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Structural and Cohesion Policies

# THE STATUS OF ARTISTS IN EUROPE

CULTURE AND EDUCATION

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EUROPEAN PARLIAMENT

**Directorate General Internal Policies of the Union**

**Policy Department Structural and Cohesion Policies**

**CULTURE AND EDUCATION**

**THE STATUS OF ARTISTS IN EUROPE**

**STUDY**

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Author: European Institute for Comparative Cultural Research  
(ERICarts), Bonn  
Suzanne Capiiau, Andreas Johannes Wiesand  
In cooperation with Danielle Cliche. Additional contributions by  
Vesna Čopič, Ritva Mitchell and a network of experts in Europe.

Responsible Official: Mrs Constanze Itzel  
Policy Department Structural and Cohesion Policies  
European Parliament  
B-1047 Brussels  
E-mail: ipoldepb@europarl.europa.eu

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## **THE STATUS OF ARTISTS IN EUROPE**

### **STUDY**

**Content:**

This report presents innovative national measures and models aimed at improving the socioeconomic status of authors (e.g. writers or visual artists) and performing artists in Europe. It addresses five main areas: individual working and contract relations; professional representation; social security; taxation; and aspects of transnational mobility. Based on the findings of the study, proposals for future Europe-wide action are made.

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## Executive Summary

This report presents innovative national measures and models aimed at improving the socioeconomic status of authors (e.g. writers or visual artists) and performing artists in Europe. It addresses five main areas: individual working and contract relations; professional representation; social security; taxation; and aspects of trans-national mobility. Based on the findings of the study, proposals for future Europe-wide action are made.

\*

The work of artists accounts for a considerable share of Europe's labour force. It is situated at the heart of the "creative sector", serving both public arts organisations and private cultural and media industries. Whether they are authors or performers, professional artists will usually generate intellectual property rights, the income from which is insufficient to sustain them in their creative work, except in a minority of cases. Despite flourishing culture/creative industry markets, their activities are generally carried out in far more precarious circumstances than other occupations. Atypical (project-based) and casual employment, irregular and unpredictable income, unremunerated research and development phases, accelerated physical wear and tear and high levels of mobility are among the key features not taken account of in the existing legal, social security and tax structures.

Several EU member states have already considered that this situation requires improvement in order to make it possible for these citizens of Europe to obtain an adequate level of professional recognition and social integration.

On the national level, several innovative or alternative measures identified in the study are:

- *Contractual or employment relations*: The "presumption of an employment contract" model for performers and a special status for "intermittent artists"<sup>1</sup> (FR); a "quasi-employed" status for self-employed artists who are economically dependent (DE); simplified procedures for freelance artists to create limited partnership companies (HU); various types of administrative, contractual and financial services for artists such as the "*portage salarial*" (FR) or the "*tiers-payant*" (BE).
- *Collective bargaining (labour law)*: Extension of negotiating rights to self-employed or economically dependent artists (DE).
- *Social security measures*: Extension of all forms of social insurance including unemployment benefits to all artists (BE); social security funds for all self-employed artists (DE); special social funds for independent artists (AT), for stage professionals or writers (IT); voluntary unemployment insurance for self-employed (DK); social assistance for low-income professionals (NL, LU); alternative means to fund social security contributions (FR; DE); adjustment of the qualifying criteria for social insurance (FR; IT).
- *Taxation (in several countries)*: Flat-rate professional expense deductions; the spreading of income and expenditure over several years; reduced VAT rates; tax exemptions for self-employed artists.

A series of comparative tables and European maps have been produced which provide an overview of the similarities and differences in national approaches and measures adopted throughout Europe.

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<sup>1</sup> "*Intermittents du spectacle*": are those artists that usually work on short term labour contracts, e.g. in film or sound recording, in theatre or music productions or in festivals.

On the European level, the study addresses various scenarios for EU-wide action including a 2003 European Parliament proposal to create a comprehensive statute for professional artists to be realised in the form of an EU Directive. This investigation deemed the proposal somewhat unrealistic given the complexity of the issues, the widely varying work conditions of the two main professional groups studied (i.e., authors, performing artists) and the innovative solutions existing in several EU member states. On the other hand, maintaining the present *status quo* is not really an option either, especially if the conditions for mobility in the larger European labour marketplace are taken into account.

This study concludes with a proposal to prepare a *new European Parliament Resolution*, which would update and expand upon its past resolutions and present a host of concrete and pragmatic measures, including those from the new Member States. In particular, the European Parliament could invite the *Member States* to:

- take note of innovative and efficient measures dealing with the most important legal and professional problems facing artists today, and
- study the implementation of these measures in their own legal and political system.

This invitation could be accompanied by the development of a more practical *Orientation Guide* that is based on the present study and other research reports proposing:

***Legal and organisational frameworks:***

- clarification of individual contractual relations and adoption of legal procedures and measures which correspond to the needs of small cultural enterprises;
- the establishment of agencies which offer legal, administrative, social security and tax assistance to artists;
- measures to support emerging artists, such as the provision of micro-credits at reduced or zero-rates of interest; assistance for professional investments in materials or equipment; further education; and
- information for professionals which is clear, practical and accessible.

***Social security:***

- the respect for and the full application of Community legislation (Regulations 1408/71 and 883) in cooperation with the various Community administrative structures and develop – with the assistance of experts from the sector – a *Code of Good Practice*;
- ensure the *full application of the Barry Banks Decision* (2000, C 178/97) and the *Commission/France Decision* (2006, C 255/04) in line with the proposed EU *Services Directive*. This implies that social security payments for self-employed artists would continue to be paid while they are working for shorter periods of time abroad;
- an accelerated transmission of relevant administrative documents via the Internet which, at the same time, keeps those professionals working in the culture and media sectors informed;
- better coordination among the various social security regimes of the EU Member States with the intention of better accommodating the differing employment status of artists (salaried worker, freelancer, self-employed) in order to avoid useless or double payments of social security contributions. The principles guiding this coordination should address the integrity of all artistic activities undertaken by an individual artist during a given period as well as the aggregation of insurance periods and contributions to different regimes of social security;



- unemployment insurance for freelance and self-employed artists and measures for the financing of social security contributions which correspond to their working conditions;
- adoption of more flexible qualification periods or criteria for social insurance and benefits that take account of the irregularity of artistic work, their particular risks (i.e. disability, employment injuries), family life (i.e. maternity or parental leave) and short term careers;
- the introduction of financial and other measures to assist artists in their further professionalisation and potential needs for retraining; and
- an allowance to pursue an artistic activity during periods of unemployment in which benefits can continue to be drawn and to consider the development of artistic practice or artistic projects as job-seeking.

#### ***Taxation:***

- the application of the *Matthias Hoffmann* Decision (2003, C-144/00) in national law which provides certain VAT exemptions for groups of artists as well as for individual non-resident artists;
- elimination of internal tax rules that sustain double taxation and, in particular, the full application of the *Arnoud Gerritse* Decision (2003, C-234/0) by allowing the deduction of business expenses on the income of non-residents, together with the normal deduction of tax paid abroad;
- an exemption for non-residents to pay wage withholding tax for fees under \$20,000;
- a more equitable deduction of professional expenses, particularly regarding the costs of training, professional re-adaptation, lump sums in the absence of receipts, a system of income averaging and the deduction of business expenses.

#### ***Mobility of artists from outside of the EU:***

- better coordination between the Departments of the Interior and for Culture when devising visa and work permit criteria;
- collective visas for touring ensembles in Europe and a study on the possibilities for implementing an annual residency card for artists from outside of the EU.

The European Parliament could invite the *Council* to recognise – via a specific resolution - the importance of artists and their creative activities in the context of European integration and to adopt, together with the Parliament, a more formal *Community Charter* addressing the status of artists and the conditions for their creative work. This Charter should take account of previous initiatives by UNESCO and could also create links with the work already undertaken by other international organisations such as the ILO, WIPO or the Council of Europe, or by professional bodies and networks.

Finally, the Parliament could call on *the European Commission* to:

- prepare the *Community Charter* which would address issues such as those mentioned above in a more systematic manner and could be devised along the lines of the model provided by the 1989 *Community Charter of Fundamental Social Rights of Workers*;
- work towards a comprehensive *Plan of Action* via a *White Book on Mobility in the Arts and Media Sectors* which would involve co-operation between the various competent DGs and invite participation from professional networks and research bodies. A *Transversal Task Force* would be asked to prepare the agenda for this action plan, including commissioning studies on the better co-ordination between social security and

tax authorities, on the role of intermediary management services ("umbrella organisations" and guarantors) and on visa policies and conditions for work permits in view of the trans-national mobility of artists in Europe and world-wide;

- establish a centralised *Online Contact Point* and information *Guide* providing practical, timely and detailed information on the status of artists, especially as concerns temporary work abroad. This Guide could be set up in collaboration with existing information systems and should be kept constantly up to date. It would profit from complementary technical studies and from the know-how of professional organisations.

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# Part I

## Introduction

### 1. Background to the Study

The purpose of this study is to assemble, complete and compare data about the current legal and social framework for artists in the 25 Member States and the two acceding countries as well as make recommendations on the possibility of developing an all-embracing *statute of the artist*.

The need of creating a professional working environment for artists which is supported by public authorities at the national and EU levels was reemphasised in 2003 by the European Parliament report on the culture industries which states that the "culture industries could not develop without the leading role of creators...". Exemplified by the 2003-2004 strikes in France of *"intermittents<sup>2</sup> du spectacle*, additional importance has been placed on the role of legal instruments, policies and measures to support the status of artists in the face of market pressures, economic competition and other social dynamics<sup>3</sup>. Legitimacy for such public intervention has been recently re-emphasised in the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, following earlier recommendations of UNESCO as well as other international organisations on the "Status of Artists".

The main part of this report will examine the ways in which governments across Europe have implemented the above recommendations into national frameworks. It has, however, not been the intention of the European Parliament and, consequently, of this study, to provide country by country profiles. Rather, the report identifies some common characteristics among the diverse approaches taken to improve the social and economic status of artists in Europe and points to innovative models adopted throughout the EU member states and accession countries. The latter can be considered as inspiration for both national legislators as well as for those considering Europe-wide strategies. What can be made clear from the beginning, however, is that the call for "national governments to devote themselves to the development of a positive legal and institutional environment which would sustain artistic creativity through the adoption of a set of coherent and integrated legal measures including contracts, national social security and adjustment of European rules, direct and indirect taxation"<sup>4</sup>, has yet to be heeded.

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<sup>2</sup> Artists who regularly work on short term contracts, for example, during festivals.

<sup>3</sup> See especially the work produced by the ORFEO Group, General Planning Commission: "Travail artistique et culture face aux pressions du marché et aux dynamiques sociétales" (December 2004); "Prospective du rôle de l'Etat vis-à-vis de la création et du travail artistique" (March 2005); "L'avenir des métiers artistiques: l'Etat face au déficit de la professionnalisation" (May 2005).

<sup>4</sup> Capiou, Suzanne: "Creative Artistic Activities, Not Yet Integrated Activities" in Beckman, Svante (ed): *Conditions for Creative Artists in Europe: a report from the Swedish EU Presidency Seminar*. Visby, Sweden: March/April 2001, pp.56-58.

## 2. Organisation of this Report

Following some methodological clarifications, Part II of this Report discusses, in a comparative manner, information and research results on:

- labour law;
- social security;
- taxation; and
- transnational mobility of artists.

The intention was to assemble updated information on common or "mainstream" approaches in Europe into easy to read texts and maps, based on comparative tables (the latter to be found in Annex II). Altogether, more than 30 European countries were reviewed, including EU member-states, applicant countries and EEA-countries. Detailed information was, however, not available for all of them in all of the fields mentioned above.

Unique cases or "alternative" systems contrasting the *mainstream approach* were added, also with a view of identifying interesting models or "good practices" for the recommendations. Special attention was given to the evaluation of their effectiveness in the improvement of artists' overall social and economic status as well as to their implications for "barrier-free" mobility in Europe.

Since the information from some European regions, in particular the countries in Central and Eastern Europe and those in the North, are generally less represented in comparative studies, the key areas of difference between these regions and Western/Southern Europe are highlighted in the text as well as, in greater detail, in two separate reports in the Annex IV provided by Ritva Mitchell (Helsinki) and Vesna Čopič (Ljubljana), followed by a special examination of the famous – but sometimes overestimated – experience of a law on the "Status of Artists" in Canada, prepared by Danielle Cliche. Interesting approaches and measures to support artists, which have been adopted in Central and Eastern Europe and in New Zealand, are found in Annex III.

The present study can also be seen in response to the 2003 Report of the Committee of Culture, Youth, Education, the Media and Sport of the European Parliament, calling on the Commission, its member states and the regions to:

“develop a European legal framework with a view to creating an all-embracing ‘statute of the artist’ intended to afford appropriate social protection, which would include legislation regarding author’s intellectual property rights”.

Keeping these ideas in mind, the study concludes, in Part II, with a short essay on the relevance of intellectual property rights in efforts to address the most important problems of the status of artists in Europe. Despite the fact that the European Parliament did not include this legal field among the areas to be dealt with in the study, such consideration seemed appropriate since, in the literature, there has been a tradition to characterise the present system and, particularly, the intentions of authors rights as resembling a "labour law of the intellectual workers" (*Arbeitsrecht der geistig Schaffenden*).<sup>5</sup>

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<sup>5</sup> This tendency, which is also frequently heard in parliamentary debates when an extension of the system of copyright protection is discussed, has been described by Schulze, Erich as early as the 1970s: *Urheberrecht in der Musik*, 4<sup>th</sup> edition. Berlin/New York: 1972, pp. 49/50.

The final Part III of the study, "Conclusions/Recommendations", examines three different scenarios and recommendations, taking account of existing European Community legislation and standards. In particular, the question whether or not the European Union should engage in the preparation of a common, EU-wide "all-embracing statute of the artist" is discussed. As an alternative, pertinent action of the European Parliament, the Commission, the Council and the Member States is proposed.

### **3. Sources/Literature**

In addition to the more general reports provided by members of the European Parliament, a range of studies have been undertaken on the status of artists on both the national and European levels since the 1970s. Recent national reports were taken into account in this study and some important examples can be found in the Bibliography. Of high interest were comparative studies on the economic and social frameworks and tax measures for artists. The information in some of these studies, however, dates back to the 1980's or addresses the problems mainly from a global perspective and could thus be of limited value for the present exercise (e.g. a Working document of UNESCO for the World Congress on the Status of the Artist: "The Artist and Society", Paris, June 1997). Another problem is that some of the previous studies often include only the "old" EU member states (for example, the extensive, still unpublished compilation of national reports provided by Alain Keseman for the EU, Brussels 1997). More recent comparative studies on measures concerning the legal status and social situation of artists include those published by the Arts Council of England (Clare McAndrew, December 2002), by the IETM network with special emphasis on the performing arts (Judith Staines, November 2004) or by the ERICarts Institute (background study to the Swedish EU-Presidency conference, "Creative Artists, Market Developments and State Policies", 2001).

Existing online information systems such as the "World Observatory on the Social Status of the Artists" published by UNESCO/ILO/MERCOSUR (2003-2005) were evaluated and provided information for the tables and maps presented in the study. The Council of Europe/ERICarts, "Compendium of Cultural Policies and Trends in Europe" often provided the most up to date information on which further research could be based.

Experts from the European Parliament and from most of the 38 European countries involved in the preparation of the national Compendium country profiles as well as a number of other specialists from e.g. cultural institutions, labour market and social security administration or artists unions and networks contributed directly to the results of this study and to the final editing of this report (see list in the ANNEX I). The authors are grateful to all of them for their participation and also want to thank their assistants Cecile Débard and Olivier Goebel.





## Part II

### Results of the Study

#### 1. Do Artists Need "Special Treatment"?

The 1980 *UNESCO Recommendation on the Status of the Artist* produced "an overall definition of the artist and specified the conditions in which artists can exist as creative workers"<sup>6</sup>. One of the main recommendations of this milestone document was "the need to improve the social security, labour and tax conditions of the artist, whether employed or self-employed, *taking into account the contribution to cultural development which the artist makes*"<sup>7</sup>. Since that time, very few countries<sup>8</sup> have translated these recommendations into national, regional or local cultural policy or other frameworks, with exceptions in countries such as Canada, France and Germany and, more recently, in Latvia.

One of the reasons for its limited success could possibly be its "merit-based approach" to justifying special approaches to occupational and social issues concerning professional artists. While general arguments which try to underline the merits of artistic efforts are important for overall cultural policy goals, there are more specific considerations to be made with regard to the atypical nature of artists working practices that call for special measures within social security, tax or other related areas of legislation. Only such specificity could challenge voices calling for artists to be treated as any other worker, since the introduction of special measures to assist them in their work would be seen as unjustifiable privileges for the already privileged "new aristocrats"<sup>9</sup> or as contrary to marketplace competition<sup>10</sup>.

The position taken in this report is that artists, while working in different fields and developing, in most cases, a highly profiled individuality, form a specific socio-professional group that share similar risks. These risks have to be addressed through special rules along the lines of other professional categories of workers with specific problems, such as miners, sailors, pilots, seasonal workers or, for that matter, bullfighters in Spain etc.

Despite the fact, that artists and their activities are increasingly seen as entrepreneurs/entrepreneurial which contribute to economic development<sup>11</sup>, their working practices and motivations must nevertheless be considered "atypical" in different ways:<sup>12</sup>

<sup>6</sup> For more information see: <[http://www.unesco.org/culture/creativity/wc-artist/html\\_eng/index\\_en.shtml](http://www.unesco.org/culture/creativity/wc-artist/html_eng/index_en.shtml)>

<sup>7</sup> Recommendation concerning the Status of the Artist, adopted by the UNESCO General Conference meeting in Belgrade from 23 September to 28 October 1980.

<sup>8</sup> While few countries have found comprehensive solutions to address the policy challenges posed by artists' particular working conditions, it is fair to mention that there has been some opposition from legislators and other professional groups to create special economic or social frameworks for artists. They argue that such initiatives can be highly administrative and cause demands from other professional groups to obtain similar frameworks.

<sup>9</sup> Heinich, Nathalie: *Les artistes sont les nouveaux aristocrates*. L'Express, 20.04.2006.

<sup>10</sup> See, for example, Abbing, Hans: *Why are Artists Poor: the Exceptional Economy of the Arts*. Amsterdam: Amsterdam University Press, 2002.

<sup>11</sup> This logic inspires business-like programmes, such as the CIBAS South East (Creative Industries Business Advisory Service) in the UK or KUNSTENAARS&CO in the Netherlands. For more information see Annex V.

<sup>12</sup> McAndrew, Claire: *Artists, taxes and benefits – an international review*. London: Arts Council of England, 2002. Capiou, Suzanne: *La création d'un environnement juridique et économique approprié pour les activités artistiques – nécessité et urgence d'une intervention publique*. Strasbourg: Council of Europe, 2000; Menger, Pierre-Michel: *Portrait de l'artiste en travailleur*. Paris: Seuil (La République des idées), 2003.

- *Atypical logic*: as a rule, artistic projects are not launched to get out of unemployment or to simply earn money but, above all, to express the creative forces of a personality;
- *Atypical work status (multi-activity)*: the majority of creators easily switch from self-employed status to that of salaried worker to that of company head or civil servant, all the while being able to combine one or another status;
- *Atypical cross-border mobility*: artists, more than other workers, are highly mobile whether in Europe or internationally;
- *Atypical economic structures*: there exists a myriad of small or even one-person businesses which compete alongside very large multinational groups; the latter dominating segments of the mainstream marketplace;
- *Atypical in their influence on economic cycles*: the work of artists reaches way beyond the culture sphere in the strict sense and influences the heart of large industrial sectors of the economy such as fashion and other design-oriented consumer goods, property development, tourism, electronics, software development, etc.;
- *Atypical in the assessment of results*: artistic success and impact can not be measured in the same manner as other marketplace achievements; and
- *Atypical financing*: artistic innovation and quality in the culture sector can not rely solely on "returns on investment" but rather needs specific forms of public intervention as well as private contributions. Public-private partnership is increasingly seen as a solution to this problem.

Observers such as Mona Cholet try to explain these conditions with the term "the intellectual underclass". The "precarious intellectuals", she writes, "come from privileged milieus, or have acquired the 'symbolic capital' of the 'higher classes', yet as far as their condition and incomes are concerned, they belong to the lower strata of society."<sup>13</sup>

A detailed look into the different member countries of the EU would reveal that, even in countries long considered to be "welfare states", the social and legal status of artists remain precarious. To cite the Swedish example:

"There were about 25,000 professional artists in Sweden in the late 1990s, according to a 1997 survey on 'Work for Artists' (*Arbete åt konstnärer*, SOU 1997: 183). Of these, 50% were freelance workers, almost 40% were self-employed and a mere 10% were employed on open-ended contracts. Moreover, they often move back and forth between self-employment and ordinary employment, and the employment is often of short duration. Quite often artists are forced to become self-employed (i.e. they are paid on the basis of invoices), rather than being accepted as employees by those who hire them. This causes problems in relation to the social insurance system, the tax system and the unemployment insurance system."<sup>14</sup>

<sup>13</sup> Cholet, Mona: *Le paradis sur terre des intellos précaires*. Le Monde Diplomatique, May 2006.

<sup>14</sup> Hellmark, Ann-Britt: *Report highlights artists' social security problems*. European Foundation for the Improvement of Living and Working Conditions, 2003.  
<<http://www.eiro.eurofound.eu.int/2003/07/feature/se0307102f.html>>

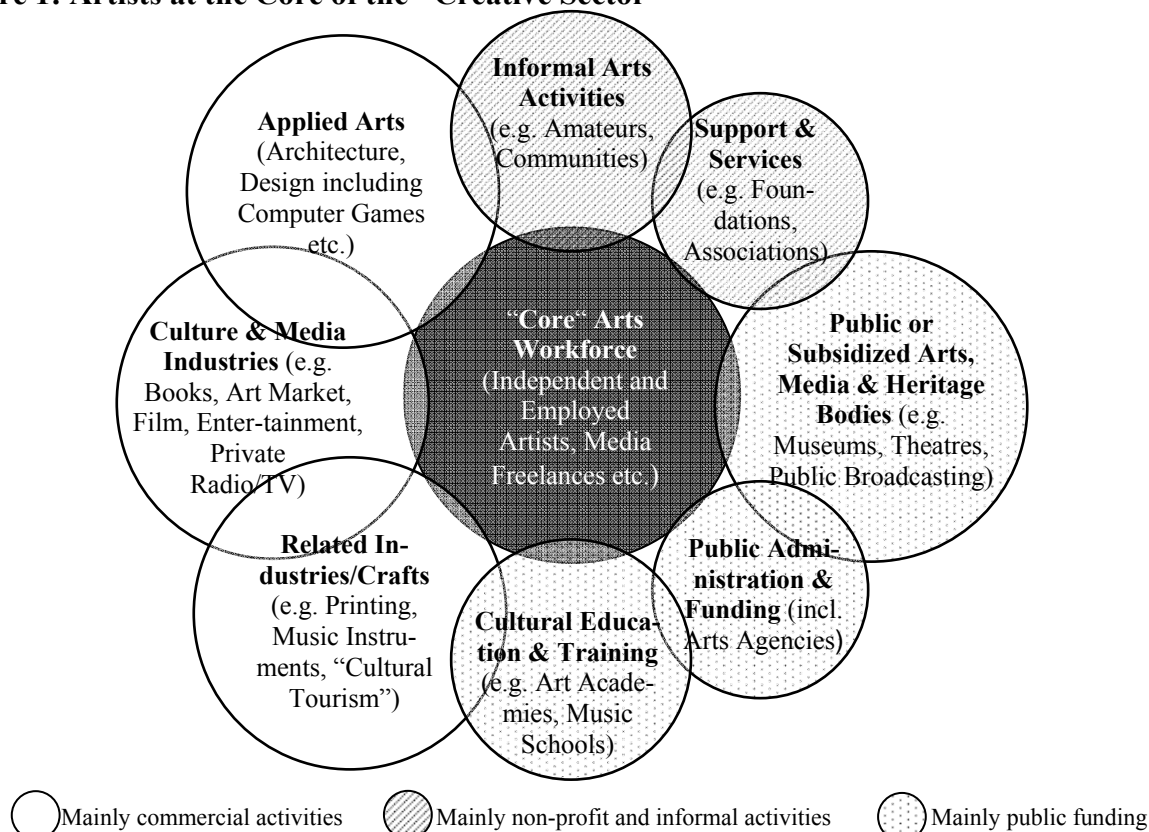
## 2. Defining Artists and their Working Status

### 2.1. The Term "Artist"

Traditionally, the term "artist" has been difficult to define and, as a consequence, was ambiguously used.<sup>15</sup> This is even more the case today, where “artistic” is often being equated with, or replaced by, “creative”. However, a closer look, into the realities of what is now called the "creative industries", the "creative economy" or, according to Richard Florida, a "creative class"<sup>16</sup> – would still see artistic inventions and actions to be of crucial importance for innovation and aesthetic developments in our societies.<sup>17</sup>

Since we do not have room in this report to go deeper into these debates, a more operational definition of professional artists was adopted, i.e., professional artists are *occupationally active persons who are defined or accepted as such in at least one of the following legal frameworks: taxation, labour law or social security.*

**Figure 1: Artists at the Core of the "Creative Sector"**



Source: Wiesand / Söndermann 2005 op. cit. Developed from models proposed at the Unesco-Conference "The International Creative Sector" (Austin, 2003), in the NRW-Culture Industries Reports (1992-2005) and in Weckerle, Christoph; Söndermann, Michael et al: Kulturwirtschaft Schweiz. Zürich 2003.

<sup>15</sup> Neurobiologists dealing with creating and recognising art see this ambiguity as an essential part of a definition of the work of an artist; see Zeki, Semir: *Inner Vision: An Exploration of Art and the Brain*. Oxford: Oxford Univ. Press, 1999.

<sup>16</sup> Florida, Richard: *The Rise of the Creative Class – and how it's transforming work, leisure, community and every day life*. New York, 2002.

<sup>17</sup> See: Wiesand, Andreas in co-operation with Söndermann, Michael: *The 'Creative Sector' – An Engine for Diversity, Growth and Jobs in Europe*. Amsterdam: Research paper for the European Cultural Foundation, 2005.

More specifically, the study addresses creators or performers:

- whose works generate copyright and related rights;
- who hold an employment status that differs from "regular", full-time employment, such as temporary or part-time employed artists, freelance workers, entrepreneurs etc.;
- who work at the heart of the "*Creative Sector*" (see fig. 1, above).

## 2.2. Professional Artists in Figures

In 2004, EUROSTAT published the results of a large scale study on Cultural Employment in Europe (the EU 25)<sup>18</sup> based on a new typology combining two different set of data from the EUROSTAT Labour Force Survey which cross tabulate:

- employment in *cultural activities*, which counts employment in all cultural businesses (Economic activity of the establishment/NACE data); and
- employment in *cultural occupations*, which counts employment for all cultural professions (International Standard Classification of Occupation/ISCO data).

Despite this attempt, there remain no European comparative statistics which aggregate the range of artistic professions as exemplified in Figure 1 above.

However, the results of the study show that, in 2002, the number of persons working in the cultural labour force in both cultural activities and cultural occupations in the EU25 was around 4.2 million persons; representing a share of 2.5% of the total employment figures. The majority of persons (70%) are *salaried employees* in, for example, public sector cultural institutions (in comparison to 85% for the overall labour market), while almost 30% are *cultural operators* in the private sector as either self-employed and free lance workers or entrepreneurs/employers (in comparison to 15% for the overall labour market).

When compared to the overall labour market figures, employment in the culture sector is more precarious. For example (2002 figures for EU 25 – see ANNEX II for more details):

- 18% of workers in the culture sector held a temporary job in comparison to 12% of the whole labour force;
- 25% of those working in culture sector had a part-time job, against 17% in comparison to entire labour force; and
- 9% of those working in the culture sector had more than one job, which is three times higher than the share of those working in the labour force as a whole (3%);

In the absence of exact, comparable figures, we can, nevertheless, estimate such figures to be even higher in the above mentioned "core" artistic workforce.<sup>19</sup>

There are no reported differences in the general employment status based on sex or age, yet the data show that the share of those working in the culture sector with a university degree is much higher: 40% of those working in the culture sector were university graduates in comparison to 24% for the entire labour force (2002 figures for EU 25).

<sup>18</sup> Département des études, de la prospective et des statistiques (DEPS), French Ministry of Culture and Communication: *Definition and Production of Harmonised Statistics for Culture in Europe. Batch 1: Cultural Employment*. EUROSTAT, June 2004.

<sup>19</sup> For example, in Germany (year 2000), the share of self-employed/freelance workers among performing artists was 45% and among visual artists and designers was 56%. See Haak, Caroll: *Künstler zwischen selbständiger und abhängiger Erwerbsarbeit*. WZB discussion papers. Berlin, June 2005.

### 2.3. Defining the Employment Status of Artists

The countries examined in this study have very different legal, economic and social traditions due to their historic development. It is therefore important to clearly identify certain distinct terms used throughout the study and indicate what they could mean for how professional artists are defined for the purposes of labour law, social security and taxation.

*Individual employment relations* engender either the application of:

- *employment laws* if the artist is engaged under an employment contract which creates a link of subordination and provides for minimum wages, holiday pay, conditions and times of work, health and safety, labour inspectorate services, representation and negotiation by labour unions, special labour tribunals, etc.;
- *civil or commercial laws* or the law of *public contracts* if the artist is not engaged under an employment contract as described above and is not engaged in a link of subordination.

With regard to *social security*, provisions are usually defined on the basis of the employment relationship. The general social security system may also provide provisions for those in services sectors (Belgium) or in parts thereof (France, Germany) regardless of the nature of the employment relationship. Some distinctions:

- Social security for *salaried workers* covers sickness-disability insurance, family allowances, statutory retirement pension and occupational diseases and employment injuries. In some countries it also covers annual holidays (e.g. in Belgium). Social security payments are calculated on the amount of salary earned. Social security programmes are funded by salaried workers, employers and, frequently, by the State.
- In many countries, *unsalaried workers* can have access to public social security insurance programmes which cover sickness-disability, family allowances, pensions, etc. Payments are usually calculated on the basis of a flat-rate and are much lower than required of salaried workers. This minimum coverage is insufficient and requires artists to take out additional private insurance or to acquire a salaried status. These public programmes are funded by unsalaried workers and the State. In certain countries, unsalaried workers can have access to unemployment benefits if they take out private insurance (e.g. Denmark, Finland).
- *Universal social coverage* is provided in certain countries (e.g. United Kingdom) which give all residents on their territory access to minimum health services. This is the exception rather than the rule in the EU 25 member states.

With regard to *tax law*, artists are not necessarily defined in the same way as they are in labour law or social security legislation. In fact, artists may be defined as an employee, self-employed and/or unemployed all within one tax year.

Accordingly, the traditional distinction between the status of a *salaried worker* and the status of an *unsalaried worker* is not always clear and relevant: their characteristics vary from one country to another and from one area of the law to another.

The following sections of this report will elaborate on some of the common characteristics found throughout the legal frameworks of the EU 25 countries and highlight some "alternative" or innovative models to consider.



### 3. Defining the Employment Relationship

#### 3.1. Application of Common Law

Traditionally, the status of a worker depended on the *legal nature of the contract* binding him/her to the person who remunerates him/her. For example:

- a *contract of employment* implies the application of employment law (probationary clause, non-competition clause, termination clause, guaranteed salary in case of illness, etc.; pay protection; health and safety at work; employment inspections; etc.);
- a *contract for services or for the purchase of certain goods* implies the application of civil or commercial law (common law);

The *status of civil servant* usually comes close to that of an employed person, at least as regards guaranteed salaries and social benefits.

These rules generally apply in principle to artists, but in an utterly different context as will be discussed below.

#### 3.2. Factors Affecting the Employment of Professional Artists

In recent years, the employment status of many groups, including professional artists, has been influenced by a diminishing role of the State and by a globalisation of market economies.

For example, the economy of culture in countries of *West Europe* has been, over the past 20 years, marked by the privatisation of the audiovisual sector, the reduction of State cultural budgets, the opening up and extension of the European public space and the predominant concentration of imported products transmitted via radio, TV, cable, etc. This has deeply altered the conditions for creation and production. Artistic creation finds itself settled into an *economy of projects* which are more often than not managed by *small and medium-sized enterprises* whilst, in the distribution sector, large-scale national and international groups dominate the market. While some groups, e.g. literary authors, may be less affected by such changes, others, such as performing artists, experience them as grave interferences with their ideas and professional practices and may even consider changing their work or working status altogether<sup>20</sup>.

In most of the *Nordic countries*, with the exception of sectors like design or architecture, artists are more reluctant when it comes to establishing their own enterprises. The data produced by the Eurostat survey shows that, in 2002, the share of self-employed and entrepreneurs in the cultural sector in Norway and Denmark or Finland was 17% and 19% respectively, as compared to countries such as Italy and Ireland, where this share was much higher at 47% and 35% respectively. Sweden, with a figure of 27% self-employed in the total cultural workforce, comes closer to the average of EU25 which stands at a share of 29%. *Freelance* workers in the Nordic countries rely more often on relatively *stable sources of temporary contracts* or, partly, on additional salaried income. Salaried workers mainly work in the performing arts (*arts vivants*). A principal characteristic of the Nordic model has long been the extended system of public grants and the availability of long-term guaranteed income, which are seen as contributing to ensuring employment security and artistic freedom.

<sup>20</sup> This is the result of a recent survey among German artists, cf. Dangel, Caroline; Piorkowsky, Michael-Burkhard with Stamm, Thomas: *Selbstständige Künstlerinnen und Künstler in Deutschland - zwischen brotloser Kunst und freiem Unternehmertum?* Berlin: Deutscher Kulturrat, 2006.

Over the past 15 years, the *post-socialist countries* have shared a slow and difficult transition process during which former models, institutions, laws and regulations have been gradually replaced by Western variants. Although the public authorities have been working hard to replace old bodies of law with new ones, the application of these laws in practice requires multiple efforts to address a variety of obstacles including the lack of institutional capacity to implement them. Old mentalities and forms of behaviour are persistent. Calls are made for societal values to adapt to new paradigms: a new role for the State, new attitudes towards work, self-management, etc. Public institutions and professional organisations in the cultural sector have been slow to adapt to change and to play the role of mediators in the promotion of artistic work. These changes surely cannot be achieved overnight and will take years, decades and maybe even a whole generation before they can be fully achieved.

Another common feature among post-socialist countries is the shift from *paternalism* to *interventionism*. While in the West, paternalism is not necessarily considered as a contradiction to the entrepreneurial spirit and often forms a corporatist element of the welfare state, its Eastern version is a legacy of *étatisme*, originating from the concept of a "nanny state", breeding a culture of dependency and bringing beneficiaries under central control. This negative connotation provided a justification for the new democratic authorities to abolish not only guarantees of full employment, but also the former social security systems, all of this masked with an ideology of self-help, individual responsibility and entrepreneurialism. In a situation where the new state regulations are not yet in place, and the market-oriented cultural production does not yet offer new opportunities for many artists, there has been a wide-spread resistance among artists against the often vague perspectives of newly developing social security and pension schemes, labour laws, taxation systems etc.

### 3.3. A Succession of Project-based, Short-term Contracts

The majority of artists nowadays share a structural instability in their conditions of engagement, and this instability is generally not compensated.

Engagement under a *project-based, short-term contract* has become the norm in the EU25 and is allowed by the law (Belgium: contract for clearly defined work; France: customary fixed-term contract), whilst artistic work is sometimes treated like temporary work (Italy; Belgium for occasional employers<sup>21</sup>). For around twenty years, the *term (length) of contracts for occasional workers in the entertainment industry* has been significantly reduced. The case of France is a good example: between 1987 and 2001, the average length of a contract fell by 72% (from 20.1 days to 5.7 days of engagement), the average pay decreased by 25%, whilst the number of contracts grew by 130%<sup>22</sup>.

Another interesting development is the increase in the number of *artist-run businesses*. This has been necessitated by the fact that if artists want to receive grants from public authorities for their own projects and/or make tax deductions of their professional expenses, they are required to create *small businesses*, whether commercial or non-commercial, in which they are shareholders and/or are appointed as directors. Even though artists may not inherently be "entrepreneurs" in the strict sense of the word, they often work independently which means that, from an employment status point of view, they can usually be classified as "self-employed"<sup>23</sup>.

<sup>21</sup> Section 1(6) of the Belgian Act of 24 July 1987 on temporary work and the loan of staff to users.

<sup>22</sup> Guillot, Jean-Paul: *Analyses et propositions des partenaires sociaux du secteur sur l'emploi dans le spectacle*. 20 October 2005.

<sup>23</sup> Cf. survey results in Galloway, Sheila; Lindley, Robert; Davies, Rhys; Scheibl, Fiona: *A Balancing Act: Artists' Labour Markets and the Tax and Benefit Systems*. University of Warwick, Institute for Employment Research, London: Arts Council of England, 2002.



### 3.4. Multiple Employment Status and Legal Uncertainties

Artists are faced with *multiple forms of engagement* which are constantly changing and may create great legal challenges. For example, an employment contract follows on from or can be coterminous with a copyright or related rights assignment agreement, or with a civil law contract. These working conditions provoke a *multiplicity of social security and tax statuses*, which is not taken account of by most legislation and increases the cost of social security contributions without increasing the level of social security benefits.

*Subordination*, which normally characterises the existence of an employment contract, is a notion that is extremely difficult to identify in the artistic sector, particularly due to the nature of the work, plunging artists and their potential employers into the greatest of legal uncertainties. Faced with this complexity, there is a great deal of pressure on artists, who are under a link of subordination (i.e. employed), to become *self-employed* (up to 70 or 80% in Poland) or to set up *micro-companies* which means that employers do not pay their share of the salaried workers' social security contributions (Belgium; France; Hungary)<sup>24</sup>.

Sometimes, the more favourable *tax status* of unsalaried workers and the relatively low level of obligatory social security contributions (8%) entices artists to adopt the status of an unsalaried worker even though it does not reflect their legal reality (especially in the UK where their rate reached 57% in 2001 for actors, variety and stage artists and film directors<sup>25</sup>). Many are then forced to carry out additional salaried activities outside the artistic sector (60%)<sup>26</sup> to subsidise their income.

Quite often, engagement contracts are not in writing, contrary to law (e.g. Spain, Greece), and the provisions of *social security legislation* are not always adhered to (e.g. Belgium; France; Germany; new EU25 member states)<sup>27</sup>.

### 3.5. Ineffective Administration of the Law

The labour inspectorates have not been playing their role properly due to the lack of sector-specific expertise, to insufficient staffing or to the fact that staff working hours are not in line with sector practice (e.g. Belgium; France; new EU25 member states).

Furthermore, the closed professional milieu has a tendency to exclude people who, in the event of a breach of the law (of intellectual property, work regulations or pay protection), would usually take their cases to court or file complaints with a labour relations tribunal. Artists, however, are very often hesitant to take their complaints to court for several reasons: the small amount of money they are owed, the high court costs, the length of proceedings and the fragility of the defending companies which are most of the time located abroad.

In many cases, the terms of intellectual property rights are not respected, especially as regards the distribution of neighbouring rights to performing artists. Authors of audiovisual works are

<sup>24</sup> Polacek, Richard: *Study Relating to the Various Regimes of Employment and Social Protection of Workers in the European Media, Arts and Entertainment Sector in Five Applicant Countries: Czech Republic, Hungary, Poland, Slovakia and Slovenia*. October 2003, p. 5.

<sup>25</sup> Department for Culture, Media and Sport: *The Creative Industries Mapping Document 2001*.

<sup>26</sup> Staines, Judith: *From Pillar to Post*. IETM, 2004, p. 41.

<sup>27</sup> FIM-FIA-EURO-UNI-EAEA, Study related to regimes of employment and social protection of live stage performance and audiovisual workers in the member countries of the European Union, 2002, p. 8. Richard Polacek, op. cit. p. 8.

often forced to give away all their rights without just remuneration on secondary exploitation (e.g. new EU25 member states)<sup>28</sup>.

### 3.6. Alternative/Innovative Models

Certain countries have adopted measures aimed either at clarifying or better protecting artists or certain categories of workers in the culture field. Three innovative examples from France, Germany and Hungary are described below and include:

- fixed term employment contracts for live-stage artists (France);
- quasi-employee status for freelance artists (Germany); and
- limited partnership companies (Hungary).

#### *France: Fixed Term Employment Contracts for Live-Stage Artists*

##### **Background**

Since the enactment of Law no. 73-4 of 2 January 1973, section L762, 1 of the Labour Code has provided that “any performing artist engaged in a return for payment activity by presenting him/herself in public is presumed to be engaged under a contract of employment unless he/she carries on his/her activity as a commercial live-stage businessperson.”

##### **How does it work?**

A legal fixed-term employment contract is drawn up with an individual. However, it can also be drawn up with a collective of artists deemed necessary to produce the work such as musicians who are members of the same orchestra.

##### **Definitions/criteria**

The following are regarded as live-stage artists: *opera singers, stage actors, choreographers, variety artists, musicians, cabaret singers, bit players, orchestral conductors, arrangers/orchestrators and directors (for the physical execution of their artistic designs).*

##### **Recent debates**

The presumption of an employment contract has not been cast into question in France, but is subject to a complaint against France filed by the Commission before the European Court of Justice (C-255/04) as it applies to self-employed artists (recognised as such in their own country) working in France, and are therefore required to make payments in France (for e.g. pension), while being liable to make social security payments in his/her country of origin. For the Commission and the European Court of Justice (decision of 15 June 2006), this presumption is contrary to articles 43 and 49 of the European Community Treaty, i.e. the principles of freedom of establishment and the free provision of services.

<sup>28</sup> Richard Polacek, op. cit. p. 8.

## **Germany: Quasi Employee Status for Freelance Artists ("Arbeitnehmerähnliche Personen")**

### **Background**

Self-employed or freelance workers who maintain frequent or quasi-permanent contracts with a single company can find themselves, despite the absence of a fixed employment relationship, in a position of economic dependence to an enterprise or organisation. This is frequently the case for professional artists, designers, musicians and freelance contractors working with broadcasting organisations. Following on the publication of reports which describe the situation faced by freelancers, changes were made to a number of regulations in German labour law.

### **How does it work?**

The most important laws addressing the group of "Arbeitnehmerähnliche Personen" are:

- Article 5 paragraph 1 ArbGG (Law on Labour Courts): disputes about contracts of such individuals fall under the system of labour courts;
- Article 12 a TVG (Collective Agreement Law): the fees and conditions of employment can be regulated by collective agreements, contrary to the competition laws which normally rule out such instruments. In the arts and media field, collective contracts exist for freelancers working in broadcasting, the press, as well as – in a more restricted sense – for designers.
- Article 2 BUrlG (Federal Vacation Law): economically dependent freelancers are entitled to 24 working days holiday pay.

There is, however, no protection on the termination of contracts. Social security provisions for employees do not apply.

### **Definitions/criteria**

The main criteria for obtaining the status of an *Arbeitnehmerähnliche Person* is economic dependence from a single contractor without being in a relationship of individual subordination to that "employer's" authority. In addition, the economically dependent persons must deliver their services or produce their works on their own, that is: without the cooperation of employees. They should not be considered as entrepreneurs, but in need of social protection similar to an employee.

### **Recent debates**

Due to the fact that the regulations mentioned above are of a general nature and are not directed at improving the specific situation of professional artists or journalists, their application in the arts and media are somewhat limited. Empirical studies of the Centre for Cultural Research (ZfKf) have demonstrated that the socio-economic situation of a great number of writers and artists who only occasionally find chances to work and if so, for different "customers" – e.g. teaching individual music students, or depending on a few local collectors to buy their works of art – may even be worse off than those professionals which have close, sometimes lucrative ties to a single company. Since this former group of "economically restricted freelancers" ("*wirtschaftlich eingeschränkte Freischaffende*") is currently without any real protection, it was argued, already 30 years ago, that they should receive more help through some combined efforts in different legal domains as well as additional cultural policy measures.

The question of whether economically dependent freelancers were really "in need of social protection similar to an employee" has emerged and has, in some recent cases, resulted in negative labor tribunal decisions (e.g. for persons earning over 150,000 € annually).

### **Foreign artists/mobility aspects**

This regulation is applicable to all professionals, regardless of their nationality.

### **Legal base/source**

<[http://www.gesetze-im-internet.de/tvg/\\_12a.html](http://www.gesetze-im-internet.de/tvg/_12a.html)>

Karla Fohrbeck, Andreas Wiesand et Frank Wolterreck: *Arbeitnehmer oder Unternehmer?, Zur Rechtssituation der Kulturberufe*. J. Schweitzer Verlag: Berlin, 1976.

## ***Hungary: Limited Partnership Companies***

### **Background**

The 1997 Companies Act CXLIV allows freelance artist, e.g. actors, dancers, musicians etc. to form a Limited Partnership Company (Betéti Társaság – Bt.). The main advantage of this legal form is its tax regime which allows freelance artists and all other individual entrepreneurs to pay a so called simplified flat rate enterprise tax of 25%. This eliminates the need for freelance artists to keep receipts that would otherwise be required to deduct professional expenses. It is a radical simplification of administrative procedures and is considered very favorable in comparison with regular taxation rates. This simplified enterprise tax replaces the corporate tax, capital return tax and personal income tax which would otherwise have to be paid. On the other hand they must add VAT (usually 20%) to their invoices which they cannot reclaim.

### **How does it work?**

The initial step in founding a company in Hungary is to prepare written Articles of Association (or Deed of Foundation), which must be signed by all members (or their authorized representatives holding a power of attorney). An attorney or public notary must countersign this document.

The Articles of Association must contain:

- the name, the company form and the registered office of the company;
- the name, the company form and the registered office (address) of the founders;
- the scope of the company's activities;
- the registered capital of the company, and the method (cash or in-kind) and date of contribution by the founders;
- authorities for signing on behalf of the company;
- name and address of executive officers;
- term of the company, if it was established for a definite period;
- other matters required by the Company Act for the different legal forms of business associations.

It is estimated that more than 75% of self-employed artists use this legal form and set up limited partnership companies.

### **Definitions/criteria**

The founding of any type of company must be reported to the Courts within 30 days of the countersignature of the Articles of Association. The Court must also be notified of any change in the registered data within 30 days of each change. If the court does not respond within a specific period of time, the registration is deemed to have occurred. Businesses are deemed to be established as of the date of their entry into the Registrar. The pre-company status ends as of the date of registration.

### **Recent debates**

The main reason for choosing the limited partnership form instead of establishing a labour relationship contract according to sections of the Labour Code was to exempt (or rather partly exempt) companies from different types of tax and social contributions. This may lead, however, to so called 'counterfeit contracts' (dead bargains) which are against the law and are strictly monitored by the Authorities. On the other hand, most cultural managers prefer to work with contracted artists rather than with companies.

### **Foreign artists/ mobility aspect**

Hungarian citizenship is not required to establish a limited partnership company.

### **Legal base/source**

Company Act CXLIV of 1997.

This text is based on information provided in: Péter Inkei and János Z. Szabó: "Country Profile: Hungary" in Council of Europe/ERICarts (eds): *Compendium of Cultural Policies and Trends in Europe*, 7th edition, 2006. <<http://www.culturalpolicies.net>>.

## 4. Professional Organisations

### 4.1. On the National Level

In the majority of countries, there is no organisation which acts as an overall representative of cultural employers.

In fact, in some cases, it is very difficult to clearly identify who is the *employer*. It is possible that an artist can be, at one and the same time:

- the employer of others who work together on a specific project;
- an employer of him/herself (within a micro-company that he/she has set up for specific projects); and
- an employee engaged in a project of a company which, occasionally, may be his/her own (e.g. film, musical or theatrical productions).

This mix of private and professional relations makes the *classic link of subordination (authority) either very difficult to determine or de facto non-existent*. This unclear status of being both an employer and employee or freelance worker all at the same time also poses challenges to those organisations or trade unions which are to represent the interests of their members as either entrepreneurs or employees in the strictest sense.

The dynamic characteristics of the culture sector prevent the structuring of true dialogue between traditionally understood employers and employees. It has been observed that, as a result, collective representation fails to develop except in public cultural institutions such as opera houses, subsidised theatres, public broadcasting companies, etc., or in commercial companies such as advertising agencies.

The artists themselves find it difficult to structure themselves into representative organisations because of the fact that their professional status is neither clear nor uniform (except in France for occasional workers in the entertainment industry) or because they are increasingly engaged under short-term contracts and have the status of unsalaried workers.

In Estonia, Lithuania and Latvia, the main artists' associations of the old communist regime have been transformed into unions, but in Poland, the Czech Republic, Slovakia, Romania and Bulgaria, such associations have lost most of the privileges that State artists once enjoyed.

In other countries, the competition authorities may even have an eye on professional associations trying to defend the interests of the increasing numbers of unsalaried workers since some of the activities of these bodies, such as creating standardised contracts, could be seen as anti-competitive (e.g. Ireland, some new EU25 member states).

## 4.2. Alternative/Innovative Models

A model from Canada is presented below which provides, within certain limits, mechanisms for freelance artists to engage in collective bargaining with "employers". A similar project seems to have been envisaged in Slovakia<sup>29</sup>.

### *Canada: Federal Act on the Status of Artists*

#### **Background**

The Canadian *Status of the Artist Act* was enacted in 1993 and brought into force in 1995. It became the first federal law in the world to recognise the particular working conditions of artists as well as their rights of association. It does not address taxation, social security or unemployment insurance.

#### **How does it work?**

The Canadian *Status of the Artist Act* provides a legal framework for collective bargaining between associations, guilds or unions representing self-employed artists and federal producers or institutions. The Act is divided into two parts. The first established the Canadian Council on the Status of the Artist, made up of artists to advise the Minister of Canadian Heritage regarding the Act. This Council was disbanded in the late 90s, shortly after its implementation. The second part of the Act created the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT) and put into place a framework for the conduct of professional relations between artists and producers within federal jurisdiction. The Tribunal reports to Parliament through the Minister of Labour. It has three main areas of responsibility: to define those disciplines that comprise the arts sector; to certify a national artist association giving them the exclusive right to engage in collective bargaining on behalf of its members; and to regulate scale agreements between these associations and federal producers/agencies. To date, the Tribunal has defined 23 artistic sectors, has certified 21 artists' associations and reached 14 pay scale agreements with federal producers and agencies.

#### **Definitions/criteria**

As labour law is under provincial jurisdiction, the *Federal Status of the Artist Act* applies only to freelance artists engaged by the federal government and its institutions. It does not apply to individuals working in employer-employee relationships, nor does it apply to artists working under provincial jurisdiction.

There is no coherent definition of a professional artist applied across federal government departments and agencies. Indeed the definition put forward by Revenue Canada (tax authorities) and in the *Federal Status of the Artist Act* are completely different. The former considers independent professional artists to be carrying on a business and that there is a "reasonable expectation" that this business will produce a profit. The latter defines an independent professional artist as someone who is paid for his/her work which is shown before an audience; is recognised by other artists' to be an artist; is a member of an artist association or is in the process of becoming an artist.

#### **Recent debates**

According to the latest Census data, the majority of independent professional artists working in Canada receive 26% less annual income than the average earning for the entire labour force which has led to allegations of the ineffectiveness of the Tribunal and its certified associations to negotiate a better deal for independent artists working for federal institutions. There is another area of concern regarding the potential for those artists not belonging to certified associations to be excluded from the collective bargaining process. Some exceptions exist such as the possibility for "non-members" to benefit from collective bargaining negotiations on the condition that an amount equivalent to the certified association's union dues is deducted from his/her fee by the producer /employer. Some are concerned that employers could hire "non-professional" artists at cheaper labour rates than those outlined in the pay-scale agreements negotiated by artist associations on behalf of their members.

#### **Legal Base/source**

Download Federal Status of the Artist Act from: <<http://capprt-terpap.ic.gc.ca>>  
Danielle Cliche, "The Canadian Federal Act on the Status of Artists" see Annex III.

<sup>29</sup> V. Polacek, 2003, p. 53.

In Europe, other models have been developed or are under discussion. For example, in *Germany* the Collective Agreement Law (Article 12 a TVG) already mentioned under point 3.6 of this report, allows economically dependent freelance artists, journalists and other independent media workers to conclude, contrary to the competition laws, collective agreements with their "employers". Such provisions, which regulate the fees and conditions of employment, have been of particular relevance for freelancers working in the fields of broadcasting and the press, as well as – in a more restricted sense – in the field of design.

As can be seen from examples provided in Annex IV, there exist some models which are based more on a "management approach". In *Belgium*, the agency SMART, an artists' mutual society, provides administrative social, tax, accounting and logistical management services.<sup>30</sup> In *France*, the agency AUDIENS, which is mutually administered by employers and employees, deals mainly with issues of social security, including special retirement schemes.

### 4.3. On the European level

With the exception of the European Council of Artists (ECA), professional representation at the European level is organised by sector. Three important examples:

#### *Performing arts:*

- The European League of Employers' Associations in the Performing Arts Sector (PEARLE), is an international organisation established under Belgian law.
- The European Arts and Entertainment Alliance (EAEA), brings together the International Federation of Musicians (FIM), the International Federation of Actors (FIA) and the European Office of the Global Union Media, Entertainment and Arts (EURO-MEI). It is recognised by the European Trade Union Confederation (CES).
- Both PEARLE and the EAEA participate in the work of the European Commission in the context of the Sectoral Social Dialogue Committee created in 1999 and dedicated to the live performing arts sector.

#### *Audiovisual media:*

- In 2004, a European Commission Social Dialogue Committee was set up for the audiovisual sector.
- Employers are represented by the European Broadcasting Union (EBU), the International Federation of Film Producers' Association (IFFPA), the European Coordination of Independent Producers (ECIP), the Association of European Radios (AER) and the Association of Commercial Television (ACT).
- Salaried workers are represented by the FIM, the FIA, EURO-MEI and the European Federation of Journalists (EFJ)<sup>31</sup>.

#### *Literature:*

- The Federation of European Publishers (FEP) is the umbrella association of book publishers associations in the EU. In some initiatives related to copyright, the FEP co-operates with the European Writers Forum (EWF).

<sup>30</sup> See <<http://www.smartasbl.be>>

<sup>31</sup> cf. Debard, Cécile: *Professionnels de la Culture en Europe-Professionnels des arts vivants en Allemagne et en France*. Study carried out at the Institut ERICarts and Université Pierre Mendès France, Grenoble, 2006.





## 5. Social Security

### 5.1. Overall Challenges

Social security programmes which are structured according to classic employment models penalise professional artists regardless of the nature of the social protection regime be it insurance based, universal, public or private. Some reasons:

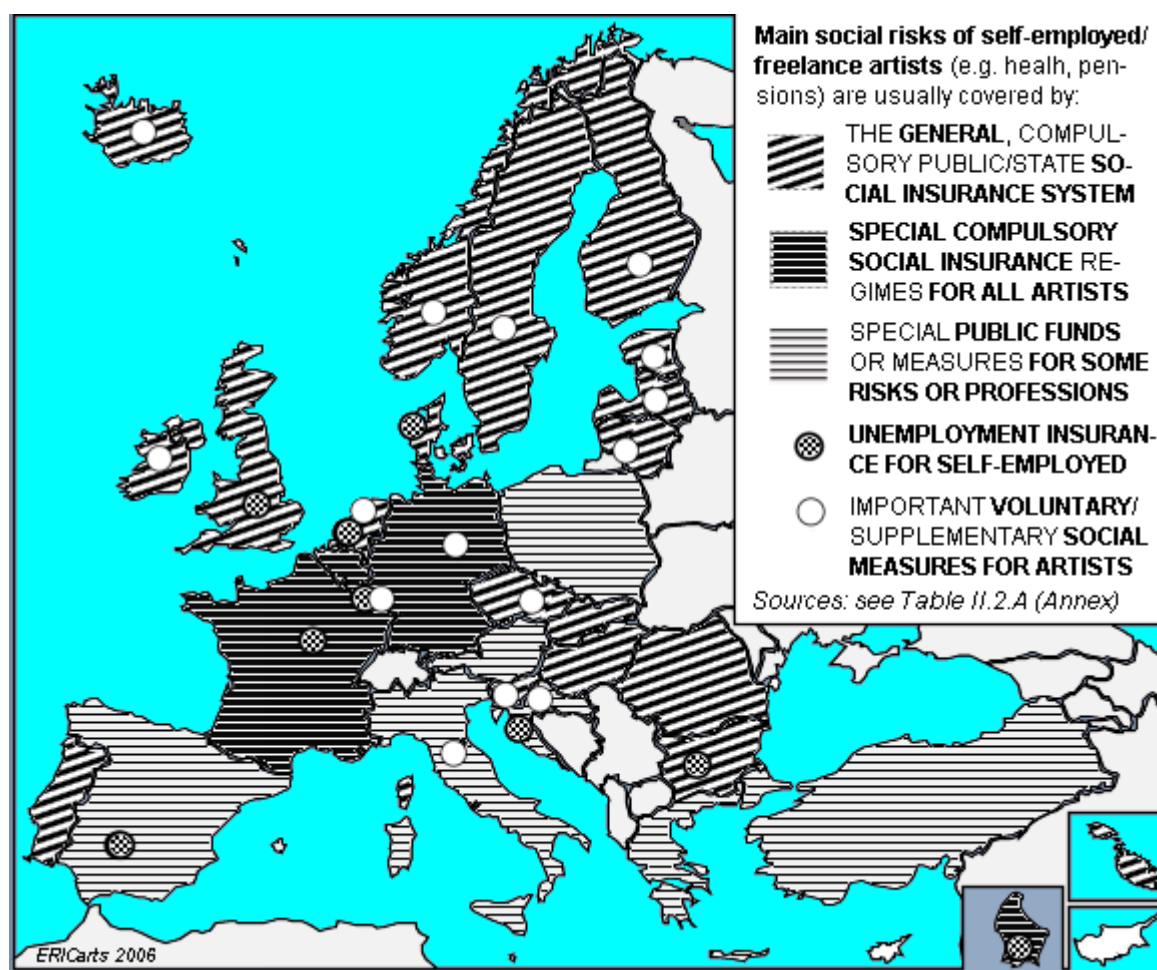
- in order to qualify for certain benefits such as unemployment insurance or pension funds, specific pre-defined criteria on e.g. the length of recognised periods of work, must be met. These criteria differ from country to country and will have a different impact on professionals working in different sectors. For example, the average age of retirement for dancers is 45-47 years of age which is far from the "norm" as defined in social security legislation;
- low levels of income which are below the minimum which is required by, for example, pension schemes (e.g. Germany; Belgium; Spain; Italy; the Nordic countries; the new EU25 member states);
- the exclusion of certain types of income from pension calculations (e.g. long-term artists grants in the Nordic countries);
- 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 is antinomical with the nature of artistic work. This problem is even more acute in countries such as Denmark where artists are required to “actively” seek work<sup>32</sup>.

The social protection of artists can be summarised on a geographical map (see the following page). This map has been prepared using a table which can be found in Annex II. It shows a clear picture:

- In the North-Western and South-Eastern European countries, the general public social security system seeks to cover the risks of all citizens. Since these systems are not fully adapted to the needs of self-employed artists, supplementary measures exist in all of the Nordic/Baltic states; and
- in most of the Central and Southern European states, special social security provisions for independent artists, some of them compulsory, have been introduced alongside general provisions.

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<sup>32</sup> New Zealand has recently adopted an alternative: Pathways to Arts and to Cultural Employment, PACE (see Annex V). An artist in receipt of unemployment benefit who develops an artistic project enabling him to receive payment or extending his artistic practice is regarded as looking for work.

**Map 1: Social Security for Artists in the EU*****Western European Countries:***

Social protection for *salaried workers* in Western countries is mainly founded on the principle of *insurance* and is dependent on the number of days worked or the total income for which a social security contribution has been paid. Certain countries have adopted *universal schemes* guaranteeing basic benefits, supplemented with obligatory (salaried workers) or voluntary insurance payments (the self-employed). The situation has recently become worse all over Europe due to socio-political developments which have introduced more stringent qualification criteria for salaried workers regarding unemployment insurance as is witnessed in France and in the Netherlands. The disengagement of the State in the provision of public social security programmes has resulted in the rise of private insurance companies in countries such as Germany, Belgium, Spain, Ireland, the Netherlands and the United Kingdom in particular.

As stated earlier on in this study, the *multiple employment status* of artists which very often combines the statuses of a salaried worker (employee), self-employed person, freelance worker, individual entrepreneur, active company member ('company owner') etc., gives rise to legal and administrative complexities for each artist's social security dossier: two or more affiliations to two or more social security schemes can augment the cost of social security, without additional benefits (e.g. Belgium, France).

***Nordic Countries:***<sup>33</sup>

In the *Nordic countries*, the social welfare system provides social security protection for the entire population, i.e. it is open to all workers, whether salaried or unsalaried, including unemployment benefits. The latter is inconceivable in other European countries.

There are however, some strains in the Nordic model caused by the tensions between the overall social welfare model and specific social and economic needs of creative artists. As in other European countries, the minimum income based criteria poses a great challenge for those freelance artists who earn a very low annual income and are therefore excluded from the system. Another challenge is having access to unemployment insurance as it presupposes that one is looking for a job in an environment where jobs in the cultural labour market are difficult to come by. After a certain period of unemployment, one may be required to take a job outside of their profession (e.g. in Denmark).

National pension system reforms are undergoing (e.g. in Denmark) or recently completed (e.g. Sweden and Norway). In Finland, where income-based mandatory pension system was introduced in the early 1960s, there are plans to integrate the separate pension system for salaried workers, freelancers and self-employed into one comprehensive system. There are fears that the reforms will take away some of the unique benefits created for artists over the years. For example, Finnish artists and journalists who do not receive sufficient income-based pensions can apply for an "old age grant" as a supplement. The Finnish Ministry of Finance administers this system and intends to abolish the grants once the reforms are adopted.

Revenues generated from copyright or from state grants were for a long time not included in the total income when calculating pension funds or, as is the case in Sweden, in social security calculations which would give artists access to health or maternity benefits. There are, however, changes which will enable artists to include long term grants as part of their total income calculations and hence result in the augmentation of the pension funds. For example in Finland, receivers of the longer-term (five-year) artists' grants of the Arts Council are now insured under the state pension system.

Another aspect of the reforms has been to use the life-long accumulated income and pension contributions to calculate benefits rather than the time based method of calculation. For example, in Sweden, pensions were calculated on the basis of the total income earned during the last 15 years of working life. The artists unions have been monitoring the effects of these changes and have found them to put artists at a significant disadvantage.

In Denmark and Sweden, unemployment benefits are administered in cooperation with the unions, which pre-supposes that claimants are members of or are recognised as professionals by the union. The unions have also implemented solutions based on a voluntary system of solidarity for unemployment (Denmark, Finland).

***New EU25 Member States:***

The status of artists in the new EU25 member states is especially worrying. The demise of the full employment model and the closure of numerous cultural institutions due to decreasing budgets for culture have reduced the employment opportunities for both salaried and unsalaried workers and hence the overall level and reach of social security protection<sup>34</sup>.

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<sup>33</sup> Based on: Mitchell, Ritva: *A Sketch of the Nordic Model of the Status of the Artist and an Account of its Main Problems*. Annex III.

<sup>34</sup> Polacek, Richard: op. cit., pp. 8 and 9. See also Čopič, Vesna, op. cit., in Annex III.

At the moment, *self-employed* workers in the new EU25 member states are incorporated into the public social protection systems set up for salaried workers, including unemployment insurance (except for Hungary), but only have compulsory coverage for certain areas such as occupational diseases and employment injuries (e.g. in the Czech Republic and Slovakia). Self-employed workers can opt out of these public programmes and can take out private insurance. However, artists whose income is irregular and of a generally low level and choose to opt out of the public insurance programmes, usually do not take out private insurance. When they do contribute, they often find it difficult to meet the pre-defined criteria for access to unemployment benefits or pension funds due to their working conditions. This is especially the case for older artists, many of which are living in extreme poverty<sup>35</sup>.

## 5.2. Alternative/Innovative Models

Certain countries have adopted special measures aimed at providing self-employed artists with some form of social security. These range from special social security systems for artists to initiatives undertaken by the artists unions themselves to provide especially older artists with a small pension supplement. Models elaborated on the following pages include:

- extension of the general social security system for salaried workers to self-employed artists, covering all benefits (Belgium);
- *Künstlersozialkasse* – a social security system for self-employed artists covering health and pension (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 incomes lower than the minimum wage (Grand Duchy of Luxembourg and the Netherlands);
- unemployment insurance for self-employed artists (Denmark); and
- unemployment insurance authorizing artistic activity (Belgium).

It must be underlined, however, that this list is by no means exhaustive. A few additional provisions, mainly from the new EU 25 member countries, can be found in Annex IV. Other potential models would require further scrutiny, including examples in *Spain*, where *Decree 26 of 1985* conceded artists and other creative workers the same rights and obligations as all other workers. Performing artists and bullfighters were then grouped together under a special heading within the general social security system. Another *Decree (2621/1986)* made specific provisions for income averaging in view of the considerable monthly fluctuations in artists' income as well as a provision for an early retirement for performing artists in an effort to compensate their difficulties to continue performing at a certain age. Other measures in Spain address the fluctuation of income found among self-employed workers such as authors. Again, efforts were made to establish a fair level of disability insurance and a retirement plan, allowing writers to spread royalties earned on a single publication over as many as ten years as an equivalent of monthly earnings<sup>36</sup>.

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<sup>35</sup> Ibidem.

<sup>36</sup> Based on a draft for the Council of Europe/ERICarts *Compendium of Cultural Policies and Trends in Europe*, edited by the Real Instituto Elcano de Estudios Internacionales y Estratégicos, 2005

## ***Belgium: Extension of the General Social Security System for Salaried Workers to Self-employed Artists, Covering all Benefits***

### **Background**

The Royal Decree of 28 November 1969 had already given all stage-performing artists the possibility to be regarded as salaried workers, including those working independently and therefore access to the Belgian social security scheme was granted. Faced with the classic problems associated with intermittent working, the National Platform of Artists (1999/2002) made an appeal for *employment contracts in all artistic fields except the visual arts*. The Finance Act of 24 December 2002, which came into force on 1 July 2003, established a *new status of artists for social security*, enabling them to make a choice between the salaried worker's status and self-employed status, depending on proof of their socio-economic independence.

### **How does it work?**

The Belgian concept seeks to provide *complete coverage* (sickness-disability, health care [minor and major risks], family benefits, unemployment, annual holidays, old age pension, employment injuries and occupational diseases) for the entire artistic population and, at the same time, *freedom of choice* between self-employed status and affiliation to the salaried workers' scheme, through the intermediation of an artists' bureau accredited by the Regions. A Commission of Artists made up of officials from the National Social Security Office and the National Institute of Social Insurance for Self-employed Workers informs artists and, by request, issues a declaration of self-employed status to the artist in the event that he/she can prove his/her socio-economic independence. The Act provides for State coverage of the employers' contribution of around €25 a day or €3 per hour of employment.

### **Definitions/ Criteria**

Since 2003, artists in the sense of the law are defined as those who provide or produce artistic services or works in return for payment in the audio-visual and visual arts sectors, music, literature, stage performance, theatre and choreography.

### **Recent debates**

Current debates focus on those aspects of the reform which have not yet been put in place such as: alternative funding, adjustment of the qualification periods and maintenance of social security benefits, etc.

### **Foreign artists/mobility aspects**

Self-employed artists from the EU carrying out salaried work in Belgium with an E101 document continue to be subject to the social security scheme of their country of origin (application of the case of BANKS v. TRM, ECJ 30 March 2000).

### **Legal base/sources**

Finance Act of 24 December 2002; Artists' Commission: <info@articom.be>

## **Germany: A Social Security System for Self-Employed Artists ("Künstlersozialkasse" – KSK)**

### **Background**

While regularly employed artists in Germany are covered by the same social security system with regard to health care, pensions and unemployment payments as other employees, the same could not be said for those who work as self-employed or on a freelance basis. This situation prompted the Federal Parliament, in the early 1970's, to launch a large-scale empirical survey among professional artists. Following its publication in 1975<sup>37</sup> and further discussions on its results, the Federal Government developed a specific social insurance system for self-employed artists. The Künstlersozialkasse (KSK) has now been operating for more than 25 years.

### **How does it work?**

The 1983 Artists' Social Security Act (KSVG) established the "Künstlersozialkasse" (KSK) with strong links to the public social security system. It provides health insurance, old age pensions and nursing care but does not provide access to unemployment benefits. Contributions towards the KSK amount to ca. 35% of the taxable income derived from artistic activities. Contrary to the regular social insurance, there is no income threshold. In principle, the contributions are shared between the individual artist (50%), the Federal Government (20%) and enterprises regularly using artists' works and services (30%). Such enterprises include publishers, press, photo and PR agencies, theatres, orchestras, choirs, event managers, broadcasters, AV and music producers, museums, galleries, circuses, artists' training institutions, etc. Their contribution is assessed annually by the KSK, which results in the collection of lump sum payments on all fees paid to artists (currently 5.5%)

### **Definitions/criteria**

Membership in the KSK is obligatory for all self-employed professional artists. In January 2005, over 145,000 artists were insured by the KSK, of which 38% were visual artists/designers, 26% musicians or composers, 25% authors, translators and freelance journalists, and 11% actors, directors and other performing artists. To be accepted into the KSK, artists have to prove

- a) that they are self-employed and
- b) that they earn a minimum income of € 3,900 per year from their artistic work.

Professional newcomers, e.g. graduates from arts colleges, are exempt from the minimum income rule for a period of three years, but have to prove their freelance status.

### **Recent debates**

During the first ten years of the KSK, there was a great deal of controversy expressed mainly by commercial contractors. In recent years, however, concerns were more frequently raised about technical details, including the rate of "employers" contributions. The continuation of the 20% share of the government's contribution was an issue taken up by artists lobbies. In early 2006, the German Arts Council reported that new regulations on unemployment outside of the KSK had been introduced which would allow at least some of the self-employed artists to enter the regular unemployment schemes.

### **Foreign artists/mobility aspects**

Principally, the fees paid to foreign artists and authors by contractors in Germany are included in the annual assessment of KSK contributions. As regards touring artists, their share is calculated on the basis of the 25% withholding tax to be paid to the financial authorities. It is doubtful, whether these contributions can be of much value for those artists who are not directly insured in the KSK.

### **Legal base/sources**

Gesetz über die Sozialversicherung der selbständigen Künstler und Publizisten  
(Künstlersozialversicherungsgesetz – KSVG) of 27.7.1981, last amended 6.04.2001.  
<<http://www.kuenstlersozialkasse.de>> (2006); <<http://www.creativeurope.info>> (2002)

<sup>37</sup> Fohrbeck, Karla; Wiesand, Andreas Joh.: *Der Künstler-Report*. Munich: Hanser, 1975.

### ***France: Unemployment Insurance for "Intermittent Artists"***

#### **Background**

France's system of social insurance is centred around the nature of the contractual relationship: a contract of employment implies that the employee falls under the general social security scheme (salaried workers); the absence thereof results in the artist falling under a special scheme for liberal or commercial professions. In either case, artists have access to social security benefits.

#### **How does it work?**

Since 1973, any performing artist engaged in return for payment by presenting him/herself in public is presumed to be engaged under a contract of employment unless he/she carries on his/her activity as a commercial live-stage businessperson. Fixed-term contracts of employment are lawful. A centralised office for the payment of social security contributions (GUSO) aims at combating the non-payment of social security contributions, which remain high, despite the reduction in the amount of payments to nearly 50%.

Live-stage artists benefit from special rules of access to social insurance, particularly unemployment insurance, as a result of the occasional nature of their work. Some changes have been recently introduced: the number of days of work is replaced by the number of fees, which are themselves converted into hours of work. For unemployment insurance: the qualification period is 507 hrs work over the course of the 304 days preceding the end of the contract (in 2005). Periods of training, education and maternity leave are included in the 507 hrs. The benefits payment period is limited. A transitional fund has been created to cater for artists and technicians who work their 507 hrs in 12 months (but no longer able to manage in the new system which led to the 2003 crisis) and artists on sick leave for more than 3 months.

#### **Definitions/criteria**

The term live-stage artists includes: opera singers, stage actors, choreographic artists, variety artists, musicians, cabaret singers, bit players, orchestral conductors, and arrangers-orchestrators and directors (for the physical execution of their artistic designs).

#### **Recent debates**

The functioning of this unemployment insurance scheme has been called into question in the context of the chronic deficit which it continues to carry. The scheme is funded by employers and workers on the basis of fixed-term agreements. The deficit, which already reached 200% of receipts in 1983 and 1984 and has steadily become worse, is made up for by professional solidarity. The scheme is currently being examined by the State and its social partners and ought to result in a thorough reform that addresses refunding the insurance scheme, fighting against abuse and developing a voluntary policy of employment in the cultural sector.

#### **Foreign artists/mobility aspects**

The presumption of an employment contract for live-stage artists has been subject to a complaint against France filed by the European Commission before the Court of Justice of the European Communities (C-255/04): the presumption also applies to an artist established as a self-employed service provider in another country yet requires payment to be made in France e.g. pension contributions. For the Commission, this presumption is contrary to articles 43 and 49 of the European Community Treaty, i.e. the principles of freedom of establishment and the free provision of services.

### ***France: Special Social Security Scheme for Writers and Creative Artists***

#### **Background**

An 1954 draft accord drawn up between representatives of art galleries and artists, stipulating the renunciation of resale rights in exchange for the transfer of turnover tax to a mutual arts fund, led to the passing of an Act on 26 December 1964 which created a health-maternity-old age insurance scheme for painters, sculptors and engravers. This was amended by the Act of 31 December 1975 which brought all literary, musical and visual artists under a single social protection scheme. Two bodies were subsequently created: the Maison des Artistes (for visual artists) and the AGESSA (association for the management of social security for writers).

#### **How does it work?**

The social security scheme for writers and creative artists is a branch of the general salaried workers' scheme. It is funded by the artists and writer's own contributions as well as by contributions by distributors-exploiters of such works including the State, public institutions, local communities etc. The fees paid by artists and writers can differ. For example, a writer's contribution could be less than 10% of his artistic remuneration with the distributor's contribution of 1%; for visual artists: a withholding of 3.3% on 30% of the turnover from sales of original works of art (or, if desired, 3.3% of the actual commission taken by the distributor); and a withholding of 1% on payments made to the artists for the purchase or any commercial exploitation of a work.

This social protection scheme covers illness, maternity and disability family and old age pension. In 2003, it covered 25,114 writer and creative artists via the Maison des Artistes, and 8,767 via Agessa.

#### **Definitions/criteria**

The Act created sections L.382-1 to L.382-14 of the Social Security Code and is based on the "false" status of writers and creative artists as salaried workers (by virtue of which they can be charged salaried workers' rates) and the status of "employers", given to "distributors" of artistic works (who pay the equivalent of employer's contributions, albeit at a very much lower rate).

#### **Recent debates**

Artists are arguing for coverage on employment injuries and occupational diseases, which at present can only be covered by taking out extra insurance. New means of funding are being explored such as the purchase of extra insurance with financial assistance. Three means of funding could be combined and be used cumulatively: funding by the artists; funding by means of a "collective" portion of resale rights, the advantage of this solution being the creation of solidarity among the major beneficiaries of the right (i.e. the successors of deceased artists) and the most vulnerable living artists; funding by the distributor contribution.

The institution of a provision for continuous professional training is desired by the various professional visual artists' organisations since many artists are confronted with the development and emergence of new digital technologies. Training in management techniques or legal training could also prove necessary. Matching funding could be envisaged: an artists' contribution, as exists for self-employed workers, since a certain consensus appears to have formed around a minimum flat-rate contribution of 44 euros (which would raise more than a million euros a year); and a share of the "collective" portion (25%) of the fee for private copying. There are a certain number of inadequacies and difficulties in the current system: variations in contributions for a number of quarter-years; non-validation of quarters for which payments were made in the period 1977-1993; quarterly payments after retirement, for prior activity but not validated.

It is proposed to diminish the current time-lag between the receipt of income and the payment of contributions, and thus reinforce the analogy with salaried workers: in the first year, contribution on a minimum notional basis; in succeeding years, contribution in the year on the basis of income from the previous year, multiplied by a flat-rate coefficient of a few percentage points. An alternative would be to adopt a declarative basis.

#### **Legal base/sources**

- Sections L 382-1 to 12 of the Social Security Code
- AGESSA: administers the writers' scheme <<http://www.agesa.org>>
- Maison des Artistes, administers the visual artists' scheme <<http://www.lamaisondesartistes.fr>>



### ***Italy: Special Social Security Coverage for Performing Artists (ENPALS)***

#### **Background**

Since the 1930s, performing artists, as well as those employed in theatres and in the audio-visual industry (radio, television, cinema, sound recording) have received social security coverage from the ENPALS / "Ente Nazionale Previdenza e Assistenza Lavoratori dello Spettacolo". ENPALS issues a certificate of hire for services (certificato di agibilità), to its members. According to Italian law, employers are prohibited from hiring performing artists who are not in possession of this certificate. The aim is to ensure that performing artists are socially protected. It is the employers' responsibility to make sure that workers are members of ENPALS, subject to a fine of twenty-five euros per worker per day if they fail to do so. Live-stage workers, writers and visual artists are distinguished from other human resources as regards health insurance and pensions.

#### **How does it work?**

In order to receive pension and health insurance, live-stage workers must be members of ENPALS, whereas painters, sculptors, musicians, writers and playwrights must be members of ENAPPS (Ente Nazionale di Assistenza e Previdenza Pittori, Scultori, Musicisti, Autori Drammatici).

The requirements laid down by the ENPALS are not the same for all members, but vary according to the type of employment envisaged. This special scheme offers performing artists the same pensions as available to those registered under the general scheme. With regard to unemployment benefits, live-stage workers are treated the same as temporary workers.

ENPALS offers a special disability pension for certain categories of workers, who are granted a guarantee against professional incapacity linked to the exercise of their work related activities, in so far as the disability prevents them pursuing that activity. The special disability fund is of particular interest to dancers, actors and models.

Contributions are calculated on a daily, and not a weekly, basis, unlike under the general social security scheme. The contribution year covers a differing number of daily contributions depending on the group. An actor or singer needs 120 daily contributions to be assured social security coverage for the year, whereas a wardrobe designer or lighting technician needs 260 daily contributions in order to qualify for the same annual coverage and, for those who work for an undetermined period, this is only guaranteed when 312 daily contributions are paid to ENPALS. Finally, a person who has already contributed to the general scheme can claim the rights he/she has acquired from ENPALS, to which previous contributions are transferred.

#### **Definitions/criteria**

One of the peculiarities of the Italian provision is that the obligation to join the ENPALS fund applies to all professionals in the sector, whether they are salaried or self-employed workers. There are thus three categories:

- those who carry on an artistic activity for a fixed term or are directly associated with the production and direction of live stage shows (actors, singers, directors, dancers, etc.);
- those who for a fixed term carry on activities not falling under the definition of the first group (wardrobe designers, make-up artists, lighting technicians, etc.);
- all those who work on an open-ended basis.

The obligation to pay contributions is also incumbent on those who only work in the live-stage sector in an ancillary fashion.

#### **Recent debates**

Despite the special rules for accessing benefits, artists often fail to accumulate the number of working days qualifying them for coverage.

#### **Legal base/sources**

ENPALS was created by the D.L.C.P.S. of 16 July 1947, no. 708.

ENPALS: <<http://www.enpals.it>>

### ***Luxembourg: Income Supplements for Self-Employed Artists***

#### **Background**

The Grand Duchy of Luxembourg has set up a special system of time-based financial assistance for artists whose income reaches below the minimum wage. This is the result of a 2004 amendment to the Act of 30 July 1999, which aims to put in place a comprehensive system of social and financial support for self-employed artists and "intermittent artists", including special tax measures more suited to their activities and other measures adopted by governments within Europe such as the 1-10% rule on the purchase of art for public buildings.

#### **How does it work?**

The main advantage of this status for self-employed professional artists and intermittent artists is that, under certain conditions, they can claim financial assistance provided by the Cultural Social Fund and subsidised by the Luxembourg State during months when their income is less than the minimum wage. While *modelled on the French scheme for "intermittents du spectacle"*, the Luxembourg model is different in that it uses income as a criteria rather than working time as in the French system.

#### **Definitions/criteria**

One can be recognised as having the status of a self-employed professional artist by making a written application to the Minister of Culture. This status is accorded by a special Committee to those who have met the fixed criteria and can prove their professional activities for three years prior to the application. The minimum three-year period is reduced to twelve months for those in possession of an official qualification issued following their studies in one of the disciplines provided for by the law.

An occasional entertainment worker is an artist or technician on the stage or in the studio who works mainly either for a live-stage company or as part of a production, principally cinematographic, audiovisual, theatrical or musical, and offers his/her services in return for a salary, fees or an emolument on the basis of a fixed-term employment contract or a contract for services.

#### **Recent debates**

The government had originally feared an excessively high number of applications. These fears were laid to rest when, in 2004, only 22 applications from self-employed professional artists were received.

#### **Foreign artists/mobility aspects**

Assistance is available to artists working in Luxembourg or abroad for a Luxembourg company.

#### **Legal base/sources**

Act of 30 July 1999 on (a) the status of self-employed professional artist and occasional entertainment worker, (b) the promotion of artistic creation.

### ***The Netherlands: Supplementary Income for Artists (WWIK)***

#### **Background**

A special Act addressing the low level of artists' income (creators, writers and performing artists), the "*wet inkomensvoorziening kunstenaars*" (WIK), came into force on 1 January 1999. The Act gives artists with an insufficient income level to ensure their own subsistence (less than or equal to the maximum amount of social assistance) the opportunity to receive a *supplementary income* for a maximum of 4 years over a period of 10 years.

This Act runs parallel to the general social insurance law (ABW). The aim of the WIK is to help artists create a business or to make a profit from their artistic activity. This Act has recently been amended (*Wet werk en inkomen kunstenaars* in 2004) which stipulates that assistance is subject to the artist gradually increasing his/her income.

#### **How does it work?**

*The WWIK allowance* is an advance made in the form of a monthly payment by the local social services department; the latter also providing for health and disability insurance for artists. The allowance amounts to 70% of the standard welfare payment. Once the artist is able to earn an income which exceeds the statutory threshold, the payments are discontinued.

The artist can continue to work and earn income on his/her professional activities up to 125% of the minimum income. He/she is not obliged to seek work and has access to all support services (such as training, advice and education).

Since 1.1.2005, payment of the allowance has been subject to new conditions, namely that the artist must, at the end of each 12-month period, show an increase in the amount of income he/she earns from his/her artistic work, from some other activity or from his/her partner: an increase of €1,200 after the first period of 12 months, €4,400 after the 2<sup>nd</sup> 12-month period, €6,000 after the 3<sup>rd</sup> 12-month period.

Access to WIK allowances is determined by a special artists' fund. Artists are required to provide evidence of their artistic activities and the low level of their income. Implementation of this law is decentralised over 20 central municipalities, which are later reimbursed by the Dutch Ministry for Social Affairs.

#### **Recent debates**

The Act was amended in 2004 to encourage artists to earn their own living.

#### **Legal base/sources**

Act of 23 December 2004, *Stb.* 2004, 717 on the adoption of new regulations for assistance to artists (*Wet werk en inkomen kunstenaars*)

<<http://www.st-ab.nl/wetwwik.htm>>

[http://www.kunstenaarsenco.nl/content/Factsheet\\_WWIK\\_EN.pdf](http://www.kunstenaarsenco.nl/content/Factsheet_WWIK_EN.pdf)

### ***Belgium: Unemployment Insurance Authorizing Artistic Activity***

#### **Background**

To receive unemployment insurance, one must, due to circumstances outside one's control, have no work and no pay. Since 1.1.2002, it has been possible to carry on artistic work during periods that one receives unemployment insurance, albeit within certain limits.

#### **How does it work?**

Under the terms and conditions for receiving unemployment insurance, work for free or voluntary work is allowed without limit, as it is not regarded as work: "1° unpaid activity in the context of artistic training; 2° artistic activity carried on as a hobby (no payment); 3° the presence of the artist at a public exhibition of his artistic creation." If he/she is not paid, an artist can still receive unemployment insurance during rehearsal time".

Creative activity which is paid is permitted within certain limits and under certain conditions. Paid artistic activity can be done during unemployment benefit periods if what is involved is creative activity (and not performance), and if the activity is not carried on as a principal activity (no more than €3,438 of net taxable annual income), and if the artist declares the activity (which has to be ancillary) at the time of applying for benefit, or later if the activity commences during the period of unemployment or if, during unemployment, he/she receives income from a previous creative activity. Failing which, the net taxable income will be deducted from his/her unemployment benefit. When these three conditions are fulfilled, the daily benefit which can be received is €10.18 of the daily income, i.e. €3,438 per annum. The daily income represents 1/312 of the annual net taxable income. If the artist receives annual taxable net income of more than €3,438, the unemployment benefit is reduced. If it is reduced to nil, the artist loses his/her entitlement to receive unemployment benefits as his/her artistic activity is regarded as having become his/her main activity.

Unauthorised artistic activity which prevents an artist from collecting unemployment benefits is considered to be recording an audio or filming an audiovisual work (even if the work is not paid) or paid services as a performing artist. In both cases, these activities have to be stated on the membership card.

When an artist is receiving unemployment benefits, they must declare all monies received as payment on a work done outside of the "unemployed period", such as copyright or related right royalties.

#### **Definitions/criteria**

Artistic activity covered by these regulations includes: "the creation and performance of artistic works, particularly in the domains of the audiovisual and visual arts, music, literary writing, live-stage shows, stage design and choreography".

#### **Recent debates**

The current debates are linked to the administrative implementation of these rules: the National Employment Office blocks payments each year on 1 July pending notice of the tax assessment by the tax authorities for income from the previous year and then reviews the amount of the allowance to be granted to the artist or determines the amount the artist has to refund. When income of more than €3,438 (net) is received, it is very advisable to report it immediately to enable the NEO as much time as possible to adjust the amount of benefit and thus avoid possible (painful) refunds.

## ***Denmark: Unemployment Insurance for Self-Employed Artists***

### **Background**

In Denmark, general social protection schemes extend to both employed and self-employed workers covered by the national insurance programme. Regardless of one's employment status, membership in an Unemployment Insurance Fund is required before receiving unemployment benefits. Self-employed workers can also choose to pay a contribution to a voluntary early retirement fund which offers returns starting from the age of 60. The unique aspect of this model is that self-employed artists retain their status contrary to other countries highlighted in this report which provide them with a quasi employment status in order to have access to such insurance programmes.

### **How does it work?**

Full members of the Unemployment Insurance Fund paid ca. 3,200 DKK or 430 € in 2006. They also make a contribution to a "Labour Market Supplementary Pension Scheme" (DKK 132), pay an administrative fee (which differs for the various unemployment insurance funds, but could be in the range of between 1,000 and 2,000 DKK), and pay into a voluntary early retirement fund (DKK 4,668 in 2006). The amounts are adjusted every year.

The unemployment insurance fee for a previously self-employed person is calculated on the basis of the average income during the two most lucrative of the past five years. However, one cannot receive more than 90% of the previous income, and there is a maximum limit, which in 2002 was 604 DKK (€78) per day, five days a week or of about 157,000 DKK (€20,410) a year. In addition to these rates, the system offers a minimum rate, independent of previous income. The minimum rate is 82% of the maximum rate. In order to obtain the minimum rate, self-employed activities as well as membership in an insurance fund for at least three consecutive financial years before the occurrence of unemployment is required.

### **Definitions/criteria**

In addition to the requirements of being a member in an unemployment insurance fund for at least one year, artists must fulfil other criteria concerning the number of hours worked. For example:

- an insured self-employed person must have had regular employment for a minimum of 52 weeks within the last 3 years;
- their business operations must be fully closed down;
- they must be registered with the public employment service;
- they must be actively seeking employment and be available for work. Following a certain period of unemployment, one may be obliged to take jobs outside of one's own professional field.

### **Recent debates**

It is sometimes difficult for self-employed artists to meet the requirements of the minimum amount of work necessary for becoming eligible to receive unemployment benefits. With this in mind, the Council of Danish Artists developed a special model of social security for writers, composers and visual artists, who are never technically 'out of work', but are frequently confronted with periods in which they have no or only minimal earnings. The model has not been implemented.

### **Foreign artists/mobility aspects**

Unemployment insurance is open to all residents in the country, regardless of their nationality. Membership in unemployment systems of other EU/EEC countries is being recognised.

### **Legal base/sources**

Arbejdsdirektoratet (National Directorate of Labour, responsible for unemployment insurance, sickness and other benefits): <<http://www.adir.dk/>>

McAndrew, Clare: "Artists, taxes and benefits - an international review". Arts Council of England/London, December 2002.

Staines, Judith: "From Pillar to Post". EFAH/Brussels, November 2004.



## 6. Taxation

### 6.1. Main Challenges

The difficulties encountered by artists in this area can be summarised by the following points:

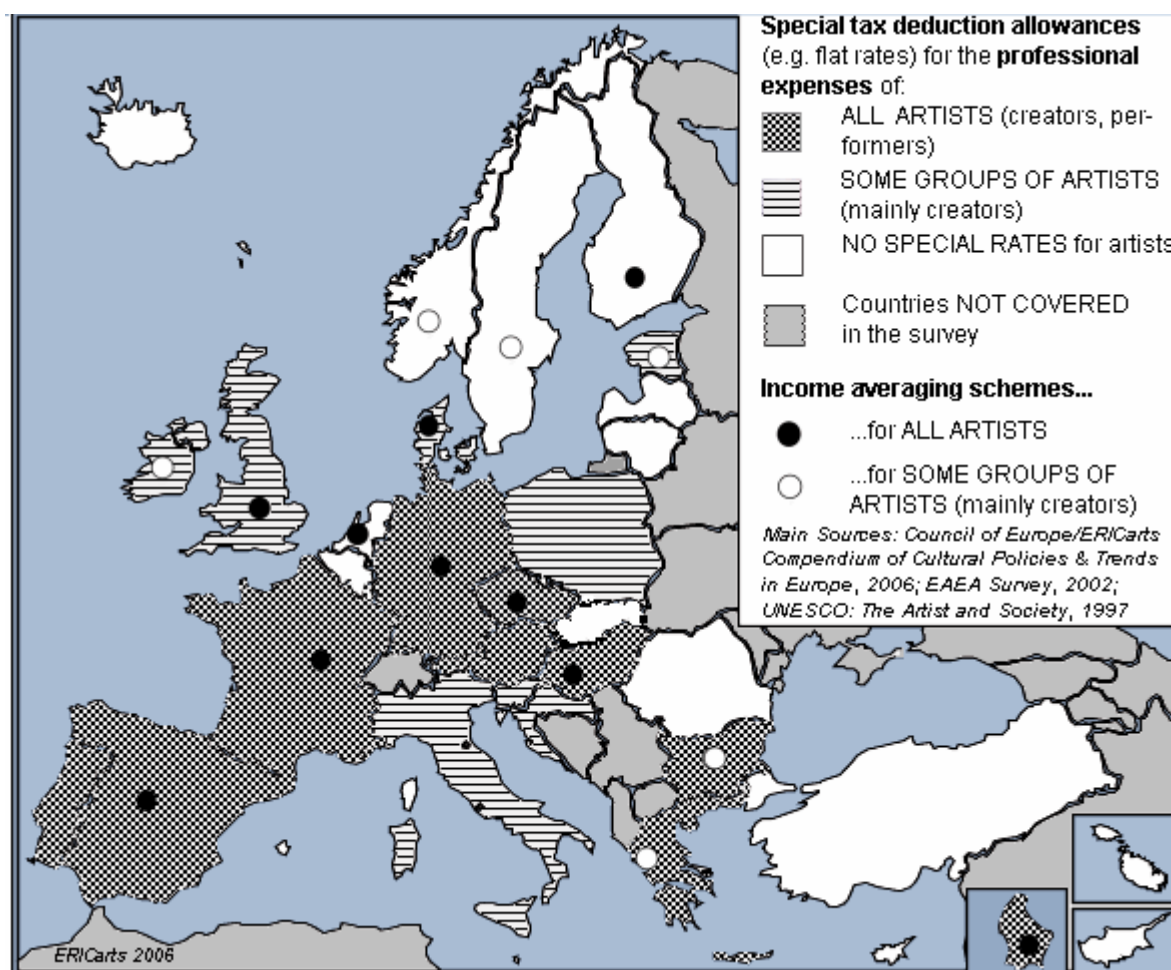
- great difficulties caused by a multiple employment status in terms of income tax calculations and payments;
- the total or partial absence of deductions for business expenses;
- the continued tax placed on irregular income (as opposed to providing income averaging for artists as is done for seasonal workers);
- the status of royalties and copyright compensation as "income"; and
- the disparity in VAT rates for cultural products and services and the conditions for exemption for cultural bodies and individual artists<sup>38</sup>.

For ease of reading, two maps have been created to visually identify national approaches to income tax (map 2) and VAT (map 3). Data used to compile these maps are provided in Annex II. Comments regarding the general or mainstream approach to each of these issues are provided following the maps, including some innovative or alternative models.

The first part deals with questions related to the income tax of self-employed authors/artists on the one hand, and of fully or partly employed performers, on the other.

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<sup>38</sup> Matthias Hoffmann case (ECJ C 144/00): the principle of fiscal neutrality requires that, as long as their services are recognised as cultural, individual performers may be regarded under certain conditions, like cultural groups, as bodies similar to public-law bodies, which are generally exempted from VAT.

**Map 2: Tax Deduction Allowances on Artists Income**

## 6.2. Deduction of Business Expenses

In general, the inability to deduct business expenses remains a problem that has not been resolved. Business expense deductions may frequently be rejected by the Finance Department/Authorities because:

- they are not considered "professional" expenses (e.g. costs supposedly seen as related to leisure activities, investments in particular types of equipment or training courses); and
- the *size and time-lag* of the expenses in relation to income earned are great and irregular. Some tax authorities reject expenses if they are not offset by income generated from activity during the respective taxation period.

This lacuna has repercussions on the level and amount of social security fees to be paid as they are calculated on the net receipts generated by artists work.

In general, self-employed artists have more opportunities to deduct business expenses from their income tax returns than salaried artists. In some countries, there are, however, special allowances for salaried persons to deduct their *business expenses*. They allow lump-sum deductions without having to provide receipts. For example, in Bulgaria, Poland and Slovenia, regulations have been passed which allow creative artists to deduct 40-50% of their earnings



generated from their artistic work from their income tax without documenting or specifying their expenses.

For example, in Hungary, a reduction of 25% on the income from intellectual property rights exists. And in Slovenia, a 25% flat-rate deduction can be claimed for business expenses by registered unsalaried workers in the cultural sector on income under 42.000 € (in addition to a personal 15% allowance on income under 25.000 €).

Ireland is the only country which exempts visual artists, writers and composers from paying income tax on earnings derived from their creative work. This measure is criticised by some due to the fact that many Irish artists can not benefit from this exemption since they do not earn enough money to pay income tax in the first place.

Frequently, artists find themselves in disputes with the financial authorities about the range and necessity of expenses, some of which may not be in line with administrators' ideas about what makes up an artistic profession and what might be necessary for its successful conduct. For example, there have been reports that artists' expenses for professional development are a matter open to interpretation. In the United Kingdom, "training costs to update or maintain professional skills are tax deductible but the cost of acquiring new skills is not. This creates a problem since acquiring new skills is necessary to remain up to date with the requirements of any profession, particularly when selling one's skills as a freelance operator."<sup>39</sup> Obviously, seeing independent artists as "entrepreneurs", as is now frequently promoted in policy circles, and giving them the right to freely decide about their professional investments, are not yet translated into all relevant legal fields.

### 6.3. Income Averaging

One main factor determining both artists' social security and tax status is, of course, the level and flow of their income. The possibility for great fluctuations in their income often leads to unsatisfactory levels of pension<sup>40</sup>, sick-leave-compensation or unemployment insurance between jobs (especially important in the performing arts). The majority of EU countries do provide professional self-employed artists with "income averaging" possibilities to spread their income on certain works over a specified period of time -- usually between two and four years. Such regulations are important especially for literary authors and composers who work over longer periods of time on an individual piece of work and are paid lump sums once their work has been produced. Of the new EU member states, Estonia and Bulgaria are the only ones which allow income-averaging over a period of several years.

Two examples from Finland and France for how income averaging works in practice:

- Income averaging in *Finland* is allowed over a period of 2 or more years in order to alleviate the impact of progressive income taxation in cases when returns from artistic work or works done during several years are realised within one and the same tax year. It does not take into consideration the need to also average the future costs e.g. in the case of income received in advance in the case of a work contract. Income averaging is made possible on the basis of the Finnish Business Income Tax Act (30/1968, § 24), which presupposes that artists/creators would apply business bookkeeping and accounting practices to their professional activities. This is not usually the case, and even when

<sup>39</sup> J. Staines 2004, loc. cit. p. 53. See also S. Galloway, R. Lindley, R. Davies and F. Scheibl (2002), loc. cit.

<sup>40</sup> In Sweden, basic pensions are calculated on the income generated over their lifetime and as most scholarships or grants are not taxable, they are not included in the overall total of lifetime-income. The situation is also same in Finland.

these practices are followed, their adoption in many fields of creative activities would be difficult.

- In *France*, income averaging for authors was introduced in 1982; since 1986 it has been extended to stage performers. Section 100bis of the General Tax Code provides that taxable profits from literary, scientific or artistic productions may, on request by taxpayers subject to the verified tax return rules, be determined by subtracting from the average receipts for the year of taxation and the preceding two years, the average expenses for those years. Section 84A of the General Tax Code extends this rule, under the same terms, to the taxable salaries of live-stage performers working under an employment contract. The option remains valid until expressly revoked.

#### **6.4. Taxes to be paid on Grants, Awards, Copyright Compensation**

In some countries, such as Austria, Germany and Luxembourg, *awards and scholarships* which honour an artist's lifetime achievements are tax exempt. However, if they are seen as compensation for a work or given in the form of grants for specific purposes (e.g. travel grants) they would normally be taxed as regular income.

Another issue is the treatment of income from *copyright royalties*. In some countries, including Denmark, Estonia, Hungary, Italy, Poland or Portugal, such income is subject to flat-rate reductions. However, in most of the Nordic countries, where royalties and compensations for intellectual property rights are generally an important source of income for independent artists, these forms of revenues are considered personal income, not capital income, and taxed accordingly (which will increase the level of taxation due to progressive income tax schemes). Library compensations and visual artists' exhibition compensations are paid either directly to authors/artists (Norway), as grants (in Finland, Norway) or partly as direct compensation (Sweden). The direct author/artist compensations are taxable; compensation as grants is, for the purpose of income tax, treated in a similar manner as other grants.

At the same time, there is no complementary legislation or practice for accounting these types of income as additional personal income privileging the receiver to have access to health and unemployment compensation and/or higher level of benefits.

#### **6.5. Alternative Models Regarding Income Tax**

Basically, there are two different ways of coping directly with artists' professional problems and, in particular, with the changing levels of income in tax legislation. On the one hand, there are attempts to solve or ease such problems through specific measures or instruments (e.g. in Sweden and in the province of Québec, Canada); on the other hand, more comprehensive legislation affecting different tax laws have been introduced (e.g. in Luxembourg and Slovenia). These are examples of interesting practice which is often deeply rooted in the legal and cultural traditions of the countries concerned. Similar to the cases regarding social security of artists dealt with above, this background makes it difficult to consider the examples as true "models" in the sense that they could serve as blueprints for harmonised action on the EU level.

### ***Sweden: "upphovsmannakonto" Special Bank Accounts for Artists***

#### **Background**

In Sweden, there is a system of "upphovsmannakonto", which could be translated as "accounts of intellectual property right holders". This system offers creative artists and writers the opportunity to open a special bank account, in the case of an exceptionally high sale of their work of art or when they receive higher than normal royalties generated from copyright (more than 50 per cent higher than in either of the two preceding years) and deposit a part of this income and use it in the following six years for their creative work. They can average both their income and the future professional expenditure.

A similar system of *special funds* is used in Finland to average the income of professional sportsmen for a longer period of time. Suggestions have been made to extend this possibility to creative artists.

#### **Recent debates**

The Swedish tax planning committee has recently suggested abolishing the whole "upphovsmannakonto" system for artists. This move was blocked following outcries from the Artists Unions. The unions in Sweden have, however, pointed out that artists receive insufficient information, advice and training which is needed in order to maintain the "upphovsmannakonto" and related processes of income averaging and managing production costs. The deduction of the costs on artistic work is still a pain point.

### ***Québec, Canada: Income Averaging Annuities***

#### **Background**

Based on an Action Plan to improve the socioeconomic conditions of artists, an income averaging scheme was introduced in 2004 that gives self-employed artists the possibility to purchase income averaging annuities and to spread, over a maximum period of 7 years, the tax applicable on artistic income in excess of CDN 60,000 received in any year. The deduction can not exceed CDN 15,000. Income generated from authors rights (since 1995) and neighbouring rights (since 2004) can also be deducted. This provision is meant to help artists save money for those years when they earn less; it does not exist at the federal level or in any other Canadian province.

#### **How does it work?**

An artist who wants to purchase an income-averaging annuity for the tax year 2006 must do so no later than 28 February 2007. He/she can deduct the amount of the annuity from his/her income generated within that year or 60 days following the end of the year. The annuity must be given to the artist in equal and regular payments within a period not exceeding 7 years. If any artist receives income from this annuity, it must be declared and he/she will be required to pay a tax rate of 24% on this "income". These annuities are purchased from insurance companies accredited by the Ministry of Finance.

#### **Definitions/criteria**

For the tax year 2006, eligible artists are those whose net artistic income will exceed CDN 25,000. If an artist receives a deduction for copyright royalties, the amount of the deduction has to be added to the admissibility threshold.

#### **Legal base/sources**

Source: <<http://www.mcc.gouv.qc.ca/index.php?id=2176#c6742>>

Contacts: Caisse d'économie de la culture; Secrétariat permanent à la condition socioéconomique des artistes; Marie-Claude Mathieu, *Principales mesures fiscales québécoises à l'intention des artistes et des industries culturelles*, Ministère de la Culture et des Communications, Québec, mars 2006.

### *Luxembourg: An Ensemble of Tax Measure*

#### **Background**

The Act of 30 July 1999 on the status of independent professional artists and intermittent artists and on the promotion of artistic creation introduced a number of tax measures:

- Income tax exemptions on: (a) artistic and academic prizes awarded by the government, foreign governments or international bodies of which the Grand Duchy of Luxembourg is a member, in so far as the prizes do not constitute remuneration for work and (b) social assistance paid by the Cultural Social Fund.
- Persons falling under the statute are entitled to deduct a minimum flat-rate tax allowance of less than 25% of their operating receipts derived from their artistic activity or €12,395 per annum.
- Profit derived from an artistic activity that exceeds the average profits for the year in question and the three full preceding years is to be regarded as extraordinary income within the meaning of the Income Tax Act and its taxation is catered for like other extraordinary income. Tax on extraordinary income cannot exceed 22.8% of that income.

### *Slovenia: Income Tax Relief for Self-employed Creative Professionals*

#### **Background**

Self-employed persons working in the cultural field may apply to the Ministry of Culture to be granted a special status as a creative or cultural professional. This special status entitles them to a personal tax relief of 15% of their income. In 2003, 1,300 self-employed artists out of 2,500 registered had been given this special socio-economic status.

However, artists are not generally exempted from paying value added tax. Like other self-employed persons or business people, they have to pay VAT if their annual gross income exceeds 5 million SIT (about 21,000 Euros). Writers, composers and performing artists pay a reduced VAT on authors' honorariums, which also include transfers of copyright.

#### **How does it work?**

Self-employed persons in the cultural sector can choose between two means of taxation. They can decide to be taxed in the same way as any other business person, meaning that they keep accounts and deduct their actual business expenses from their gross income. They could, on the other hand, apply for a standardised deduction rate of 25% of their gross income. The second option is only applicable to those earning less than 6 million SIT per year. If artists opt for the second option, they do not have to keep business records and collect bills and invoices; this considerably reduces the administrative work load.

#### **Definitions/criteria**

Independent persons working as cultural professionals who are adequately qualified or have shown their abilities through their work can be registered as self-employed persons. "Independent" in this context means that the person is neither employed on a regular basis nor retired. In the case of part time employment, the artist may be registered as an independent cultural professional for the remaining working time. Expert commissions for different fields of art assess whether an applicant meets specific professional criteria. The status of a cultural professional is to be re-assessed every five years.

#### **Recent debates**

Special support to independent cultural professionals is a cultural policy measure which encourages self-employment in the field of culture. During the tax reform debates in 2005 and 2006, cultural professionals successfully defended the favourable tax treatment and the special personal tax relief of 15%.

#### **Foreign artists/Mobility aspect**

The registration of independent cultural professionals is not linked to citizenship.

#### **Legal base/Source**

Exercising of the Public Interest in Culture Act (Ur.l RS no.96/2002)

Decree on self-employed persons in culture (Ur.l RS no.9/2004)

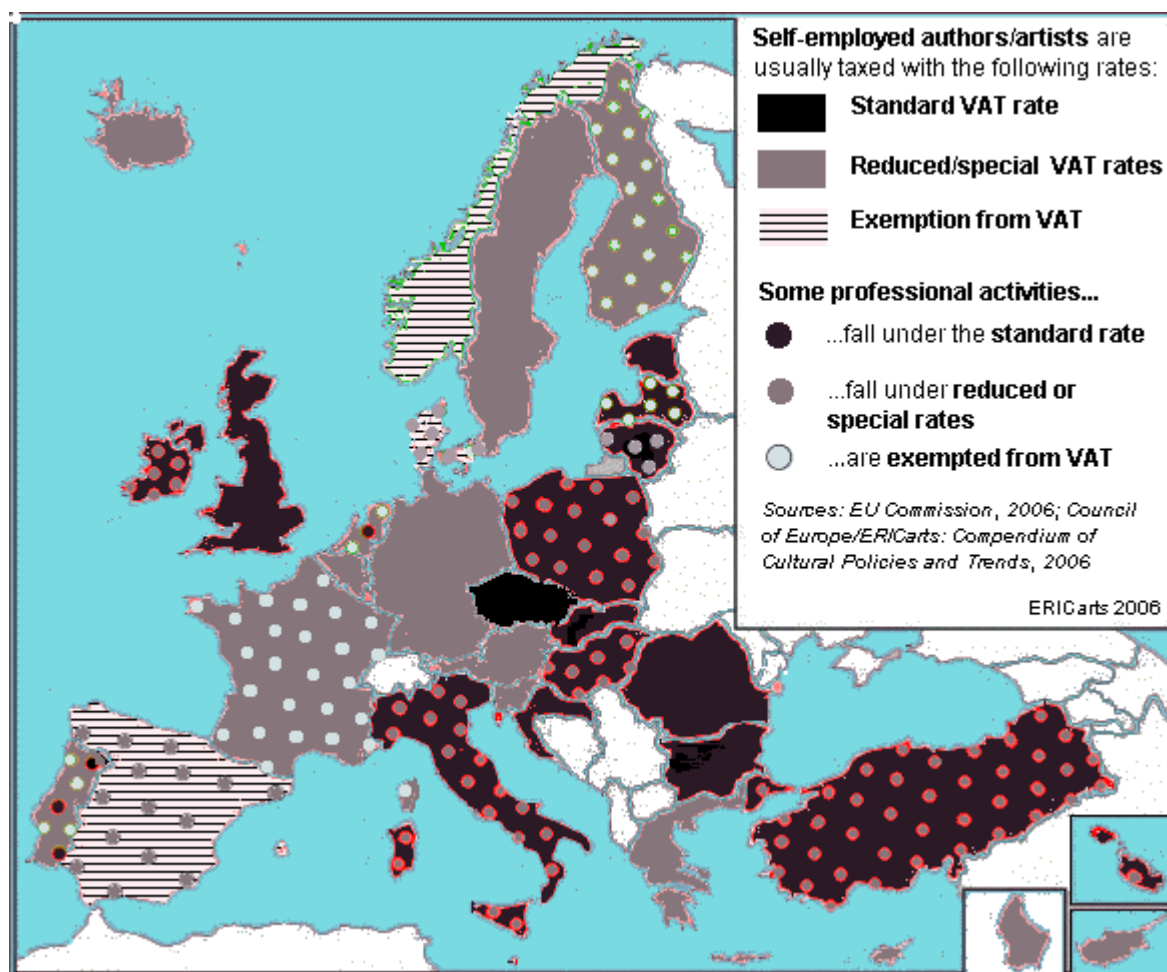
Personal Income Tax Act (Ur.l RS no.71/93.)

Value Added Tax Act (Ur.l RS no. 89/98)

## 6.6. VAT

The following map gives an overview of VAT rules for self-employed artists in the EU member and accession countries as well as in those of the EEA. It has been compiled using the latest EU data (February 2006) and the 2006 edition of the Council of Europe/ERICarts *Compendium of Cultural Policies and Trends in Europe*. See Table C in ANNEX II.2 for more details and sources.

**Map 3: VAT Rates for Self-employed Creative Artists in Europe**



As can be seen in Map 3, the measures taken in different countries with regard to VAT for works and services provided by authors and artists vary greatly, which makes it difficult to identify a "mainstream approach".

Out of the 33 countries surveyed<sup>41</sup>, 16 maintain a number of *exceptions* for at least some types of artistic and literary activities. In some countries, e.g. in the Netherlands and in Portugal, potentially all types of applications are possible: standard rates, reduced rates and full exemption. Generally, artists may be exempted from VAT, if their turnover does not exceed a certain margin. Other exemptions are related e.g. to contracts for works whose distribution is regulated under authors' right/ copyright law, which could explain, why writers and composers

<sup>41</sup> NOTE: As in other maps and related tables, the different sources do not always provide identical results

are, on the average, enjoying somewhat better conditions than visual artists (the opposite is true only in Ireland and Portugal).

On the other hand, we find a more *homogenous approach* in 17 countries which, however, leads to differing consequences for the professionals concerned. The following main types of VAT regulations can be distinguished:

- *Regular VAT taxation at the "standard rate" – which varies between 15 and 25 % – in: Bulgaria, Croatia, Estonia, Lithuania, Romania, Slovakia and the UK (the latter, however, allowing large non-taxable allowances);*
- *VAT taxation generally at a reduced rate – which varies between 3 and 15 % – in: Austria, Belgium, Cyprus, Germany, Greece, Iceland, Luxembourg, Slovenia and Spain;*
- *General exemption from VAT for all authors and artists in: Norway<sup>42</sup>.*

Taking account of all these differences, there seems to be a general tendency in many of the *New Member States* of the EU to mainly apply the standard VAT rates, while in the *Nordic Countries* exemptions or exceptions in favour of artists are more frequently found; in *Central and Western Europe*, reduced VAT rates are most commonly found. These varying conditions can present great obstacles to the mobility of authors, publishers, composers or visual artists and, particularly, to trans-national movements of their physical works.

A problem to be mentioned is the VAT *treatment of business expenses* which is not in harmony with the tax rates of self-employed artists. Generally, there are no VAT reductions for important professional tools and working materials, such as musical instruments, recordings, computers, travel tickets to performances etc., while, on the other hand, entrance tickets to cultural performances and museums are tax-exempt<sup>43</sup> and publications enjoy a reduced rate. This situation is particularly detrimental to professionals in the music and audio-visual field and, consequently, efforts have been made both by performers/composers and producers to achieve, via a revision of EU Directives, the same preferential rates for audio and audiovisual material that now exists for books and other publications.

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<sup>42</sup> As an option or restricted to specific professional activities

<sup>43</sup> Sixth Council Directive 77/388/EEC of 17 May 1977, amended by Council Directive 92/77/EEC of 19 October 1992, on the harmonisation of the laws of the Member States relating to turnover taxes. This Directive committed the member states, for the first time, to exempt theatre, concerts and other cultural events and activities from turnover taxes. More information can be found on the website of the European Commission: <[http://europa.eu.int/comm/taxation\\_customs/law\\_en.htm](http://europa.eu.int/comm/taxation_customs/law_en.htm)>

## 7. Transnational Mobility

The employment status of artists today is not only characterised by high levels of flexibility but also of mobility for longer or shorter periods of time. Although artists have always travelled a great deal, their increased mobility is a result of a growing number of international co-productions, of live performances, circus or audiovisual productions. Recent studies show that there are very different types, causes and consequences of artistic mobility (within and between culture sectors), which require different legislative measures as well as policy approaches and solutions<sup>44</sup>. Such complexity is not, however, sufficiently taken into account of in current national or in Community law.

Below is an overview of some of the main challenges facing the free movement of artists working within the EU as salaried, freelance or self-employed persons for short periods with regard to social security, taxation and visas/work permits<sup>45</sup>.

### 7.1. Social Security Protection

At the Community level, Council Regulation 1408/71 of 14 June 1971 related to the application of social security schemes to both employed and self-employed persons and members of their families moving inside the Community (which will soon be replaced by Council Regulation 883 of 29 April 2004 when its implementing regulation is adopted) coordinates, without harmonising, national systems of social protection. Designed for workers who move within the European Community for longer or shorter periods of time, it is difficult to apply to those whose work period is very short term, i.e. lasting less than three months.

Since the *Banks case (ECJ, 20 March 2000)*, the rules were clarified for non-salaried artists who carry out work (salaried or not) in another EU member state<sup>46</sup>. Despite this improvement, there is still a lot of work to do to improve the situation in practice.

Form E101 is issued to self-employed artists working temporarily in another EEA country. The form will indicate which law (jurisdiction) applies concerning social security and liability insurance. It is suppose to be sent to self-employed artists before going to work abroad but is usually only received after the work has been done. The latter creates problems for the employer or competent institution<sup>47</sup> which will have to make retroactive payments. It also leads to legal and financial insecurity which affects the employers' social security payments and for the continuity and clarity of the artists' social security dossier at home. The need to have a separate E 101 form for each job abroad presents additional administrative burdens to those artists who

<sup>44</sup> They also suggest that specific socioeconomic measures for artists introduced in some countries (as mentioned earlier in this study) could attract artists to travel to and even set up temporary residences in order to benefit from them such as: income guarantees in the Nordic countries, tax exemptions in Ireland, unemployment insurance for performing artists in France or comprehensive social security protection for freelance artists in Germany. See ERICarts Report to the LabforCulture on the *Causes, Consequences and Conflicts of Mobility in the Arts and Culture in Europe*. Bonn, December 2006

<sup>45</sup> Article 42 (ex-article 51) of the Treaty establishing the European Community (Rome): “The Council shall, acting in accordance with the procedure referred to in Article 251, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it shall make arrangements to secure for migrant workers and their dependants: (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries; (b) payment of benefits to persons resident in the territories of Member States. The Council shall act unanimously throughout the procedure referred to in Article 251.”

<sup>46</sup> Reference to Member State also includes Members of the EEA and Switzerland.

<sup>47</sup> Since the *Herbosch Kiere case (CJCE C-2/05, January 26, 2006)*, the form E101 may be opposed to court decisions taken in the country of work.

have multiple short term engagements. Expediency with regard to the issuing of forms and a simplification of administrative procedures is essential.

The absence of legislation on either the national or European level which harmonises the status of artists under a single employment status as either employed or self-employed is a problematic barrier to mobility, especially in the performing arts and audiovisual sectors<sup>48</sup>. This weakens their level of social protection as they may be hired as an employed person in one country (e.g. in France or in Belgium) and as a self-employed artist in another for the same type of work. Consequently, the artist's working period or time may be decreased and they risk losing their social rights, in particular insurance related to unemployment, employment related accidents or occupational illness and injuries, old age pension, holiday pay etc. In this context, the Commission could consider preparing a White Paper which addresses the periods of interruption in social security when salaried artists work abroad.

Regarding the implementation of Community legislation on the national level:

a) in the case of a series of contracts in different countries, salaried artists

- face administrative difficulties in reconstituting the artists' career for work periods abroad which results in unrecognised periods of work which would count toward their life-long accumulated income and in the calculation of their e.g. pensions;
- risk non-payment of social security contributions by the employer in the host country for which artists have little recourse; and
- have difficulties in receiving benefits due to a lack of coordination between national administrative and financial bodies (transfers of funds)<sup>49</sup>.

b) in the case that an activity is considered "salaried" in several member states and is tied to the country of residence, salaried artists:

- will have difficulties in getting employers from another member state to make social security payments in the artists country of residence<sup>50</sup>.

In the case of a European tour, the situation becomes more complicated when an employer engages artists coming from another Member State or a non EU member state to carry out services in a third or several other Member States. Certain national administrations (Belgium, in particular) have been working to try and find solutions to help artists overcome the impending difficulties; some of which could be considered as good practice.

In addition, despite the principle of *totalization of insurance periods*, certain countries would still impose a condition of residence to qualify for unemployment insurance and pension contributions, and not only on the basis of working time<sup>51</sup>. Paid leaves are still the subject of double contributions by the fact that they may be subject to either labour law (as in France), or social security legislation (as in Belgium).

In order to overcome the complexity and burdens inherent in the administration of social security payments which result from international mobility, artists can: create their own companies; seek an intermediary (a third party which pays the artist and makes the appropriate social security and tax payments on their behalf to the country where the work is being carried out); or find a "*porteur de salaire*" (a company which hires artists to work in third countries and negotiates on their behalf as is the case in e.g. Belgium and France). The intervening

<sup>48</sup> Service Centre for International Cultural Activities (SICA): *Recommendations for mobility of the cultural sector*. Rotterdam, 7/8 October 2004.

<sup>49</sup> Audéoud, Olivier: *Etude relative à la mobilité et à la libre circulation des personnes et des productions dans le secteur culturel*, DG EAC/08/00, Brussels 2002.

<sup>50</sup> Art. 14, 2, b, Regulation 1408/71 ; Art. 13, 1, Regulation 883.

<sup>51</sup> Audéoud, Olivier. op.cit., p. 16.



organisation hires artists to work on a short term contract in another member state. The artist is engaged as a salaried employee of this organisation and is considered "on secondment" (i.e. *detaches*). During this time, the artist remains part of their own social system. These intermediary services generate additional costs to artists, yet considerably simplify procedures, not only in the case of European mobility but also as regards their obligations under their own national legislation.

The *principle of good administration* obliges administrative bodies to respond to all requests within a reasonable time span and to find solutions for all persons confronted by particular problems. The administrative bodies responsible for interpreting and applying community regulations should work together with experts who have a good knowledge of the performing arts and audiovisual sectors in order to improve the implementation of community legislation by developing a code of good practice.

## 7.2. Taxation

Defining the status of artists for the purpose of taxation in the host country is problematic. In some cases, the mobile artist may be classified as an employee of the host institution which would withhold a certain percentage of his/her fees for tax and social security payments. If the artist can provide evidence that he/she is employed or self-employed in another country, he/she may be paid a lump sum without local tax and social security deductions. The situation is also difficult for touring companies. For example, in Italy, visiting companies are supposed to pay a 30% tax; however, they may qualify for tax relief if their performances are for publicly subsidized festivals or institutions. The problem is that foreign artists, especially if they come from countries which are not EU members, have problems of understanding and legitimizing their position<sup>52</sup>.

*Double taxation* remains another serious and recurrent problem:

- either the amount of the withholding tax retained in the host country is often inexplicably high and applies to business expenses (general and particular to the move)<sup>53</sup>; OR
- the withholding tax is not wholly or partially deducted in the State of residence;<sup>54</sup> OR
- owing to a refusal to issue a certificate of payment of the withholding tax in the host State.

The differences between the systems of taxation and exemption in the Member States provide additional barriers:

- in the case of withholding tax retained in the host country, sometimes it cannot be refunded due to non-liability in the country of residence (e.g. in the United Kingdom); and

<sup>52</sup> Carla Bodo, in her article for the ERICarts project: *Causes, Consequences and Conflicts of Mobility in the Arts and Culture in Europe*. loc cit

<sup>53</sup> Case of *Arnoud Gerritse*, ECJ C-234/01- 2003.

<sup>54</sup> On July 20, 2006, the European Commission started a procedure against Belgium (2005/4576): When a convention of double taxation applies, Belgium exonerates the incomes from foreign sources perceived by the Belgian residents while holding account of these incomes in the determination of the tax rate applied to their incomes from national sources (exemption with reserve of progressive taxation). This practice limits deductions related to the personal and family situation. Based on a Dutch case decided by the Court of Justice (*De Groot* – C-385/00 – Dec. 12, 2002), the Commission considers this practice of impeding integral personal deductions as an obstacle to the freedom of movement of workers and the self-employed, which are guaranteed by articles 18, 39 and 43 of the EU Treaty and corresponding rules in the relations with the EEA.

- the differences across Member States regarding the possibilities for the deduction of lump sum or business expenses and income averaging which can act as incentives or barriers to mobility<sup>55</sup>;

### 7.3. Visas and Work Permits

Finally, it must not be forgotten that many artistic productions also involve artists from countries outside the European Union<sup>56</sup>. The mobility<sup>57</sup> of these persons is seriously hindered by visa requirements and difficulties in obtaining short or longer term work permits. In many cases, the time period for visas is quite short and renewing them is often difficult and expensive. It has been suggested that, due to immigration legislation and pressures from artists union, longer term visas are often difficult to obtain. A special visa could be designed for artists which would allow them to stay for longer, uninterrupted periods abroad, irrespective of such pressures.

This reality has led to the formation of the Schengen Opera Group and Petition (1 May 2006) which calls on "all private persons, all political parties, international institutions, professional unions to ensure that"<sup>58</sup>:

- administrations respect their own rules;
- clarification and harmonisation should be seriously brought together at the EU level (so far as issuing visas for non-EU artists is concerned);
- there must be an immediate stop to instant "return to the border" for non-EU artists when they are in possession of a working contract with a cultural employer based in Europe; and
- discussions should immediately be organised, with all concerned administrations in all countries, in order to submit to national and European parliaments as soon as possible, clear, fair and democratic regulations about the issue of such visas.

Proposed revisions to the work permit system in some countries such as the UK requiring, e.g. touring theatre companies or orchestras to have individual members of the company apply for visas rather than obtaining a group visa for all members, significantly raises the barriers to mobility. In the first instance, it can significantly increase the costs of both the local organisers and of the visiting arts group/company. In addition to the overly administrative burdens, performances could be at risk due to the rejection of one key member of the group. In some cases, this has prevented companies and their artists from travelling to and performing abroad<sup>59</sup>.

<sup>55</sup> Audéoud, Olivier: op. cit., pp. 6 and 7 and Molenaar, Dick: *Artists Taxation and Mobility in the Cultural Sector*. Report for the Ministry of Education, Culture and Science, Netherlands, April 2005

<sup>56</sup> The Directive 2004/38/CE on the rights of citizens of the Union and their families to circulate and remain freely on the territory of the Member States, which had to be transposed into the law of the Member States by April 30, 2006, removed residency permit for nationals of the Union.

<sup>57</sup> In this context, the term "mobility" should not be confused with "migration"; the latter raising a different set of issues and challenges regarding longer term visas and work permits. For example, a recent study pointed to a great number of artists which left countries of the former Yugoslavia for Western Europe during the 1990s because of the war and complain about the difficulties of maintaining their artistic work in their new home countries due to heavy gate-keeping structures and lack of recognition, support and public spaces. More often than not, they are forced to abandon their artistic profession for low skilled labour jobs or folklore related cultural work/performances. For more information see: Vujadinovic, Dimitrije: *One Way Ticket – Brain Drain and Trans-border Mobility in the Arts and Culture of the Western Balkans*. Belgrade: Balkankult Foundation, 2006. This article was commissioned in the context of the first phase of a transnational research project undertaken by the ERICarts Institute for the European Cultural Foundation on the *Causes, Consequences and Conflicts of Mobility in the Arts and Culture in Europe*.

<sup>58</sup> See <<http://schengenopera.free.fr/?lang=uk>>

<sup>59</sup> See <<http://www.thestage.co.uk/news/newsstory.php/11751/whitehall-reviews-foreign-artists-visa-costs>> or <<http://arts.guardian.co.uk/features/story/0,11710,1150285,00.html>>

Studies on the impact of visa reforms in the context of changing immigration laws or regulations are required.



## 8. Copyright as a Tool to Enhance the Economic Status of Artists? Some Reflections

Copyright legislation is said to be one of the earliest legal instruments addressing the status of artists. Even today, copyright legislation is still seen by some as the main tool to improve the overall status of artists. While it is not the intention of this study to provide an in depth analysis of copyright legislation, there are some important questions to be raised regarding the relevance and contribution of this and related legal instruments to support artists in Europe. The short overview below will argue that, despite many tailored amendments made to copyright legislation in the past 25 years, the benefits of current legal frameworks are insufficient to replace specific measures to support the legal and social status of artists.

### 8.1. Artists: Subjects<sup>60</sup> of Political, Economic or Individual Interests?

#### *As subjects of political interests*

First traces of what we today call "author's rights" date back to the passing of the 1710 *Statute of Queen Anne*<sup>61</sup> in England. This Statute gave the rights over the publication of works to authors rather than publishers for the first time. The emergence of this Statute was driven by the *political interests* of Queen Ann Stuart, a Protestant, for two reasons. The first was to *break the monopoly and control* enjoyed by England's Company of Printers since 1557, whilst preventing the creation of new monopolies. The second was to limit the grip of the Company, which was dominated by Catholics, and to expand the marketplace by enabling the emergence of new publishers and the circulation of new works and ideas<sup>62</sup>; especially those advocated by the Reform. To this end, copyright was given to authors for a period of 2 x 14 years. It provided for an obligatory termination of assignment at the end of a first period of protection (14 years) in order to give writers maximum negotiating freedom with publishers. Following this period of 28 years, works were to become part of the public domain.

#### *As subjects of economic interests*

The protection of the *economic interests of creators* was an important theme of the American Revolution and was subsequently introduced into first the American Constitution of 1787. *Article 8* gave Congress the power to "promote the progress of science and arts, by securing for a limited time, the exclusive right of authors and inventors to their respective writings and discoveries". Already at this time, creation figured as one of the main vectors of economic development in the "New World". A few years later, protecting the economic interests of creators would become a focus of French law makers who, after the French Revolution and the abolishment of the privileges of the ancient regime, were faced with fighting the chaos in the marketplace and the rampant reprinting of works. In the spirit of Enlightenment, they introduced legislation (1791, 1793) which would give authors the right *to authorise or prevent works from being copied*, albeit for a limited period of time.

<sup>60</sup> The term "subjects" here is used in a double means: referring to "(2b) a person etc. under the control of or owing obedience to another" and as a noun referring to "(II.5.c) a thinking or cognizing entity or agent; the conscious mind; the self, the ego, esp. as op. to anything external to the mind", The Shorter Oxford English Dictionary, 2002.

<sup>61</sup> Queen Ann's Statute of 1709, promulgated in 1710.

<sup>62</sup> Boytha, György: *The Justification of the Protection of Authors' Rights as Reflected in their Historical Development*. RIDA, 1992, pp. 53-100.

### *As subjects of individual interests*

It was only towards the end of the 19<sup>th</sup> century in Germany that the doctrines of natural law and the *jus personalissimum* gave birth to a third stream of thought: copyright as a *right over the intangible work* and *attaching non-transferable rights* to the individual author as a person (the monist theory of copyright). It is thanks to this philosophy that the *non-economic, moral aspects of copyright*, aimed at protecting both the individual person of the author and the authenticity of his/her creation, was introduced<sup>63</sup>. This development acknowledged the cultural aspects of artistic creation.

### **8.2. Artists as Main Beneficiaries of Copyright Legislation?**<sup>64</sup>

Across Europe, member states developed legislation based on different schools of thought and traditions. For example, on the French inspired *continental tradition of "droit d'auteur"*<sup>65</sup> emphasising the relationship between the author and his/her work or on the *anglo-saxon tradition of copyright* emphasising mainly the work itself as a concrete form of expression. More recently, there has been a surge of action by law makers around the world to extend and strengthen intellectual property rights over all artistic content, information, know-how and works, the importance of which has become crucial in industrialised countries shifting towards a "knowledge based society". Indeed the European Union has been working to harmonise member state legislation in the field of copyright for over 15 years. Today there are a myriad of Directives<sup>66</sup> aimed at harmonising national approaches to copyright on: computers (incl. software); rental rights; satellite and cable; neighbouring rights; database protection; reproduction and communication rights in the Information Society, resale rights etc.

One of the most significant developments in European copyright law said to have a great impact on the status of artists is the extension of copyright to 70 years after the author's death. Not subject to any great debate in European institutions, this extension is deemed to be of no benefit to living artists, but mainly to powerful business conglomerates or heirs<sup>67</sup> which have come to own these rights. It is very often the case that individual artists sign contracts which assign their rights to e.g. publishers of their works for the full duration of the extended period including all modes of exploitation and in all territories. Subsequently, their rights have become the exclusive *intangible economic assets of companies*. The question remains: for how many artists do *royalties* obtained from copyright represent a significant means of supporting their past and future creative activities? Strangely enough, precise information to answer that question is not available, at present.

<sup>63</sup> In the nineteenth century, advances in technology would challenge the concept that copyrights were solely embodied in a natural person (an individual creator) by extending them to non-physical beings (e.g. companies, products). This eventually led to the extension of rights for individual authors (in the sense of writers) to form the basis of what is now known as *neighbouring rights* to cover performers, record producers and broadcasting companies.

<sup>64</sup> Based on an extract from a forthcoming study by Danielle Cliche: "Culture-DIV: Policies to Foster Divisions or Diversity in Europe?", 2007.

<sup>65</sup> What makes this model distinct is the provision of "moral rights". Moral rights were created as "personality rights" to protect the honour and reputation of the creator. These rights belong to the creator and can not be waived. Even if the copyright to their works are sold, the creator still retains moral rights over his/her work.

<sup>66</sup> A complete listing of EU copyright directives is available from the European Commission's web site: <[http://europa.eu.int/comm/internal\\_market/en/intprop/docs/index.htm](http://europa.eu.int/comm/internal_market/en/intprop/docs/index.htm)>. Despite these Directives, national definitions, assessments of the value of the use of author's work, concepts and schemes for the distribution of revenues, etc., still vary greatly from country to country.

<sup>67</sup> According to the study by Ginsborough, Victor: *The Economic Consequences of Droit de Suite in the European Union*. March 2005, the adopted European Directive on Resale Rights (2001) will not benefit the 350,000 living visual artists as predicted by the European Commission but rather their heirs in over 85% of the cases.

Indeed, in the past ten years, there has been a growing amount of evidence to confirm that the economic status of artists has diminished under the prevailing copyright regimes, not only in the new countries of the EU25, but also in the north and east of Europe<sup>68</sup>. They show that, with the exception of a few big stars<sup>69</sup>, the majority of contemporary artists in Europe can not live from the supposed economic returns on their professional activities provided to them through copyright instruments. According to Bernhard Günter, the current copyright system is not working as it disproportionately benefits a few famous artists and major enterprises<sup>70</sup>. Copyright royalties are, for most artists, not an incentive to create. Günter estimates that only 15-20% of the composers receive copyright royalties which make up more than half of their income (despite the fact that, in the field of music, the distribution of royalties is fully controlled by collecting societies). The space for experimentation, cultural innovation and diversity is disappearing in a field where, for example, 80% of the recording industry market share goes to only five multinational companies. In that context, the domination of the marketplace by a handful of multinational conglomerates is considered to be harmful not only to artists and their works, but to the public interest as well<sup>71</sup>.

### 8.3. Sustaining Artistic Creativity through a set of Integrated Legal Measures

The brief overview above may help to dispel the myth that copyright legislation, despite all of its merits, should be seen as the instrument best suited to improve the social and economic status of artists in Europe in a decisive manner. Indeed, not only the present research, but many other studies and evaluations undertaken since the 1980s, including more recent ones of the European Parliament in 1991, 1999 and 2002<sup>72</sup>, have all suggested the implementation of key measures addressing the precarious socio-economic status of artists more directly such as:

- social security frameworks tailored to meet the specific needs of artists;
- guaranteed protection or remuneration during unsalaried periods;
- adjustments to taxation laws taking into consideration potentially significant income fluctuations;
- simplified administrative procedures for hiring resident and non-resident artists;
- special models of funding for artists;

<sup>68</sup> Mitchell, Ritva: *A Sketch of the Nordic Model of the Status of the Artist and an Account of its Main Problems*. Copic, Vesna: *General Overview: Transitional Problems*. See Annex III.

<sup>69</sup> For example: In France, in 2002, 80% of the intermittent artists and stage technicians working in the entertainment industry without steady employment received an annual salary of less than 1.1 of the SMIC (*salair minimum de croissance*).

<sup>70</sup> Cliche, Danielle; Mitchell, Ritva; Wiesand, Andreas with Heiskanen, Ilkka and dal Pozzolo, Luca: *Creative Europe: On the Governance and Management of Artistic Creativity in Europe*. Bonn: Arcult Media, 2001, page 55.

<sup>71</sup> On the other hand, some have predicted that, due to the wide spread use of new technologies, there will be a decline of industry "hits" or "best sellers". This can already be seen through the impact which the Internet has made to facilitate the distribution of cultural goods and services around the world to a limited, but international audience. Chris Anderson: *The Long Trail*, www.wired.com.; Courier international: *C'est la fin des tubes préfabriqués*, 3-23 August 2006, p. 40.

<sup>72</sup> Parliament resolution on the situation and role of artists in the European Union, dated 09.03.1999; European Parliament resolution on the importance and dynamics of the theatre and the performing arts in an enlarged Europe, dated 22.10.2002; Report by the Committee on Youth, Culture, Education, Information and Sport on the situation and role of artists in the European Union, Doris Pack, reporter, 19 December 1991, A3-0389/91.

- distribution of in-depth information on the status and mobility of professionals, etc.<sup>73</sup>.

Therefore, these types of recommendations will also guide the following conclusions of the present study.

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<sup>73</sup> See the site supported by the European Union: <<http://www.on-the-move.org>> which provides information on mobility schemes for performing artists.



## Part III

### Conclusions/Recommendations

In July 2003, a Report of the Committee of Culture, Youth, Education, the Media and Sport of the European Parliament called on the Commission, its member states and the regions to: “develop a European legal framework with a view to creating an all-embracing ‘statute of the artist’ intended to afford appropriate social protection, which would include legislation regarding author’s intellectual property rights”. It was within this context that this particular study was commissioned; albeit excluding intellectual property right issues.

Accordingly, the authors sought to advance three different scenarios for the Parliament, the Commission and its member states to consider, including:

1. an EU Directive on the Status of the Artist;
2. a European Parliament Resolution on the Status of the Artist addressing the most important problems and making specific proposals for measures aimed at the EU and member states on key issues related to social security, taxation and mobility; and
3. the “Status Quo”.

Based on the results of this short study, the authors put forth several arguments which either support or refute the possibility for each of these scenarios.

#### Scenario 1: EU Directive on the Status of the Artist

The creation of an EU Directive or other forms of legislation on the Status of Artists implies the introduction of specific legal provisions to be harmonised across all EU member states. This would be very difficult to achieve for several reasons. We can point to two main arguments:

1. While artists constitute a coherent group of workers, their working conditions remain widely different. Two groups can clearly be distinguished:
  - artists in the audiovisual and performing arts sectors generally work in collaboration with others and in a fixed location. Their work is characterised by high levels of mobility and varying employment status; and
  - visual artists, composers and writers, who generally work alone and in a location decided upon by themselves.

The study has shown that, in some countries, alternative or innovative solutions have been implemented within very different social traditions and cultural policy systems to address specific needs of these different artistic groups. European legislation that would try to harmonise such varied legal systems and rules could not only contradict *Article 151* of the EU Treaty, which prohibits such harmonisation, but also the envisaged *Directive on services in the internal market*. A harmonisation process could also risk eliminating the positive and innovative measures implemented to date in some of the Member States.

2. The status of the artist is a transversal issue and draws on several legal areas and numerous institutional competences: free movement of citizens and workers, taxation and social security legislation, the Internal Market, etc. Bringing these strands together into a single piece of legislation seems extremely complex; a challenge yet to be addressed on the national level.

On the other hand, proposals have been made by experts to develop a *European Social Security System for Artists (ESSA)*. As Community law currently stands, there is no legal basis for establishing such a system applicable to artists<sup>74</sup>. Would it nevertheless be a long-term aspiration to strive toward?

## Scenario 2: European Parliament Action on the Status of Artists

Taking into consideration the 1980 UNESCO Recommendation on the Status of Artists, a European Parliament Resolution could first invite:

- the Council to recognise the importance of artists and their creative activities in the context of European integration and to adopt a resolution on the status of artists in Europe;
- the Commission to work on specific issues effecting artists working practices especially regarding their employment status, social security and the taxation resulting from international and European mobility;
- Member states to produce and publish more specific legal information and statistics on the culture sector; and
- Member States to take action on the most important problems facing artists and their socioeconomic status.

## Member States

A very specific list of measures could be considered for adoption at the various institutional levels on issues related to social security provisions, taxation and mobility. The list of such measures provided below is based on the results of the present study, on other research, as well as on issues identified in various recommendations concerning the status of artists, which were made in documents of the European Parliament in 1999, 2002 and 2005<sup>75</sup>. It includes existing and innovative solutions being applied in the EU Member States and could serve as a guide.

### i) *Social Security:*

- *Community legislation:* Ensuring the respect, the interpretation and the *specific* application of the Community legislation (Regulations 1408/71 and 883) in collaboration with the various administrative commissions, to take care of the development of a Code of Practices – with the assistance of experts of the sector – to reduce and harmonize procedures, and to improve the rules of coordination;
- *Short term work in another EU country:* Ensuring application of the *Barry Banks* decision (2000, C 178/97) and in line with the proposed *EU Services Directive*, to ensure that social security contributions are paid for self-employed artists working for short term periods abroad and to improve the transmission of administrative documents;

<sup>74</sup> Question no. a279671 put to the Commission by Mrs Hennicot-Schoepges, Member of the European Parliament, February 2006.

<sup>75</sup> Resolution on the "nouveaux défis du cirque" (2004/2266(INI).

- *Invite the EU Member States to coordinate their difference social security regimes* to enable, on the national level, the various employment statuses of artists to be taken account of (salaried worker, freelancer, self-employed), including recognition of attachments to a protection scheme (salaried workers) and of the principle of totalisation of periods of liability and social security contributions (self-employed);
- Provide *unemployment insurance* for freelance and self-employed artists (see e.g. the models in Belgium and Denmark);
- *Adopt more flexible qualification* periods or criteria for social insurance and benefits that take account of the irregularity of artistic work (e.g. models in France and Italy), their intellectual rights, particular risks (disability, employment injuries) and short term careers (e.g. the Italian model). Aid and assistance measure are to be provided to professional re-training;
- *Adopt measures to financial social security programmes which are suited to self-employed persons* (see e.g. the models in Germany and France);
- Adopt "intelligent" measures to provide financial assistance to artists in view of their *further professionalisation and re-training* (e.g. in Luxembourg and the Netherlands);
- *Permit the pursuit of an artistic activity during periods of unemployment* in which benefits can continue to be drawn and to consider the development of artistic practice or artistic projects as job-seeking (e.g. in Belgium and in New Zealand);

**ii) VAT:**

- ensure the application of the *Matthias Hoffmann* decision (2003, C-144/00) in national laws which provides certain VAT exempts for groups of artists as well as for individual non-resident artists<sup>76</sup>;

**iii) Wage Withholding Tax to Non-Residents:**

- do not require *non-residents to pay wage withholding* tax for fees under 20,000 EUR; eliminate internal tax rules that sustain double taxation;
- ensure application of the *Arnoud Gerritse* decision (2003, C-234/0) and allow the deduction of business expenses on the income of non-residents, together with the normal deduction of tax paid abroad;

**iv) Income Tax:**

- allow a more equitable deduction of professional expenses, particularly the costs of training, professional re-adaptation, lump sums in the absence of receipts, and a system of income averaging which includes business expenses (different models to be evaluated, e.g. those in Canada, Slovenia or Sweden);

**v) Entrepreneurship:**

- adopt legal structures and incentive measures for small businesses in the cultural economy<sup>77</sup>;

<sup>76</sup> Most of the Member States apply the exemption for cultural organisations, but apply VAT to the fees of non-resident performing artists. This situation is inequitable.

<sup>77</sup> Increasingly, female artists and operators are at the forefront of those setting up "micro businesses" and, indeed, make up a large share of independent workers in the culture sector, cf. results of a series of empirical studies carried out by the ERICarts Institute for the European Commission: <<http://www.culturegates.info>>

- encourage the development of structures and agencies offering administrative, social and tax management services for artists (the example of SMArt in Belgium or in France);
- encourage support systems for emerging artistic forms, particularly interest-free or reduced-interest micro-credits, funding for materials and equipment, professional training in new technologies etc.

**vi) Visas and Work Permits:**

- encourage better coordination between the Departments of the interior and for culture when devising visa and work permit criteria as well as studying the possibilities for implementing an annual residency card for artists from outside of the EU.

### **The European Commission**

The European Parliament Resolution could also propose that the Commission establish:

- a more formal *Community Charter on the Status of Artists* which would address the issues above in a more systematic manner and could be devised along the lines of the model provided by the 1989 *Community Charter of Fundamental Social Rights of Workers*. Such a Charter would also create links with the work already undertaken by international organisations such as UNESCO, WIPO and ILO;
- a *Transversal Task Force on the Mobility in the Cultural Sector* with the objective of developing a comprehensive Plan of Action which would involve the various competent DGs and should also seek advice from professional networks and research bodies. The Task Force would be asked to prepare studies or white papers on the mobility of professional artists in Europe, and examine the following:
  - the compliance, interpretation and specific application of Community Law (e.g. Regulations 1408/71 and 883), taking account of the problems encountered by artists. A Code of Good Practice could be developed in cooperation with the various administrative agencies and experts from the cultural field. Proposals are to be made to improve coordination;
  - intermediary agencies which provide information and advice to mobile artists and related professionals (particularly in the performing arts and audiovisual sectors) on administrative, tax and social security regulations in the country where they are undertaking work for short periods of time. Some of their services include covering payments of salaries / fees for the contractor, pooling together freelance artists under one umbrella or acting as guarantors towards social security or tax authorities. The envisaged study could make proposals toward a new directive on the new forms of employment and mediation;
  - taxation on the income of artists which are non-residents and a re-examination of Article 17 of the OECD Convention on the prevention of double taxation;
  - the trans-national mobility of artists in view of new visa policies and conditions for work permits being proposed in the EU member states and the possibilities to implement an annual residency permit for artists;
- an *Online Contact Point and Information Guide* providing practical, timely and detailed information on social security and taxation for artists especially as concerns temporary work abroad. The Contact Point and Guide could be established in cooperation with the *UNESCO Observatory on the Status of Artists* (the content of which needs to be

systematised and regularly updated). In addition, the contact point could benefit from the experience of the Council of Europe/ERICarts information system "Compendium of Cultural Policies and Trends in Europe", now in its 8<sup>th</sup> edition and should also take account of the work of some European networks and associations (e.g. "On the Move"/IETM). The Information Guide could build upon the results of this study as a first step. More detailed information could be obtained through two additional and complementary exercise such as:

- a representative European survey on the socio-economic conditions of artists and how this has changed over the past five years; and
- a technical study which would examine the access of artists – employed or self-employed and in each sector - to social security insurance in the 28 EU Member States (emphasis on health, disability, unemployment and pension).

### **Scenario 3: Status Quo**

Evidence produced over the past 20 years, and more specifically in the last 5 years, indicates that the socioeconomic status of artists is not improving due to specific legal impediments at both the national and European level. The challenges are aggravated in the context of mobility and the drafting of proposals to restrict possibilities to mobility not only for artists wishing to work or perform in other countries. Therefore, maintaining the status quo is not an option.



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## Annex I. Specialists and Research Institutions Contacted for the Study

In addition to trans-national organisations, networks, unions and agencies of relevance for the study, such as: Council of Europe, EURES, FIM, IETM, UNESCO or UNI-MEI Global Union, a great number of individual experts have been contacted in the course of the project and many of them contributed actively to the research. What follows is a provisional, non-exhaustive list of names of these contacts, as they were recorded:

ARKOVA, Rossitza (Analyses and Forecasts Department, Ministry of Culture), BG-Sofia  
 AUDIGE, Thomas (IGAS), FR-Paris  
 AZZOPARDI, Mario (Ministry of Education), MT-Valletta  
 BAETEN, Els (Vlaams Theater Instituut), BE-Brussels  
 BINA, Vladimir (Ministry of Education, Culture and Science), NL-The Hague  
 BODO, Carla (Associazione per l'Economia della Cultura), IT-Rome  
 BONET GALZY, Marie-Caroline Thomas (IGAS), FR-Paris  
 BONET, Lluís (University of Barcelona), ES-Barcelona  
 BÜCHEL, Thomas (Stabsstelle für Kulturfragen), LI-Vaduz  
 COPIC, Vesna (Cultural Policy Department, Ministry of Culture), SI-Ljubljana  
 DALLAS, Costis (Panteion University), GR-Athens  
 DE PAUW, Bruno (Office National de Sécurité Sociale), BE-Bruxelles  
 DELVAINQUIÈRE, Jean-Cédric (Département des études et de la prospective - Ministère de la culture et de la communication), FR-Paris  
 DUMAS, Thierry (AGESSA), FR-Paris  
 ESPEN, Alain (Ministère des finances), LU-Luxembourg  
 FISHER, Rod (International Intelligence on Culture), UK-London  
 FITZGIBBON, Marian (School of Humanities, Athlone Institute of Technology), IE-Athlone  
 FOOTE, John (Department of Canadian Heritage), CA-Gatineau  
 HEISKANEN, Ilkka (EKVIT), FI-Helsinki  
 HEMMER, Claudine (Ministère de la Culture, de l'enseignement supérieur et de la recherche), LU-Luxembourg  
 HOFHECKER, Franz-Otto (IKM, Universität für Musik und Darstellende Kunst), A-Vienna  
 ILCZUK, Dorota (Jagiellonian University), PL-Cracow  
 INKEI, Peter (Regional Observatory on Financing Culture in East-Central Europe), HU-Budapest  
 JUROWICZ, Julek (SMART asbl), BR-Bruxelles  
 LAGERSPETZ, Mikko (Estonian Institute for Humanities), EE-Tallinn  
 LEBON, France (Ministère de la Communauté française), BE-Bruxelles  
 LEJEUNE, Muriel (Office national pour l'Emploi), BR-Bruxelles  
 LIMA DOS SANTOS, Maria de Lourdes (Observatorio dos Actividades Culturais), PT-Lisbon  
 LIUTKUS, Viktoras (Vilnius Academy of Fine Arts), LT-Vilnius  
 MACK, Carlo (Ministère des finances), LU-Luxembourg  
 MATHIEU, Douxami (AGESSA), FR-Paris  
 MITCHELL, Ritva (CUPORE), FI-Helsinki  
 MUCICA, Delia (Ministry of Culture and Religious Affairs), RO-Bucharest  
 OBULJEN, Nina (IMO), HR-Zagreb  
 PATENAUDE, Gaétan (Secrétariat permanent à la condition socioéconomique des artistes, Ministère de la Culture et des Communications), CA-Québec  
 RATZENBOECK, Veronika (Österreichische Kulturdocumentation), AT-Vienna  
 RAYMOND, Michel (IGAS), FR-Paris  
 REITAN, Therese (National Council for Cultural Affairs), SE-Stockholm

ROIGT, Annie (ancienne chargée de mission, Ministère de la Culture), FR-Paris  
SANAVIA, Patrick (Ministère de la Culture, de l'enseignement supérieur et de la recherche),  
LU-Luxembourg  
SEDLNIECE, Una (Strategy Unit, Ministry of Culture), LV-Riga  
SÉVERINE, Lulin (AGESSA), FR-Paris  
SIEVERS, Norbert (Kulturpolitische Gesellschaft), DE-Bonn  
SMIERS, Joost (University of the Arts), NL-Utrecht  
SMITHUIJSEN, Cas (Boekman Foundation), NL-Amsterdam  
WAGNER, Bernd (Kulturpolitische Gesellschaft), DE-Frankfurt  
WECKERLE, Christoph (University of Art and Design), CH-Zurich  
WESTERLAAK, Lucia van (Syndicat des artistes FNV), NL-Amsterdam  
ZIMMERMANN, Olaf/SCHULZ, Gabriele (Deutscher Kulturrat), DE-Berlin

## Annex II. Comparative Tables - National measures

### II.1. Cultural Employment and Working Characteristics in Europe (2002)

	% of workers with temporary jobs		% of workers with part-time jobs		% of workers with a second job		% of employers & self-employed	
	Total empl.	Cultural empl.	Total empl.	Cultural empl.	Total empl.	Cultural empl.	Total empl.	Cultural empl.
<b>EU25</b>	<b>12</b>	<b>18</b>	<b>17</b>	<b>25</b>	<b>3</b>	<b>9</b>	<b>14</b>	<b>29</b>
<b>Austria</b>	7	11	19	26	4	9	9	39
<b>Belgium</b>	8	17	20	21	3	7	15	29
<b>Cyprus</b>	9	5	6	11	5	5	20	20
<b>Czech Republic</b>	8	15	5	12	2	7	16	29
<b>Denmark</b>	9	10	21	36	11	20	8	17
<b>Estonia</b>	2	2	7	13	4	4	5	5
<b>Finland</b>	17	24	12	24	4	8	9	19
<b>France</b>	14	29	16	24	3	10	9	20
<b>Germany</b>	12	18	21	30	2	8	10	30
<b>Greece</b>	11	21	4	14	3	9	30	31
<b>Hungary</b>	7	11	3	n.a.	2	5	12	19
<b>Ireland</b>	5	n.a.	17	24	2	4	13	28
<b>Italy</b>	9	19	9	17	1	7	26	47
<b>Latvia</b>	11	9	7	10	7	19	6	6
<b>Lithuania</b>	6	2	8	15	7	18	6	8
<b>Luxembourg</b>	4	1	12	16	1	3	7	16
<b>Malta</b>	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
<b>Netherlands</b>	14	19	44	56	6	14	11	32
<b>Poland</b>	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
<b>Portugal</b>	21	35	7	15	7	13	19	27
<b>Slovakia</b>	5	5	2	2	1	6	9	18
<b>Slovenia</b>	15	26	5	15	2	3	9	20
<b>Spain</b>	30	34	8	16	2	6	17	25
<b>Sweden</b>	16	22	21	28	9	14	9	27
<b>United Kingdom</b>	6	10	25	26	4	7	11	28
<b>Iceland</b>	6	5	29	41	17	29	15	35
<b>Norway</b>	10	17	26	29	9	13	5	19
<b>Bulgaria</b>	n.a.	n.a.	2	7	1	1	10	12
<b>Switzerland</b>	13	14	33	45	6	14	14	27

n.a. Data not available

Source: Eurostat Labour Force Survey 2002/Eurostat News Release 68/2004. The estimation method was developed by a special Eurostat Task Force led by the DEP (Department of Studies and Prospective) of the French Ministry of Culture and Communication. Analysis of data was carried out by the DEP.

**Note:** EU aggregate based on 23 Member States, as no data is available for Malta and Poland. *Cultural employment* covers both cultural occupations in the whole economy and any employment in cultural sectors of the economy (cultural economic activities). *Cultural occupations* are professional activities with a cultural dimension, such as librarians, writers, performing artists, architects, etc. In other words: these figures are NOT limited to artists (of which comparative data are not available, at present).

**II.2 Table A: Independent / Self-Employed Artists – Typical Coverage in Social Security Regimes**

**NOTE:** Classifications in this table refer only to common measures and practices, with emphasis on the public social security system; exceptions apply in some countries.

**LEGEND:** **GSS** = General State/Public Social Security Regime; **SPS** = Special Public/State Social Security Regime for artists; **ASM** = Alternative or Supplementary Social Security Measures (e.g. via Arts Councils, Copyright Bodies etc.); **+** = Measure/system normally applies; **CC** = Complete coverage in the public social security system (pensions, sickness, unemployment etc.); **EX** = Exempted from insurance; **HI** = Health/Medical insurance; **PS** = Pension system/insurance; **OB** = Other benefits (e.g. maternity, training opportunities); **UI** = Unemployment insurance; **(?)** = unclear/different sources;

Country	All residents	Independent Performers				(Other) Independent Artists/Authors			Comments (Legal basis, exceptions, sources etc.)
	Compulsory Insurance or Coverage		Voluntary or Sponsored		Compulsory Insurance or Coverage		Voluntary or Sponsored		
	GSS (total workforce)	Modified GSS coverage	Coverage by SPS	ASM	Modified GSS coverage	Coverage by SPS	ASM		
<b>Austria</b>		PS*				PS*			*Künstler-Sozialversicherungs-Fonds 2001 <sup>78</sup>
<b>Belgium</b>		CC <sup>79</sup>	HI/PS OB			CC	HI/PS OB		<b>EX</b> on application of the artist (proving socio-economic independence)
<b>Cyprus</b>									<i>Currently no detailed information available!</i>
<b>Czech Rep.</b>	+							HI	Self-employed need to be registered (JS)
<b>Denmark</b>	CC/UI*								*Separate <b>UI</b> system, also for the self-employed
<b>Estonia</b>	+		+*(?)				+	+(?)	*New law 2004 on "creative artists" <sup>80</sup> (CCP)
<b>Finland</b>	+			PS*			PS(?)	+	*Special pensions for performing artists <sup>81</sup>
<b>France</b>		CC <sup>82</sup>	OB**			CC <sup>83</sup> except UI*			*except professional sickness and accidents (in proposition) Self-employed artists need to register at <i>AGESSA</i> (visual artists, via <i>Maison des artistes</i> ). <b>EX</b> possible for entrepreneurs (JS) **Further education in performing arts: <i>AFDAS</i> <sup>84</sup>
<b>Germany</b>			HI/PS*				HI/PS*	PS**	*Künstlersozialkasse <sup>85</sup> (employers are exempted) **Supplem. <b>PS</b> for performers/media freelances
<b>Greece</b>		(?)						+	*Occasionally sponsored by Min. of Culture (CCP)
<b>Hungary</b>	HI/PS*								*Benefits for artists considered as "symbolic" (JS)
<b>Ireland</b>	+		PS/OB*				PS/OB*	OB**	*Pay Related Social Insurance (PRSI) for all self employed people. **for 200 artists ( <i>AOSDANA</i> )
<b>Italy</b>			CC* (not UI)					(?)	*Compulsory via the National Institute of Social Security for the Performing Arts ( <i>ENPALS</i> )

<sup>78</sup> Law on the Social Security Fund for Artists, 2001

<sup>79</sup> Loi du 24 décembre 2002.

<sup>80</sup> Act on Creative Artists and Creative Artists Unions, 2004

<sup>81</sup> Pensions Act for Performing Artists and Certain Groups of Employees (TaEL) 1986 and Act on the Pensions of Artists and some Particular Groups of Short-time Workers, 1985 (?)

<sup>82</sup> Art. L.311-3-15°, Code de la Sécurité sociale et L.762-1, Code du Travail. Special regulations for unemployment insurance: Convention UNEDIC, annexes VIII et X.

<sup>83</sup> Law of 31 December 1975 on Social Security of Authors; L. 382-1 à L. 382-14 du code de la sécurité sociale.

<sup>84</sup> Fonds d'assurance formation des secteurs de la culture, de la communication et des loisirs.

<sup>85</sup> Gesetz über die Sozialversicherung der selbständigen Künstler und Publizisten (Künstlersozialversicherungsgesetz) – KSVG of 27.7.1981, mod. 6.04.2001.

<b>Latvia</b>	+								+(?)*	*Only for members of the Writers Union (CE)
<b>Lithuania</b>	+				PS*(?)				PS*	*Special pensions awarded by the State <sup>86</sup>
<b>Luxembourg</b>					PS/UI*			PS*		*Assistance of the <i>Fonds social culturel</i> in case of low income of artists registered by the Ministry. <sup>87</sup>
<b>Malta</b>	+									No SPS to address needs of freelance artists (CCP)
<b>Netherlands</b>	+*				HI/UI*				HI/OB*	*GSS legislation for entrepreneurs is modified for artists, e.g. in the <i>WIK</i> (Artists Income Act, 1998) <sup>88</sup>
<b>Poland</b>									OB	*Concerns mainly determination of periods of work
<b>Portugal</b>	+								+	*Registered artists only
<b>Slovakia</b>	+(?)									<i>Currently no detailed information available!</i>
<b>Slovenia</b>	+								+	*SPS: 1.300 out of 2.500 registered artists (CCP)
<b>Spain</b>	+								OB	*Special measures in the GSS (Decree 2621, 1986)
<b>Sweden</b>	+*								PS	OB *Tax-exempted income does not count for pensions!
<b>UK</b>	+ <sup>90</sup>	limited UI	UI*		PS**/OB	limited UI			OB	* <i>New Deal for Musicians</i> ; ** <i>Dancers Career Development</i> charity (support: Arts Council England)
<b>Bulgaria</b>	+		UI*							*Access to UI under special conditions <sup>91</sup>
<b>Croatia</b>			+(incl. UI?)						+(?)*	*Below 5.000 HRK income per month, GSS contributions of indep. artists can be covered by the State <sup>92</sup>
<b>Iceland</b>	+(?)								PS	Differentiated system of State bursaries for artists
<b>Norway</b>	CC*								PS	*Working Environment Act/National Insurance Act
<b>Romania</b>	+*									*Former SPS (artists/writers) merged with GSS
<b>Liechtenstein</b>	+								OB	
<b>Turkey</b>	+									*Modified GSS regulations for artists <sup>93</sup> (UN)

Main sources: CCP = Council of Europe/ERICarts Compendium of Cultural Policies and Trends in Europe, 2006; CE = Creative Europe, 2002; JS = Judith Staines: From Pillar to Post, 2004; UN = UNESCO World Observatory on the Social Status of the Artist

<sup>86</sup> Only for registered artists, cf. Law on the Status of Art Creators and Art Creators Organizations, 2004

<sup>87</sup> Law of 30-07-1999, modified 26-05-2004, concerning a) the status of the independent professional artist and the performance intermittent b) the promotion of artistic creation (Aide sociale pour les artistes indépendants et les intermittents du spectacle). Grand-ducal regulation of 16-06-1989 modifying the measure of 24-05-1979 to establish the rules for the sickness insurance of self-employed intellectual workers.

<sup>88</sup> Decree of 25 April 2000 to amend the Execution Decree on the salary determination of artists (WIK=Wet inkomensvoorziening kunstenaars) and Decree of 24 December 1986 (on the establishment of an administrative regulation of different social security laws)

<sup>89</sup> Professionais de Espectaculos, decreto-lei n°407, 27 September 1982.

<sup>90</sup> J. Staines, 2004: "Self employed workers pay basic (Class 2) National Insurance throughout the year at £2 / €3 per week. Additional (Class 4) National Insurance payments are due if you make more than a certain level of profit. The current rate is 8% on profits between a lower and upper level as calculated from the tax return." See also <http://www.artscouncil.org.uk/documents/publications/316.doc> (ACE, 2004)

<sup>91</sup> Transitional and final Provisions of the Protection and Development of Culture Act. and Ordinance on Social Security of Persons who practice a Liberal Profession..., 2000

<sup>92</sup> Rights of Self-employed Artists and Promotion of Cultural and Artistic Work Act of 1996, amended 2000 and Regulation No. 793 of 19 March 1999

<sup>93</sup> e.g. in the Act n° 4759 of 23-05-2002 to amend the Act on social insurances,... the Act on the Turkish Pension Fund, social insurances for craftsmen, artists and other independent workers...

## II.2 Table B: VAT-Rates Applicable on the Turnover Resulting from the Creative Work of Self-Employed Authors and Visual Artists in Europe (2006 in %)

Country	Standard Rate (II/2006)	Works/Supplies of		Remarks
		Writers, Composers	Visual Artists	
<b>Austria</b>	20	<b>10 / 20*</b>	<b>10</b>	*For non-literary texts
<b>Belgium</b>	21	<b>6*</b>	<b>6*</b>	*EX: Some authors contracts. Performing arts: 21% or EX
<b>Cyprus</b>	15	<b>5</b>	<b>N/A</b>	
<b>Czech Republic</b>	19	<b>5</b>	<b>19</b>	
<b>Denmark</b>	25	<b>EX</b>	<b>EX/5*</b>	*Reduction of the regular rate
<b>Estonia</b>	18	<b>18</b>	<b>18</b>	
<b>Finland</b>	22	<b>EX*</b>	<b>8</b>	*Income from authors rights of individual creators
<b>France</b>	19.6	<b>5.5*</b>	<b>5.5*</b>	*With option for an exemption
<b>Germany</b>	16	<b>7*</b>	<b>7*</b>	*For works protected by authors rights
<b>Greece</b>	19	<b>9</b>	<b>9</b>	
<b>Hungary</b>	20	<b>15* / 20</b>	<b>20**</b>	* artistic and literary creations; ** out of scope for occasional sales
<b>Ireland</b>	21	<b>21*</b>	<b>13.5**</b>	*Allowances for authors contracts; **"Parking rate" (EU)
<b>Italy</b>	20	<b>20</b>	<b>10 / 20*</b>	*"Occasional sales"
<b>Latvia</b>	18	<b>EX</b>	<b>18</b>	
<b>Lithuania</b>	18	<b>15</b>	<b>15</b>	15% for performers, musicians
<b>Luxembourg</b>	15	<b>3</b>	<b>6</b>	
<b>Malta</b>	18	<b>15</b>	<b>18</b>	
<b>Netherlands</b>	19	<b>EX* / 6</b>	<b>6 **/ 19</b>	*EX: artists' services; **Artist's first sales
<b>Poland</b>	22	<b>7</b>	<b>22</b>	
<b>Portugal</b>	21	<b>EX* / 5**/ 21***</b>	<b>5**/ 21***</b>	*EX: some artistic services (Art. 9, VAT code); **Artistic work, publications; ***Trade with other goods
<b>Slovakia</b>	19	<b>19</b>	<b>19</b>	Flat tax rule with no exemptions
<b>Slovenia</b>	20	<b>8.5*</b>	<b>8.5</b>	*Reduced rate also for performing artists (actors, musicians...)
<b>Spain</b>	16	<b>EX*</b>	<b>EX/7*</b>	*EX for professional services of artists/authors (Art. 20.1.26° VAT Act), while sales of works of art are subject to tax
<b>Sweden</b>	25	<b>6</b>	<b>12*</b>	*VAT optional up to sales of 300,000 SEK p.a.
<b>United Kingdom</b>	17.5	<b>17.5*</b>	<b>17.5</b>	Allowances for authors contracts /
<b>Bulgaria</b>	20	<b>20</b>	<b>20</b>	
<b>Croatia</b>	22	<b>22</b>	<b>22</b>	
<b>Iceland</b>	24.5	<b>14</b>	<b>14</b>	
<i>Liechtenstein</i>				<i>Currently no information available</i>
<b>Norway</b>	25	<b>EX</b>	<b>EX</b>	option / restricted to specific professional activities
<b>Romania</b>	22	<b>22</b>	<b>22</b>	
<b>Turkey</b>	18	<b>8* / 18</b>	<b>18</b>	*Books and press

Source: Compiled by the ERICarts Institute, based on data provided by the EU Commission (DOC 1803/2006) and the Council of Europe/ERICarts Compendium of Cultural Policies and Trends in Europe ([www.culturalpolicies.net](http://www.culturalpolicies.net)). Additional source material: Judith Staines, 2004; the ERICarts "Creative Europe" project ([www.creativeeurope.info](http://www.creativeeurope.info)); and national resources available on the Internet.

Note: Information provided in the sources mentioned above do not always lead to identical results; EX = Exempted from VAT



**II.2. Table C: Taxation of Artistic Income: Special allowances/reductions for professional expenses and "income averaging" schemes<sup>94</sup> for artists**

Country	Special allowances		Income averaging		Remarks
	Indep. creators	Performing artists	Indep. creators	Performing artists	
<b>Austria</b>	+*	5-7,5%**	Over 3 years	Over 3 years	*Exemption of awards/ scholarships and of work carried out in other countries **Flat rate deduction for arts/media workers
<b>Belgium</b>	-	-	-	-	No special exemptions or measures for artists are known, at present
<b>Cyprus</b>					<i>Currently no information available</i>
<b>Czech Republic</b>	40%*	40%*	over 3 years	over 3 years	*Since 2005
<b>Denmark</b>	Tax reduction	-	Max 10 years*	-	* Max transfer: 539.000 DKK to later taxation (2006)
<b>Estonia</b>	+*	-	Several years**	-	*New legislation of 2005; **For income relating to the works created
<b>Finland</b>	-	-	Over 2 or more years	Over 2 or more years	New legislation in discussion.
<b>France</b>	10 and 20%	10 % or diverse rates	Over 3 years**	Over 3years**	**Option can be withdrawn
<b>Germany</b>	30%*	Special rates**	Several years***	Several years***	*Flat rate for independent artists, **Freelances with short contracts; ***For previous + following years, in which the work is carried out
<b>Greece</b>	+*	+*	Over 1 year + 3 more years**	-	*Exemption of public and other recognised grants, scholarships, awards; **For visual artists only (to be verified - 1989)
<b>Hungary</b>	+*/**	+**	-	-	*Max. 400 € reduction of income from intellectual property rights; **Option for simplified tax rules
<b>Ireland</b>	Total tax exemption*	-	Total tax exemption*	-	*Exemption only for creative artists (not performing artists) on income from work recognised for its artistic or cultural value.
<b>Italy</b>	25%*	-	-	-	*Reduction of taxable income from intellectual property rights + deduction of some professional expenses
<b>Latvia</b>	15-40%*	-	-	-	*Depends on the type of profession
<b>Lithuania</b>	-	-	-	-	
<b>Luxembourg</b>	25%	25 %	Over 4 years*	Over 4 years*	*Reduced tax on "revenus extraordinaires" + exemption of awards
<b>Malta</b>	+*	-	-	-	*Relative allowance for materials and supplies
<b>Netherlands</b>	-	-	Over 3 years*	Over 3 years*	*(1989)

<sup>94</sup> This concerns mainly honorariums for works created/performed over a longer period of time which then can be spread accordingly.

<b>Poland</b>	50%*	-	-	-	*Exemption for income from the creation of works of art/literature. Plans for abolishment failed in 2006
<b>Portugal</b>	50%*	50%*	-	-	*On income from intellectual property rights
<b>Slovakia</b>	-	-	-	-	No special exemptions or measures for artists (flat-tax = no progression)
<b>Slovenia</b>	25%*	-	-	-	*For registered artists on income below 42.000 € (+ personal 15% allowance on income under 25.000 €)
<b>Spain</b>	+*	+*	+	+	*Certain allowances + tax exemption on "important literary prizes"
<b>Sweden</b>	-	-	+*	-	*System of "upphovsmannakonto" (see text)
<b>United Kingdom</b>	+*	+*	2 years**	2 years**	*Exemption of Arts Council grants; **Previous + following year (profits of one of the tax years must be less than 75% of those in the other year)
<b>Bulgaria</b>	50%*	50 %*	Over 1 - 4 years**	-	*Deduction of 50 % on income resulting from works of art (to be verified); **For income resulting from their works of art
<b>Croatia</b>	+*	-	-	-	*25% of authors' fees are not taxed, and another 40% are recognised as business expenses
<b>Iceland</b>	-	-	-	-	No special exemptions or measures for artists are known, at present
<b>Liechtenstein</b>					<i>currently no information available</i>
<b>Norway</b>	-	-	Over 3 years*	-	*For visual artists only (to be verified - 1997)
<b>Romania</b>					<i>currently no information available</i>
<b>Turkey</b>					<i>currently no information available</i>

Sources: Council of Europe/ERICarts: *Compendium of Cultural Policies and Trends in Europe, 2006* ([www.culturalpolicies.net](http://www.culturalpolicies.net)); European Arts and Entertainment Alliance (EAEA): *Study Relating to the Various Regimes of Employment and Social Protection of Cultural Workers in the European Union, 2002*; UNESCO: *The Artist and Society, Paris: UNESCO, 1997*; plus some national portals (e.g. for the UK: Arts Council of England, 2002, *Artists, taxes and benefits - an international review*, <http://www.artscouncil.org.uk/documents/publications/316.doc>)

**Note:** Information provided in the sources mentioned above do not always lead to identical results.

## Annex III. Special reports from European Regions and Canada

### III.1. Problems of Transition in Central and South East Europe: A General Overview

#### Background paper provided by Vesna Čopič, Ljubljana (April 2006)

The East and South East European countries of the former socialist or Soviet bloc have not developed a uniform post-socialist model for the status of artists, but certain common trends and developments may be observed. There are, of course, some similarities between Slovenia and Croatia since both countries share a common history of socialist self management during Yugoslavian times, which finds its reflection in the strong influence of artists' organisations and a high resistance against the reform of inherited support systems for artists, even if these have become obsolete under the present conditions. Latvia, Lithuania and Estonia are also characterised by powerful central artistic associations inherited from Soviet times who strive to keep their strong positions even though they are transformed into artists' unions.

In other post-socialist countries, artists seem to have lost most of the privileges that were granted to them under the Soviet model. These countries include Poland, the Czech Republic, Slovakia, Romania and Bulgaria. In Hungary, there is a tendency to counteract the old *étatistic* approach by modern, more business-oriented measures.

However, all post-socialist countries have shared a slow, painful and cautious process of transition over the last 15 years, a process in the course of which old models, institutions, laws and regulations are replaced by Western variants.

They have all gone through uncountable seminars, conferences and working sessions offering a wide range of models and ideas imported from the West, with the undesired side-effect to raise uncritical expectations that economic, political and social systems can be transplanted, thus leading to a process of transition. Many good ideas were developed and achieved rapid and universal acceptance, but they remained unfulfilled, even if corresponding laws were adopted. Clear vision was often replaced by a sort of legal fever, with the law not being a mere instrument to achieve certain aims, but rather an aim in itself, providing the illusion of quasi-divine power.

Simultaneously, the transformations in the working system, health care system and pension schemes confronted artists, too, with a whole new reality of uncertainty and insecurity. The return to capitalism at a time when the western welfare model was in crisis proved to be an oversimplification, and it barred the innovation that was actually needed. The **Restoration of the West in the East** was in many ways a broad, ill-defined policy directive that systematically ignored the lack of institutional capacity to implement it.

On the other hand, successful support schemes with real benefits for the artists which had been developed in the past in some Western countries (long term grants, compensatory grants for pension insurance, *Künstlersozialkasse*, *le regime des intermittent du spectacle*, ..) did not get the attention they deserve in the post socialist countries, and none of them were emulated. It is obvious that everywhere in Europe, we are facing the end of the welfare age.

The core problem behind all these years of unsuccessful transition lies in **institutional deficits**. Institutions, like norms and traditions and beliefs, must diminish transaction costs and facilitate mutual understanding and co-operation. When they are not the result of a historical process as in

the West, but invented and prescribed by transitional laws, the problem of feasibility is inevitable. The implementation of these laws needs new ways of thinking and attitude changes that cannot be achieved overnight. Old mentalities and forms of behaviour are very persistent. It usually takes years, decades, maybe even a whole generation, before they can be modified. Societal values have to change, and a different perception of the state needs to be developed: the rule of law must replace the power of discretion, attitudes towards work have to change – to earn instead of just being given, whatever the performance -, intellectual property must be respected in the same way as "real" property, people must learn to assume the responsibility for their own destinies. The internalisation of new values is to be accelerated through new organisations and structures for the implementation of the new norms.

However, all post-socialistic states are characterised by a deficit of structures for the enforcement of new models, institutions, laws and regulations:

- bad judicial setbacks that weaken the rule of law,
- insufficient inspections that fail to counteract the disrespect of labour laws,
- public cultural institutions that function in the way of the old monolithic structures instead of serving the needs of artists and the arts as flexible infrastructures,
- underdeveloped organisations for the collective management of authors' rights that still grapple with their new role and therefore provide no efficient services for authors,
- former central state-based associations of artists, often degenerated into formal, non-functional paper tigers, are still searching for new identities,
- a general distrust towards financing that does not originate from the public system,
- an absence of specialised agencies for the mediation of artistic work, and a lack of collective bargaining power to protect free-lancers or self-employed artists.

Another common feature is the **shift from paternalism to interventionism**. The process has different dynamics in different post-socialist countries. For example, in Slovenia, the situation is still kind of frozen, preserving the status quo in order to avoid social tension; in other post-socialist countries major steps have already been accomplished - sometimes in a new prospective spirit, sometimes for want of better solutions.

While in the West paternalism is not necessarily a contradiction to the entrepreneurial spirit and often forms a corporatist element of the welfare state, its eastern version is a legacy of *étatisme*, originating from the concept of a "nanny state", breeding a culture of dependency and bringing beneficiaries under central control. This negative connotation provided the perfect justification for the new democratic authorities to abolish the former social security systems and guarantees of full employment and to replace them by an ideology of self-help, individual responsibility and entrepreneurialism. In a situation where the new state regulations are not yet in place, and the market-oriented cultural production does not yet offer new opportunities for artists - especially not for all of them - there has been a wide-spread resistance among artists against the newly developing systems of social security, pension schemes, labour laws, taxation etc.

While in the West such reforms of the social security system meet with organised resistance, in post-socialist countries they were seen as part and parcel of the transition process. But in both cases the reforms imply giving up paternalism. The difference is that paternalism plays different roles: in the West, paternalism is connected with the corporatist welfare system, in the post-socialist societies it is an element of *étatisme*, exerting social control in order to ensure compliance with and subordination to the regime. Currently, this difference does not play a role any more as the common trend is to replace paternalism by interventionism: it is no longer the

responsibility of the state to take care of artists, but only to intervene with elements of support like grants, awards, scholarships, subsistence allowances, unemployment benefits...

In all post-socialist countries, artists have several jobs and work under a multitude of different contracts in order to make ends meet, combining regular employment with authorship agreements or contracts for services, sometimes with a self-employed status - all this even though the different jobs often conflict with each other, they need, e.g. the written consent of their employer or there is an incompatibility clause in their contracts. In some countries public servants are even allowed to obtain extra income from additional work on the basis of an authorship agreement, on top of the usual salary. On the one hand the **plurality of contracts** is a solution for low wages in the public sector; on the other hand it is a semi-legal solution to keep highly qualified staff through higher remuneration. But more often, it is the price to be paid for the abandonment of the previous full employment model, and perhaps a way to slowly encourage public employees to adopt other, more flexible and work-related forms of employment. In this case, social rights based on labour law and the civil and commercial laws, which are currently often contradictory, should become more harmonised. Perhaps the solution lies in the development of a special status of artists which would give them a special treatment with respect to taxation, labour rights and social security provisions.

### III.2. A sketch of the "Nordic model" of the status of the artist and an account of its main problems

Background paper provided by Ritva Mitchell (CUPORE, Helsinki), May 2006

The unique feature of the Nordic model is an extensive system of state grants, artists' or artist professors salaries' or life-long income guarantees, which aim at providing security and freedom for creative work.

Due to limited home markets, the expectations that artists could succeed as entrepreneurs pertain only to few sectors, mainly to design and architecture. As the EU statistics indicate, the per cent of sole traders and entrepreneurs of the cultural labour force was in 2002 in Finland, Norway and Denmark some 17-19 per cent and in Sweden 27 per cent, while e.g. in Italy and Ireland the shares were 47 and 35 per cent respectively. Artists' orientation to entrepreneurship is reflected in the following interview statement by a Finnish internationally recognised visual artist:

*"I am often asked how I finance my artistic work and my related business activities, as I have no secured source of income. I reply that my main sponsor is the Finnish state. It has supported me more than any other sponsors. As an interested party, it seems to consider my works and production activities significant...."*

In the Nordic model freelance work presupposes stable sources of temporary contracts or it is carried out e.g. by actors as an additional source of salaried income. Wage earners are found in publicly supported institutions of performing arts (opera, theatre, orchestras). Holding a second longer term job is most customary in Denmark (20 per cent of cultural labour force); in other Nordic countries the share is close to the EU average and varies between 8 and 14 per cent.

Besides substantial public support and absence of entrepreneurship, the Nordic model is characterised by strains caused by the tensions between the overall social welfare model and specific social and economic needs of creative artists. A Swedish report on the artists' social security system summarises these problems in the following manner:<sup>95</sup>

*Artists fit ill in the overall social security systems, which in principle are designed to accommodate for the standard types of employment relations. The systems cannot take special conditions of artists into account in the same manner as is done in many other countries. Most Swedish (Nordic) general social security systems apply to their clients a minimum income-based inclusion criterion. Despite high level of education and artistic recognition many artists have rather or very low annual income and are excluded from the system. Furthermore, some temporary income (like copyright income) is not included in "salary"*

In addition to income level social security systems may use as the precondition of inclusion the stably continued period of earned income. This is e.g. the case in the calculation of the Swedish SGI<sup>96</sup>, which gives right to health, maternity, etc. benefits and in the case of practically all unemployment compensations.

<sup>95</sup> SOU 2003:21, *Betänkande av Utredningen konstnärerna och Trygghetssystemen*, Stockholm 2003 (A, official Swedish State committee report on artists and social security systems). The text in italics summarises the main points of the reports introduction.

<sup>96</sup> Sjukpenninggrundande inkomst, "income condition for sickness compensation"

A third type of provision prevails in the case of unemployment compensations. That is a clause, which presupposes that unemployed is looking for job and ready to take one, if an appropriate job is offered.

These preconditions are problematic in the case of professional creative artists, especially visual artists, whose income is often lowered by the fluctuation of sales. Furthermore for them longer uninterrupted period of income earnings are more of an exception than a rule and appropriate opens jobs in the labour markets scarcely exist. In Sweden the general exclusion clauses have been mitigated by special legislation in the case of "cultural labour markets" ("*kulturarbetsmarknaden*"). In the case of freelancers with rather stable income or a more stable second job employment, the situation is considerably better, although persons with a more stable second job are seldom able to avail fully of their additional income from freelancing in the calculation of the criteria for their social security benefits.

Alongside the health and unemployment systems, national pension systems are the second major social security system. In most European countries they either have undergone a recent major reform (like in Sweden and in Norway) or are being stepwise corrected (like in Denmark). In Finland, where income-based mandatory pension system was introduced already in the early 1960s, there are plans to integrate the separate pensions system for wage-earners, freelancers and self-employed into one comprehensive system.

In all these reforms the main goals have been to relate the pension level to life-time earned income, increase people's interest to stay longer in the working life, and increase their willingness to save for future post-working-life consumption. The goal has also been to induce individually saved and invested pension financing and at the same time move from defined pension benefits-("right to pension-") system to benefits based on pension contributions. In the latter system the insured persons can have notional account system, where they can see how the funds for their future pension accumulate. As to the individual's saved and invested contributions the insured can even decide which of the numerous pension funds/companies they choose as the investor of their payments. This is the case e.g. in the Swedish premiums pension system.

A crucial decision from the point of view of artists and freelancers is the change that is taking place in the criteria used in assessing the level of pensions. E.g. in Sweden the old defined benefit system calculated the pension level on the basis of the person's income during the 15 last years of employment. In the new system the life-long earnings actually mean that the pension income is based on the accumulated income and pension contributions for the whole working life, e.g. for 47 years.

The Swedish artists' unions have monitored the new system and proposed that in general:

*The new pension system based on life-long earnings favours occupational groups, which have long and steady career as wage-earners, but disfavours occupational groups with high educational level, short career and uneven and annually fluctuating income level. Also unemployment, maternity leave and working on grants lower the pension level. The new system disfavours most of the artistic occupations, because they have usually a long education and a long low income period before artistic break-through – if it ever happens.*

Swedish artists unions have assessed for the different artistic occupation e.g. the following decreases on the expected pension level after the recent reforms:

- an opera soloist in a publicly supported opera house loses 35 per cent
- a dancer in a publicly supported ballet company loses 18 per cent
- a freelance dancer loses 12 per cent
- an actor in the publicly supported theatre loses 36 per cent
- a freelance actor loses 28 per cent
- a freelance singer (pop music) loses 24 per cent
- an averagely successful fiction writer loses some 16-30 per cent.

These figures should be seen only as an illustration. There are not yet any comparative figures, which would tell us what actual impacts we can expect from the social security insurance reforms in the "Nordic model". It sure seems tough, that unique features of artistic work have not been taken into account in these reforms: positive impacts will be few in comparison with those provided by the old systems. Some unique benefits for artist may also be waning. As an example we can mention the Finnish special pension system, which artists and journalists, who do not get sufficient income-based pension, can apply and which functions as "old-age grant" to the retired but artistically active creators. The Finnish Ministry of Finance, which administers the system, consider it obsolete, as the income-based pension systems evolves it wants to abolish it.

The processes, which push in to the Nordic system artists/creators from their specific positions into the general social security systems, are most apparent in the development of artists' grant system. Originally artists' grants were not only financing, but also prize-type recognitions for artistic excellence. They were also usually tax-free and did not carry any provision for social security benefits. The unification of the social security systems has gradually changed the grant system. Long term grants have become taxable and they consequently are due to social security payments and guarantee unemployment benefits and accumulation of pension right. This "salarisation process" has already happened as to all form of artists support in Norway and Denmark and in Sweden in respect to longer-term support. The "salarisation" is also happening at present in Finland, where the receivers of the longer-term (five-year) artists' grants of the Arts Council are now insured under the state pension system. The costs are paid by the state. In Sweden the "targeted grants" ("*punktstipendier*") and shorter-term grants (two consecutive years max.) are still tax-free and bear no provisions for social security benefits. In Finland the largest private foundation, the Finnish Cultural Foundation, provides now its main grants with a compensatory grant for pension insurance, which the guaranteed must take in an appropriate pension fund. There has been a working group proposal for a similar system to be adopted by the Finnish Arts Council in the case of shorter-term grants.

The library compensations and visual artists' exhibition compensation are paid either directly to authors/artists (Norway), as grants (in Finland, Norway) or partly as grants, partly as direct compensation (Sweden). The direct author/artist compensations are taxable; compensation as grants is allocated and tax-treated in a similar manner as other grants.

The taxation of artistic professions rises in the "Nordic model" – and probably everywhere else in Europe – economically as important and also as ambiguous as the artists' position in social security systems. Taxation problems are also most severe in the case of independent artists. We can look at artists' taxation from the point of view of three problems: the status of royalties and copyright compensation as "income", artists' right to average annual sales incomes and related expenditures in income taxation, and the VAT treatment of cultural products and services.



The "Nordic model" has not come to any conclusion as to the income status of royalties and compensations for intellectual property rights. This is due to the fact that these forms of revenues are considered personal income, not capital income, and taxed accordingly, increasing in the case of progressive income tax unduly the level of taxation. At the same time, there is no consistent legislation or practice for accounting these types of income as additional personal income privileging the receiver to sick and unemployment compensations and/or higher level of benefits.

In the case of artists, there are no fair system for averaging in income taxation the sales income fluctuations and related expenditures of artistic production. In the case of Finland and Sweden we encounter two different approaches. The Finnish solution tries to accommodate the artist's problems in the overall system of averaging business income and expenditure; the Swedes offer a more tailor-made solution.

The Finnish income tax legislation allows for averaging of sales income taxation in order to alleviate the impact of progressive income taxation in the cases when returns from artistic work or works done during several years are realised within one and the same taxation year. The sales income can be spread as taxable income for two or more years and the amount of tax is calculated accordingly to mitigate the progression. This procedure does not, however, take into account the need to average also the future costs e.g. in the case of income received in advance in the case of a work contract. The averaging of costs would be possible on the basis of the Finnish Business Income Taxation Act (30/1968, § 24), but this would presuppose that artists/creators would apply business bookkeeping and accounting practices to their professional activities. This is not the case in the main, and even when these practices are followed, their adoption in many fields of creative activities would be difficult.

In Sweden there is a system of "*upphovsmannakonto*", which could be translated as "accounts of intellectual property right initiators". This system offers artists the opportunity to open a special bank account where they, in the case of an exceptionally high annual income, can deposit a part of this income and use it in the following years and thus average both the taxation progression and the future costs.

Similar system of special funds is used in Finland to average the income of professional sportsmen for a longer period of time. Similar system has been suggested for artists, but adopting it seems to progress slowly, if at all.

The problems of establishing and maintaining such a special solution for artists as *upphovsmannakonto* are reflected in a recent proposal of a taxation planning committee to abolish the whole system. The contrary opinion of the artists unions prevented that. The unions in Sweden have, however, pointed out that artists receive insufficient information, advice and training in tax declaring and accounting practices needed in maintaining *upphovsmannakonto* and related processes of averaging annual sales income and production costs. The deduction of the costs of artistic work is still a pain point in the artist's taxation. In this issue the interest of financial experts to simplify taxation practices goes encounter the business interests of artists.

The EU directives on VAT make provisions for lowered VAT rate for artistic and cultural products and services. Denmark, and the non-EU member Norway seem to use these provisions rather meagrely, and the standard rates are applied to most cultural products and services. Sweden and Finland use the whole spectrum of the lowered rates offered by these provisions. The following description of the Finnish VAT-legislation applies *mutatis mutandis* to Sweden.

It should be first noted that the "sales" by the artists of the original "intangible" primary products (manuscripts, composition, etc) to reproduction or media transmission are only transferences of copyrights to the producer and thus not susceptible to VAT<sup>97</sup>. The works of visual art and photographs are considered to link tangible and intangible aspects of products so inherently to each other that their first sales are susceptible to VAT – in Finland with the reduced rate of 8 per cent. The distribution activities of the works of visual art (gallery activities) are susceptible to full VAT rate (22 per cent). In contrast the lower eight per cent rate is applied to books and to tickets to theatres, concerts, circus and dance performances, cinemas, exhibitions, sports events, amusement parks, zoos, museums and other comparable cultural and other performances, events and facilities.

Producers and distributors, who charge the VAT from their customers and account them to the state, can claim back the VAT on the products and services they themselves buy. The VAT return in the case of small business transaction is insignificant from the fiscal point of view, but potentially important managerial cost factor. Consequently small business enterprises having the turnover of business activities smaller than 8 500 euros need not pay VAT.

Basically there is no "Nordic model" as to the VAT-systems; the experiences in Finland and Sweden indicate that it is, however, a powerful instrument for cultural policy decision-making within the EU legislative frame.

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The above descriptions and comparisons of the Nordic artists' support and social security systems are based on rather fragmentary information. They do, however, show the same as some earlier reports which have tried to identify "Nordic cultural policies". There is no uniform Nordic regime, and the Nordic countries differ considerably from each other. The similarities in the support and position of the artists result by and large from the similar social welfare systems – and also from the similar tensions, which appear, when the latter are applied to proctor artistic labour force.

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<sup>97</sup> The freedom of intangible from sales/value added tax, see e.g. State of Connecticut, Department of Revenue Services, "Taxation of the Audio or Video Production Process", which states:

"The sale of intellectual property often has both tangible and intangible components. For example, the sale of a manuscript, which represents an author's intellectual work product, to a publisher is essentially the sale of an intangible, of which the tangible component is an inconsequential element. Once a manuscript is printed in book form, however, the sale of the printed books becomes taxable as the sale of tangible personal property. Similarly, the creation of a master copy of an audio or video production is the physical representation of the intellectual work product of its creator, and as such its sale will be treated as the sale of intangible property. However, it should be noted that it is possible, in some circumstances, that the sale of a master copy of an audio or video production may be treated as the sale of tangible personal property. One example is the sale of a master copy to a collector, where the consideration is based upon the value of the tangible component of the property instead of its intangible component".

This is an excerpt from Policy Statement cited in Ruling 95-7; PS 92(13),  
<<http://www.ct.gov/drs/cwp/view.asp?a=1511&q=267186>>

### III.3. Case Study Canada: The Federal “Status of the Artist Act”<sup>98</sup>

#### Background paper provided by Danielle Cliche (ERICarts), May 2006

In June 1992, the Canadian federal government became the first in the world to pass a law entitled “Status of the Artist Act” (it was enacted in 1993 and brought into force in 1995). The Act recognises “rights of freedom of association and expression of artists and producers, the right of artists' associations to be recognised in law and to promote the socio-economic well being of those whom they represent”. It acknowledges the specific working conditions of artists in comparison to other professional groups and the need to provide special recognition and measures that correspond to their reality<sup>99</sup>. What the Act does not do, however, is translate this recognition into a comprehensive framework including a broad range of measures designed to improve the overall economic and social status of artists as specified in the UNESCO Recommendation on the Status of Artists (Belgrade 1980). In fact, a conscious decision was made when the Act was being prepared to exclude questions of taxation, employment insurance and access to the universal Canadian pension plan as it was deemed too difficult at the time. In this context, the name of the Canadian Act as “Status of Artists” may be considered somewhat deceiving. At a recent conference to review the *Status of the Artist Act*, proposals were made to change its name to “Artists Equity Act”; others have proposed to rename it the “Status of Arts Organisations Act”.

#### What is the Canadian Status of the Artist Act?

In essence, the purpose of the Canadian *Status of the Artist Act* is to provide a legal framework for collective bargaining between associations, guilds or unions representing self-employed artists and federal producers or institutions (e.g. the Canadian Broadcasting Corporation, federal museums, national arts centre, etc). It does this in several ways by:

- defining what is a professional artist,
- officially recognising those associations which represent professional artists,
- providing regulations which encourage collective bargaining between artists representative and those institutions which regularly employ artists for certain lengths of time;
- creating a recourse mechanism - Canadian Artists and Producers Professional Relations Tribunal - where disputes can be settled.

The Act is divided into two parts:

Part I of the *Act* established the Canadian Council on the Status of the Artist, made up of artists to advise the Minister of Canadian Heritage regarding the Act. This Council was disbanded in the late 90s, shortly after its implementation. Recently, calls have been made by artists as well as former members of the Council to reinstate it.

<sup>98</sup> The information presented here is based mainly on three sources:  
Danielle Cliche: "Status of the Artist or of Arts Organisations?" in *Canadian Journal of Communication*. Vol.21, 1996, pgs. 197-210.

Gary Neil: *Report on Issues Affecting the Socio-Economic Situation of Canadian Artists*. Prepared for the Department of Canadian Heritage, January 2005.

John Foote: "Canadian Compendium Country Profile" in Council of Europe/ERICarts, *Compendium of Cultural Policies and Trends in Europe*. 8<sup>th</sup> edition, 2006.

<sup>99</sup> Data shows that the number of artists tripled between the early 70s and the millennium and that the majority of them are self-employed, highly educated persons who still earn a very low income and quite often live below the poverty line.

Part II of the *Act* established the Canadian Artists and Producers Professional Relations Tribunal, and put into place a framework for the conduct of professional relations between artists and producers within federal jurisdiction (government institutions and broadcasting undertakings under the jurisdiction of the Canadian Radio-television and Telecommunications Commission). The Tribunal reports to Parliament through the Minister of Labour.

As labour law is under provincial jurisdiction in Canada, the *Status of the Artist Act* applies only to freelance artists engaged by the federal government. It does not apply to individuals working in employer-employee relationships, nor does it apply to producers and artists working under provincial jurisdiction. There are two provinces which have their own status of the artists legislation:

- Québec: 1987 Act Respecting the Professional Status and Conditions of Engagement of Performing, Recording and Film Artists and 1988 Act Respecting the Professional Status of Artists in the Visual Arts and Crafts and Literature and their Contracts with Promoters. These pieces of legislation – designed to regulate collective bargaining between the professional associations representing artists and those which employ them - inspired the creation of the Federal Status of the Artist Act.
- Saskatchewan: 2002 Act which is very broad and reflects the preamble generalities of the Federal Act recognising the important contribution which artists make to society and their right to earn a living from their work.

Unsuccessful attempts have been made to introduce such legislation in Ontario and British Columbia.

### **Creating a “Labour Board” for Artists**

Established in June 1993, the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT) is responsible for implementing the terms and conditions of the *Status of the Artist Act*. The tribunal was created in recognition of the fact that artists are not labourers in the traditional sense of the word and therefore require a separate “labour board” and was inspired by the French-Canadian *Commission de reconnaissance des association d'artistes* model, established to settle mediation disputes in accordance with the terms of their laws on the status of performing and creative artists in Québec. The Tribunal has three responsibilities:

- to define those disciplines that comprise the arts sector;
- to certify a national artist association<sup>100</sup> giving them the exclusive right to engage in collective bargaining on behalf of its members (and in many cases the entire specific sector); and
- to regulate scale agreements between these associations and federal producers/agencies such as the Canadian Broadcasting Corporation, the National Film Board, the National Arts Centre, etc.

To date, the Tribunal has defined 23 artistic sectors, has certified 21 artists’ associations and reached 14 pay scale agreements with federal producers and agencies. According to the latest Census data, the majority of independent professional artists working in Canada receive 26%

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<sup>100</sup> This provision has not always been well received by the artistic community. For example, in Quebec, there was resistance among creative artists to organize and be represented by only one association. New rivalries among artists' groups seeking certification emerged adding a new competitive dimension to an already fragmented sector. Some artists in Quebec also argued that new formalities in the collective bargaining process were created which strained previously amicable relationships with producers.

less annual income than the average earning for the entire labour force which has led to allegations of the ineffectiveness of the Tribunal and its certified associations to negotiate a better deal for independent artists working for federal institutions.

As a result of the *Status of the Artist Act*, there will be three new scenarios for self-employed artists wishing to work for federal institutions:

- As a self-employed artist and a fully fledged paying member of a certified artist association and, therefore, a professional artist, one will be able to work within the cultural field and have access to and participate in all benefits negotiated by the association. Benefits include negotiated pay-scale agreements.
- If one is not a member of an association and, therefore, does not hold an official professional status, one may still benefit from these negotiations on the condition that an amount equivalent to the certified association's union dues is deducted from one's pay by the producer /employer.
- If one is a self-employed artist and not a member of a certified association and if the scale agreements negotiated by the certified associations have included a provision that "requires membership in a specified artists' association as a condition of engagement" (Article 51[b] of the *Status of the Artist Act*), federal institutions will be prohibited, by law, from hiring self-employed artists who are not members of certified associations.

These scenarios indicate that there is a potential for those artists not belonging to certified associations to be excluded from the collective bargaining process and therefore the benefits that are subsequently negotiated on their behalf. In this case, there appears to be a possibility that employers may hire "non-professional" artists at cheaper labour rates than those outlined in the pay-scale agreements negotiated by artist associations on behalf of professional artists.

### **Who Qualifies as a Professional Artist?**

Artists in Canada who are not fully employed are considered to be "in business". They are referred to interchangeably as independent contractors, self-employed artist or freelance artist. One of the main problems is that there is no coherent definition of an independent "professional artist" across federal government departments and agencies. For example:

- From the point of view of the *Income Tax Act*, independent professional artists are considered to be carrying on a business and that there is a "reasonable expectation" that this business will produce a profit. If there is no "reasonable expectation of profit", then the artist is considered to be an amateur and will not benefit from deductions under this Act. The result has been that some artists considered to be professional (and have been awarded grants by the Canada Council for the Arts) are considered to be amateurs or hobbyists for tax purposes. Proposals have been made by the artistic community to replace the "reasonable expectation of profit test" with an agreed upon test of "professionalism" coming from the sector itself.
- According to the *Status of the Artist Act*, an independent professional artist is someone who is paid for his/her work which is shown before an audience; is recognised by other artists' to be an artist; is a member of an artist association or is in the process of becoming an artist.

In recent years, the tax authorities (the Canadian Revenue Agency) have re-classified an increasing amount of artists as employees on the basis of a four-fold test to determine: the extent

of control the payer has over the worker; whether the worker provides his/her own tools; whether the worker has a chance of profit or risk of loss; where the worker is employed as part of the business and is performing service integral to the business. The loss of their self-employed or independent status is damaging, not only because they are not employees receiving the normal social security, employment benefits of regular employees or a guaranteed income, but because they would lose the small amount of exceptions provided to artists such as tax exemptions on materials, studio spaces etc. The employers, in this case a symphony orchestra or the national broadcaster (the CBC), would have to pay back outstanding contributions to the national unemployment insurance, pension and health plans, which has left many on the verge of bankruptcy and / or forced to cancel performances or programme series. Recent cases of the Thunder Bay Symphony Orchestra or the Winnipeg Royal Ballet, which entailed major reviews and overturned of their contracted artists' self-employed status to employed status has far-reaching implications for all professional symphony orchestras and ballet companies across Canada. The lack of coherence between these two approaches also poses great problems in the context of *Copyright Law* as it gives the rights to works created in an employer-employee relationship belong to the employer rather than to the artist. For example, the loss of independent status for playwrights at a theatre or composers at a symphony orchestra, means they would lose the ownership rights on their current work and of e.g. neighbouring rights in any recorded works. The third area where this causes problems is related specifically to the artists associations which would lose the collective bargaining powers gained through the *Status of the Artist Act* as the provisions of the Act only apply to professional artists who are independent, self-employed, freelance. New calls from the artistic community have been and continue to be made to better define who is a professional artist across all government departments.

### **Tax Measures**

There are specific tax exemptions outlined in the Canadian *Income Tax Act* which artists may benefit from according to their specific field. As self-employed artists are considered to be "businesses" under the *Income Tax Act*, they must first prove that they have a "reasonable expectation of profit" (see discussion on definitions of professional artists above). *Visual artists and writers* who are self-employed are entitled to deduct reasonable expenses incurred in connection with income derived from their business, including work space in home expenses, professional membership dues. Visual artists and writers who are employees can deduct, within certain limitations, expenses paid to earn income (e.g. advertising and promotion, travel expenses). *Performing artists* who are self-employed are entitled to deduct reasonable expenses incurred in connection with income derived from their business. "Reasonable expenses" for e.g. a musician might include purchase of musical instruments and equipment, the cost of repairs to instruments and equipment, legal and accounting fees, union dues and professional membership dues, an agent's commission etc., publicity expenses, transportation expenses related to an engagement, cost of music, acting or other lessons incurred for a particular role or part or for the purpose of general self-improvement in the individual's artistic field. Artists who are employed may deduct reasonable employment expenses, subject to certain limitations (e.g. advertising and promotion, travel expenses). An employee, who is employed in the year as a musician and is required as a term of the employment to provide a musical instrument for a period in the year, may deduct certain costs related to the musical instrument (e.g. capital cost allowance, amounts for maintenance, rental and insurance of the instrument).

Income generated from federally awarded prizes, e.g. the Governor General's Award is tax exempt. Artists can also receive an income tax credit if they donate a work as a gift. An

independent administrative tribunal assesses the work for income tax purposes, establishing the fair market value of the object(s) being donated.

Self-employed artists do not have the right to tax exemptions on copyright royalties (except in the province of Québec where exemptions are granted on royalties generated from authors rights, neighbouring rights, public lending and private copying of their works). The Federal Department of Finance has refused to give artists the right to income averaging -despite the numerous calls from artists associations and parliamentary commissions over the past 30 years – stating that artists can defer their taxes on income through investments/contributions to the Canadian Registered Retirement Savings Plan (RRSP). The main problem is the fact that artists do not earn enough income to make contributions to the RRSP. In 2004, the province of Québec introduced an income averaging provision for artists within its jurisdiction (i.e. residents of Québec).

### **Social benefits**

All Canadian citizens have the right to receive a pension under the Canadian Pension Plan and to receive Old Age Security Benefits. With regard to the former, the amount received is calculated on the number of years one contributes to the programme and to the totality of their earnings. All self-employed workers (including artists) are required to contribute to this Plan, paying both the employer and employee's share. The main problem is that the income level of self-employed is very low and therefore their contributions to the plan, when they are able to make them, will also be quite low. In this respect, new research is underway to examine the status of "senior Canadian artists" and to find solutions to their problems which are a direct result of lifetime of enormous contribution to Canadian culture and of continuous low income.

Some of the larger professional artists association/unions have initiated different schemes for their members which are paid for by the organisation engaging the artist and by deductions from the artist's contractual fees (e.g. the musicians union). For example, they will use these funds to make contributions to the Canadian Retirement Savings Plan (RRSP) on behalf of their individual members. The amount of coverage will depend on the income earned. The union representing actors provides a large range of additional benefits including life insurance, health benefits and dental plans for some of their "qualifying members"; those who are usually very successful artists with higher income levels. In reality, the majority of members have no social coverage at all due to their level of income. Other associations, for example, the Writer's Union of Canada, have group insurance plans available to their members on an individual basis. There is no special cover or schemes available to visual artists. Appeals have been continuously made to provide self-employed artists with some kind of access to social insurance without any success.

### **Recent Evaluation**

In accordance with the provisions of the *Status of the Artist Act* (section 66), a review of its impact was conducted ten years following its entry into force. A report was commissioned and published in 2003 with grim results. It states that the Act has not improved the socioeconomic status of artists in Canada and that the legislation itself is insufficient to bring about change needed in the following areas:

- allowing self-employed artists to claim dual status in order to benefit from new income tax deductions;
- an income averaging mechanism to help stabilize artists' economic situation
- access to unemployment insurance

- a new classification for artists as preferred or secured creditors in the event of a bankruptcy;
- improved access to pension plans, occupational health and safety measures and other social benefit programs;

While many have argued that the Canadian *Status of the Art* is a step forward, there is still a great deal of work to be done to expedite Canadian artists from their current socioeconomic realities. A successful policy on the status of the artist requires a strong political commitment to drive co-operation among all government departments. To date, there has been little or no co-operation among federal departments, such as the Departments of Canadian Heritage, Finance, Human Resources and Development, and Revenue Canada, whose policies each affect the economic and social status of the artist; nor has there been any agreement on fundamental issues such as a universal definition of a professional artist. This has created many barriers to developing an integrated public policy to address the needs of artists.



## Annex IV. Additional national examples

### IV.1. “Employment in support of the Bulgarian Theatre” Program (Bulgaria)<sup>101</sup>

#### 1. Background

“Melpomena” is the name of a special employment programme in support of the Bulgarian theatre, including both state and municipal theatres. It was introduced in 2003 as a joint programme of the Ministry of Labour and Social Policy and the Union of Actors in Bulgaria to counterbalance the effects of the reform of the Bulgarian theatre sector, which had led to a considerable decrease in job positions over the last ten years.

The programme aims at theatre workers with specific experience, professional qualification, knowledge and skills, including actors, theatre-craftsmen, property, stage and lighting workers. In 2004, the programme provided 240 job positions; in 2005, the number had gone up to 437, and in 2006 it will provide 510 jobs.

#### 2. How does it work?

*The Employers* (theatres) apply for the funding of specific job positions under the programme to the Labour Office Directorates. A contract on the funding is then signed between the theatre and the respective Labour Office Directorate. The theatre then sets up individual labour contracts with the persons to be employed, in conformity with the Labour Code.

*The Labour Office Directorates* under the Ministry of Labour and Social Policy provide information to unemployed persons, carry out the initial selection and sign the contracts with the employers under the programme.

*The Regional Employment Service Directorates* under the Ministry of Labour and Social Policy are responsible for channelling the programme funds from the State budget to the theatres; the amounts are defined by the National plan for the development of employment.

The *National Employment Agency* ensures the formal management – it provides sample forms of contracts (designed in collaboration with the Union of Bulgarian Artists) and is responsible for the overall co-ordination and control and for the distribution of funds among the regions.

#### 3. Definitions/Criteria for inclusion

The programme includes all kinds of theatre-related occupations, e.g. actors, archivists, ballerinas/ballet-dancers, librarians, wardrobe keepers, sound-technicians, cashiers, music designers, lighting operators, illuminators, persons responsible for the atelier, keepers, porters, sellers of playbills, stage directors, property-people, stage workers, scenographers, theatre masters, technicians – upholstery and decorations, tone-technicians, persons responsible for hygiene, artist-decorators, producers of puppets etc.

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<sup>101</sup> The presentation is based on the Bulgarian country profile in the *Compendium of Cultural Policies and Trends in Europe, 7<sup>th</sup> Edition*, 2006, prepared by Rossitza Arkova; see <<http://www.culturalpolicies.net>>

#### **4. Recent debates**

The Programme has been operating for four years already, and it is appreciated by the theatre community. As the remuneration provided by the programme is quite low, it solves mainly the problems related to the subsidiary personnel. The programme does not increase the mobility of actors, as its requirements for inclusion presume that the eligible persons are Bulgarian citizens who are registered as unemployed with the labour offices.

#### **5. Foreign artists/ Mobility aspect**

The programme is a part of an internal restructuring process and has no international dimension.

#### **6. Legal base/Source**

More information about the Program (in Bulgarian) is available from the site of the MLSP at [http://www.mslp.government.bg/bg/projects/Melpomena\\_2006.doc](http://www.mslp.government.bg/bg/projects/Melpomena_2006.doc)

## IV.2. The Status of self-employed Artists (Croatia)<sup>102</sup>

### 1. Background

The status of artists is regulated by the *Law on the Rights of Self-Employed Artists and on the Promotion of Cultural and Artistic Creativity* (OG 43/96, 44/96 and 127/00). Self-employed artists either pay their own retirement, social and health contributions, or the contributions are paid by the state, depending on the recognition of their special status.

The support system has been inherited from former Yugoslavia and was only partially changed during the 1990ies. Originally conceived as a measure to promote artistic excellence, the support system gradually turned into a social security measure. It covers more than 1,000 artists<sup>103</sup>.

### 2. How does it work?

The creative work and public recognition that an applicant achieved over the last five years is assessed by an Expert Commission. This Commission consists of five members appointed by:

- the Ministry of Culture (one representative)
- the Association of Self-Employed Artists (one representative)
- the professional artists' association relevant for the main field of creative work of the applicant (three representatives)

The Association of Self-Employed Artists (founded in 1965) decides on the professional organizations entitled to represent each specific cultural sector in the Commission.

Although the Ministers of Culture have always had the right to disapprove of the Commission's decisions, this right has never been exerted; the Commission's decisions have always been approved. The Ministry of Culture has also delegated some of its responsibilities for implementing this law to the Association of Self-employed Artists.

Once an artist has been acknowledged by the Expert Commission, the Croatian Association of Freelance Artists registers him or her with the Croatian Institute for Retirement Insurance and the Croatian Institute for Health Insurance nearest to the artist's place of residence.

### 3. Definitions/Criteria for inclusion

Only members of the Croatian Association of Self-Employed Artists are eligible to have their social security payments covered by the state budget. The application should be made to the Association, which will then forward it to the Expert Commission. The criteria to be met are based on artistic merit and achievement; they are laid down in special regulations. Once the application has been approved by the Expert Commission and confirmed by the Ministry of Culture, these artists have their retirement, disability and medical insurance paid out of the national budget of the Republic of Croatia.

The by-laws of the Association of Independent Artists were recently changed, and a maximum income of 5 000 HRK (ca. 690 Euros) per month was introduced for those having their social security contributions paid by the state budget. Independent artists earning more than 5 000

<sup>102</sup> The presentation is based on the Croatian country profile in the *Compendium of Cultural Policies and Trends in Europe, 7<sup>th</sup> Edition*, 2006, prepared by Nina Obuljen; available at <http://www.culturalpolicies.net>.

<sup>103</sup> A similar system exists in Slovenia, covering around 1,300 artists. However, in Slovenia there is no connection between the membership in an artistic union and the support system as it is the case in Croatia.

HRK per month will no longer be entitled to additional state support. The first review was undertaken at the beginning of 2006 and was accompanied by a debate in the media.

#### **4. Recent debates**

The *Law on the Rights of Self-employed Artists and on the Promotion of Cultural and Artistic Creativity* has been debated both within the artistic and professional organizations and by a wider public. A draft law on retirement benefits and health insurance in the cultural sector was presented by the Ministry of Finance and the Ministry of Social Affairs in 2002. It led to protests of independent artists and a public debate with the Ministry of Culture. In early 2003, the government seriously reduced the benefits and the amount earmarked in the budget for social and health benefits; without any prior consultation with the Association of Self-employed Artists, the benefits for artists were cut down considerably, so that today they are more symbolic than substantive. However, under the subsequent pressure (including the resignation of all members of the Board of the Association of Self-Employed Artists) and after two years of "fierce battle" between the professional arts organisations and the government (presented by the Ministry of Culture and the Ministry of Finance), only symbolic reductions of costs took place, and the number of independent artists included in this scheme is constantly increasing.

Although the system has been under continuous criticism for being monopolized by artistic guilds, non-transparent and, in a way, obsolete in the context of contemporary public policies, the example of a unilateral decision to abolish incentives without any analysis of possible effects and consequences, and without contemplating the possibility of introducing any new measures to counterbalance the negative effect of a government's decision shows that it is not rational to exclude interested parties from the decision making process.

#### **5. Foreign artists/ Mobility aspect**

An application to become a member of the Association of Self-employed Artists must always include a certificate of nationality and a certificate to prove that the applicant's place of residence is in the Republic of Croatia. Otherwise the Law on Foreigners (OG 109/03, 182/04) applies, which allows artistic works or work in the field of the protection of cultural heritage or similar without work permits for a period of up to 30 days or three months with interruption.

#### **6. Legal base/Source**

More information is available at <<http://www.hzsuh.hr/about.html>> and <<http://www.min-kulture.hr>>

### IV.3. Creative Support Grant (Estonia)<sup>104</sup>

#### 1. Background

The *Act on Creative Artists and Creative Artists' Unions* introduced a scheme of monthly support for creative work. Freelance artists who lack other sources of income are eligible to apply for support through this scheme. The amount corresponds to the official minimum wage plus social and health insurance fees; support can be granted for a period of up to six months once in any two years. The scheme aims at softening the risks faced by free-lance artists or artists with short-time employment only. It is administered by the Creative Unions working in the respective fields of culture.

#### 2. How does it work?

At present, there is more money allocated to the creative support grants than there are applications. According to the law, the unions may use the remaining money for training activities or other kinds of grants. This seems to be easier for some creative unions than for others, depending on the employment structure and other factors. As the creative support grants were only introduced in 2005, there has not yet been an evaluation of its effectiveness.

#### 3. Definition/criteria for inclusion

Free lance creative workers who are neither employed nor studying and do not receive any income from other business or professional activities are eligible to apply for creative support grants. They must be over 16 years of age and should not receive a retirement pension or parental support (paid for parents of a child under 1 year of age). Applicants do not have to be members of any creative union, even though the support system is administered by them. Non-members submit their application directly to the Ministry of Culture, which redirects it to the relevant creative union.

Any person having received a creative support grant cannot apply again before two years have elapsed since the end of the previous grant.

#### 4. Recent debates

There has been no public debate on this issue after the act was passed. Prior to that, the creative unions were actively and visibly lobbying for it.

#### 5. Mobility aspect/foreign artists

The act pays no specific attention to the mobility aspect. In principle, support available for Estonian citizens is also available for other legal residents of Estonia, irrespective of citizenship.

#### 6. Legal base/Sources

The Act and an explanatory letter prepared by the Ministry of Culture (in Estonian) are available e.g. from the website of the Writers' Union <<http://www.ekl.ee/seadused.html>>

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<sup>104</sup> The presentation is based on the Estonian country profile in the *Compendium of Cultural Policies and Trends in Europe, 7<sup>th</sup> Edition*, 2006, prepared by Mikko Lagerpetz; available at <<http://www.culturalpolicies.net>>

#### IV.4. "Old age grants" (Slovenia)

##### 1. Background

The old age insurance system for artists has been inherited from former Yugoslavia, together with the problems it is supposed to solve. Traditionally, artists have been earning low incomes, and the socialist system did not allow for additional voluntary insurance (the "second pillar"). Therefore even those who could have afforded additional insurance at the peak of their career are not covered. This is the reason why even some of the most prominent artists earn very low pensions. Two different correction mechanisms have been developed so far. The first is a so-called "exceptional pension" of an honorary nature, which is granted to exceptional artists. The second scheme is called "republican recognition"; it is a kind of old age grant which is a special social supplement to the artist's pension. Both pensions may also be received by recipients of a family pension, but in the case of an exceptional pension, only to the level of 80%.

##### 2. How does it work?

The "exceptional pension" was introduced in 1964 to honour persons who made a special contribution to the arts or to science and society in general. This special pension was originally intended to reward people for their revolutionary and political services.

The Ministry of Culture proposes suitable candidates to the Government of the Republic of Slovenia, which subsequently decides based on the assessment of a special government commission for personnel and administrative matters. The exceptional pension provides a topping-up of the artist's regular pension to the highest pension level in a range of 40% to 100% (from 124,000 SIT to 310,000 SIT). Almost 200 artists enjoy this right.

The "republican recognition" was introduced by the *Exercising the Public Interest in Culture Act* of 1994 to replace the "exceptional pension" which is expected to be gradually phased out as a relict of the socialist past. In contrast to the exceptional pension, which is based on artistic excellence and special merits, the republican recognition is a social security measure. The Minister of Culture awards republican recognition to retired artists or cultural workers after consultation with expert commissions covering individual fields of art. Special regulations stipulate the conditions and procedures for obtaining "republican recognition" in more detail. A special record is kept which is publicly accessible. Final decisions maybe challenged through a complaint to be filed with the Administrative Court, but there is no such case to date. The level of the republican recognition is not fixed; it bridges the difference between the candidate's pension and 35% of the highest pension basis. Amounts thus vary; the minimum amount is 10,000 SIT. Republican recognition is enjoyed by 74 recipients.

##### 3. Definition/criteria for inclusion

Both pension schemes are only applicable to recipients who meet the conditions for obtaining a pension under the general pension insurance. Exceptional pensions are granted to artists who have received very high awards on a national or international level. Republican recognition depends on the evaluation of the artist's work and its importance for Slovene culture through an expert commission in the relevant field. The decision is usually based on awards, professional evaluations and entries in encyclopaedias.

#### **4. Recent debates**

The exceptional pension has been widely criticised as a relict of the past. It will probably be transformed into a special award for achievement and separated from the pension system. In that case, the exceptional pension may be integrated into a revised system of republican recognition.

#### **5. Foreign artists/Mobility aspects**

The right to republican recognition is bound to a contribution towards Slovene culture, irrespective of citizenship. Exceptional pension is part of the Slovene pension system.

#### **Legal sources:**

Exceptional Award and Calculation of Old Age Pensions for Persons of Special Merit Act (Ur.l.SRS, no.18/74...)

Exercising the Public Interest in Culture Act (Ur.l.RS no. 96/2002) and Decree on Republican Awards in the Field of Culture (Ur.l. RS no. 70/2003).

## **IV.5. New Zealand - The Pathways to Arts and Cultural Employment (PACE)**

### **1. Background**

There is little argument across the world that the arts industry is a significant and relevant contributor to society. Governments have initiated reports researching the sector, national arts councils have been established, funding – usually via subsidies and grants – is meted out to those considered worthy.

What then of the notion of a social security benefit specifically to support the arts industry?

In New Zealand, the *Pathways to Arts and Cultural Employment* (PACE) scheme was launched in November 2001, under the Labour/Alliance Government.

### **2. How does it work?**

In New Zealand, a job seeker is required to sign a ‘Job Seeker Agreement’, the terms of which has been decided in conjunction with a case worker. These agreements outline the obligations that the applicant must adhere to in order to receive benefits. One of these obligations is to look for work.

Under the PACE scheme, a ‘cultural worker’ can list art as their first career choice. The applicant must still sign a Job Seeker Agreement, but they are freed from looking for work outside their field. Essentially, PACE customises services already offered by Work & Income (New Zealand’s equivalent of Centrelink), to be specifically responsive to cultural workers.

### **3. Definitions/criteria for inclusion**

The term ‘cultural worker’ incorporates practitioners involved in arts administration, preservation, tuition production, curation, as well as those working in the design industry, and, of course, those involved in creating original works.

While PACE has work-test requirements, it also recognises that some cultural workers do generate their own work and income opportunities. So, if the individual case worker can be convinced that you are making progress with your artform, then you will be considered to be meeting your work-test requirements.

To access PACE, a person must qualify for unemployment benefits with Work & Income NZ and be willing and able to take up paid employment.

### **4. Source**

Extract from Arts Hub: The Dole for Artists Forum Discussion Paper, March 2003



## **Annex V. Documents from international Organisations and professional Bodies**

### **V.1. Conclusions of the UNESCO World Congress on the Status of the Artist: "The Artist and Society", Paris, June 1997 (Excerpt)**

#### **14. Employees, social security and taxation**

(a) The right to social security is perhaps the most basic, but rarely achieved notion of the artist's right to live from his or her profession. At a time when artists in all disciplines are experiencing increasing difficulties in obtaining funding for their work, when secondary employment and short-term contracts are rapidly becoming standard practice, when artists routinely have to subsidize their own work, when employment is almost invariably insecure and for the vast and badly paid majority, the right to earn a decent living and to be socially protected needs reiterating and reconfirming by governments.

(b) The problems of self-employed status and permanent contracts, were discussed at length. Self-employed artists must be able to enjoy the same rights and freedoms as employed people - including the right to bargain collectively and to benefit from social security systems. This was far from being the case in far too many countries. An erosion was noted, where they existed, of permanent contracts, but participants, including some from countries in Eastern Europe and the CIS, as well as orchestral musicians and others, were at pains to point out that they were fighting this decline, and artists did not accept collectively that self-employed status for them was, or necessarily should be, the norm. Nevertheless, so-called flexible or atypical working conditions were a growing reality for all categories of workers and society at large must adapt itself to them.

(c) Specialized research and high-level discussion on artists' taxation and social security, as well as on health and safety, was required. The Commission stressed the need for action at international level by UNESCO and the ILO, and critically the participation of ministers not just of culture, but also of finance, social security, labour and education within governments and internationally. Too many of the artists' problems result from the fact that their work falls between a wide range of ministries; governments must be made to take account of the needs of artistic professions and to take what was called an inter-ministerial approach to the economics of culture.

(d) There was great potential for harmonization of systems - at the level of the 1980 Recommendation. This important work was essential because of the fact that artists and their work were increasingly mobile. Just as their employers had become more and more international in nature, so should artists be able to organize within huge multinational media conglomerates and so should systems of tax deductions, professional criteria, VAT, and health and safety and social security facilitate rather than penalize the artist as was frequently the case at present. Specific professional groups - dancers, visual artists, actors and others, had specific needs which governments should not ignore.

(e) Concrete, international action and standard setting was entirely achievable in these areas. The Latin American participants in the Congress met to discuss the possibilities of creating a regional committee for the social protection of performers.

(f) Finally, the committee called upon UNESCO to set up monitoring and legal mechanisms, in which NGOs would take part, to chase up governments and provide positive assistance and even model legal provisions to assist them in the adoption of measures. A good start would be for governments to sit down and actually re-read the Recommendation.

## **V.2. ECA Conference on the status of the artist in Eastern and Central Europe**

Conference in Vilnius 28-29th of November 2003, organised by the Lithuanian Council of Creative Unions and the Lithuanian UNESCO in co-operation with the European Council of Artists (ECA)

### **International Conference “Implementation of the Recommendation concerning the Status of the Artist and the Florence Agreement in Eastern and Central Europe”**

#### **Final Declaration**

We, the artists and representatives of art organizations and cultural institutions from Armenia, Austria, the Czech Republic, Croatia, Denmark, Germany, Hungary, Estonia, Iceland, Latvia, Lithuania, Poland, Portugal, Romania, Russia and Slovakia, attending the International Conference on the Implementation of the Recommendation Concerning the Status of the Artist and the Florence Agreement in Eastern and Central Europe held in Vilnius on 28-29 November 2003, consider that the Recommendation Concerning the Status of the Artist adopted by the UNESCO General Conference in 1980, and The Final Declaration of the 1997 World Congress on the Status of the Artist held in Paris remain the principal documents defining the status of the artist in contemporary society and are of special significance to Eastern and Central European states.

The participants of the conference are convinced that:

1. Artistic creation is a fundamental element of cultural identity and of present and future European sustainable development.
2. Free and individual expressions of artistic creativity should continue to be a focal point of the cultural policies of both national states and the European Union at large.
3. Art has always been and continues to be an essential part of human and societal creativity, intercultural dialogue, development of democracy and social cohesion; the future of Europe depends on the attention its states and the society pay to art, on their ability to hear the voice of artists and to improve their status.
4. A new instrument on cultural diversity without prejudice to the international legal framework applicable for trade exchanges of cultural goods and services will not achieve its goals. With regard to the drafting process of the UNESCO Convention on Cultural Diversity the member states should acknowledge the decisive role of international trade regulations for diverse cultures.
5. Support and funding of arts should be facilitated through public funding as well as through establishment of various partnerships and combined models of funding in order to provide reasonable working conditions for individual artists and/or artists organisations.
6. Public authorities should provide artists with premises for their creative activity and foresee possibilities for such premises in the process of planning or reconstruction of cities, towns and settlements.
7. The various interdependences between the knowledge based society and art should be acknowledged, because, inter alia, the content being used is provided by artists. All forms of

artistic education and training as well as the education for the arts (audience building) are of paramount importance.

8. Copyright and related rights are still insufficiently enforced in a number of states resulting in huge losses incurred by states and rights holders themselves. With the advancement of new technologies an adequate protection of rights should be developed, including the strengthening of collective management of the rights.

9. National regulatory frameworks should provide for measures improving social and economic conditions of artists' existence. In addition the regulatory environment should enable artists to associate themselves in various organizational forms to protect their rights through collective bargaining, assisted by professional legal specialists.

10. Artists from accession and EU associated countries are now facing not only new opportunities, but also serious challenges and threats resulting from uneven social and economic conditions and production of creative work. Possible negative effects of direct and indirect taxation systems' harmonization raise our particular concern.

11. Dialogue among cultures and civilizations enhances creativity, universal perception of culture, tolerance and harmony. The states that have not joined the Florence Agreement yet should ratify this legal instrument. The enlargement of the European Union might call for reflection on the contents of the Florence Agreement. The public functions of professional creative organizations should be recognized in legal acts and supplied funding.

### V.3. Cultural Legislation: Why? How? What?

#### *Excerpts from a Report prepared by Delia Mucica for the Cultural Policy and Action Department, Directorate General IV of the Council of Europe*

January 2003 – DGIV/CULT/STAGE(2003)4

[http://www.coe.int/t/e/cultural\\_co-operation/culture/completed\\_projects/stage/DGIV\\_CULT\\_STAGE\(2003\)4\\_EN.pdf?L=E](http://www.coe.int/t/e/cultural_co-operation/culture/completed_projects/stage/DGIV_CULT_STAGE(2003)4_EN.pdf?L=E)

#### **2. Creativity and Economic and Social Rights**

The relationships developed between creators, as individuals, and the different institutions, organisations and industries using their creativity are more and more market driven. Thus, creators are entering into different forms of labour relations and are subjected to labour regulations. Therefore, creators should be entitled to social protection whether in their capacity of independent artists or free-lancers or in their capacity of employed persons.

In addition, they must have the right of access to education and vocational training, and access to employment and to particular occupations, which are incorporated by the International Labour Organisation in the Discrimination (Employment and Occupation) Convention of 1958 (No. 111) in the concept of "employment and occupation". Moreover, the terms and conditions of employment should be non-discriminatory, a principle that covers equality with regard to remuneration and security of tenure and dismissal.

To these issues must be added that of mobility which, with reference to creativity, means both mobility of creators and mobility of creative works, a subject matter related, but not limited, to fundamental civil rights and to the free trade in goods and services. Last, but obviously not least, there is the issue of creators' earnings and of their taxation.

The right to employment and occupation, the right to social protection, the right to labour protection and the right to fair wages and equal remuneration for work of equal value are components of the fundamental economic and social rights provided for in the International Covenant on Economic, Social and Cultural Rights. These issues are further addressed, both at the international and national levels, within the Labour Law, which includes, generally, social protection as well.

National regulatory systems establishing these rights as well as the corresponding means of redress as fundamental principles addressed to the whole population have therefore their primary source in the international legally-binding instruments administered (with the exception of the International Covenant on Economic, Social and Cultural Rights) by the International Labour Organisation. However, according to their constitutional and administrative systems, in different countries certain issues have been further regulated by collective agreements.

Labour Law focuses, generally, on the establishment of legal principles and of the means of judicial redress, providing the frameworks within which the relationships between the social and economic players in the labour market - employers, employees and their organisations - are being structured. Labour Law is, therefore, enabling these players to participate in the regulation of certain aspects of the labour market, principally through collective bargaining and social dialogue. Such an approach is consistent with the democratic principles of good governance, of stakeholders' participation and empowerment.

At the core of the debate lies the question of whether the existing national regulatory system is sufficient to ensure full enjoyment by the creators of social, economic and cultural rights, given the specificity of their work. The view expressed by the creators themselves, and shared by many governments, is that special provisions in this respect are further required.

The subsequent question is therefore how best to implement these provisions and what are the key regulatory interventions needed?

## ***2.1. The "Status of the Artist" - A Compact of Social, Economic, and Cultural Rights***

From this perspective, the introduction in national regulatory systems (either by amendments to existing regulation or by collective labour agreements or by a combination of these two approaches) of the principles contained in UNESCO's "Status of the artist"<sup>105</sup> as well as in the Final Declaration of the World Congress on the Status of the Artist organised by UNESCO in 1997, should be recognised as an essential building block of national public policies.

The "Status of the Artist" is an important guide to national policy-makers and to national regulators, as it is putting together, in a coherent and comprehensive form, almost all the major issues that should be addressed in national regulatory frameworks. This important instrument should be understood as a "compact" of social, economic and cultural rights, whose transposition into national regulatory frameworks should be done via numerous regulatory initiatives, aimed principally at amending the existing regulation so as to answer the specific needs of the creators.

The first and foremost step should be a needs assessment exercise, conducted in cooperation with the creators' organisations. The identified needs could then be the subject of a national "compact" between government and creators' organisations, against which further initiatives should be tested.

However, a compact or any kind of inventory of needs and corresponding measures is not sufficient; the amendment of the regulatory environment requires, on one hand, a firm commitment of decision-makers and, on the other hand, a structured and powerful organisation of creators, with sufficient bargaining power.

Among the most important issues addressed in the UNESCO non-binding instrument are those related to labour protection, social protection, employment and occupation.

The corpus of labour regulations pertaining to the creator's activity is organised following a classical opposition: on one hand the independent, "free lance", activity and on the other hand the employed activity, which is characterised by a bilateral labour agreement where the creator as employee is subordinated to his contractual partner, the employer. These two different situations are the basis for different rights and obligations and are determining, to a large extent, different legal environments.

While labour law and social protection law and the ensuing legal clauses of labour agreements were modified during the 90's with a view to their harmonisation with the principles and rules of international instruments, these regulations have been usually targeted to address the general issues of employment and occupation, labour and social protection for the entire work force, without any special or specific provisions concerning creators and artists.

Moreover, the two distinct situations - employment and self-employment - have received unbalanced attention from regulators. One of the main reasons is given by sheer numbers: there is only a small percentage of active people which are self-employed and an even smaller percentage that conduct an independent creative activity. In addition, during the communist regime, almost all creators, with some notable exceptions, were employed on the basis of labour agreements, being subjected to the general provisions of labour law.

Thus, the notion of self-employment has entered the post-communist countries quite recently and generally speaking, the regulatory framework has not yet been adapted to respond to the specific rights such a status entails. In addition, whatever amendments to the labour and social protection have been made with respect to the "new" category of self-employed persons, these did not cater for the specific needs of self-employed creators.

Generally speaking, independent professional activities allow for a much greater freedom in choosing the means, working methods, working hours for achieving a self-assigned result,

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<sup>105</sup> Recommendation concerning the Status of the Artist, adopted in 1980 at the General Conference of UNESCO.

including a much greater contractual freedom; on the other hand, all the risks inherent to such an activity are being shouldered by the free-lance. The applicable regulation for independent professional activities is not, however, a homogenous and autonomous body of law, with its internal logic, such as that of Labour Code. This situation is also the result of the persistent ambiguity in defining a professional activity. Thus, creators should develop their own statutes and codify their own practices, according to their specific activities.

However, creative independence, which is essential for any creative activity, is not necessarily linked with the sole status of independent creator or artist. A well balanced labour agreement could allow, as well, for the necessary creative independence.

Whatever status creators are opting for - self employed or employed - their creative activity should give them the right to social protection, for which adequate provisions should be included in the regulatory framework. One of the specific features of creative activities is that creators are more and more combining those two different statuses and therefore the regulatory framework should also provide for this new development.

In this respect, several aspects should need further clarification. Social protection law, which includes protection against risks incurred during a professional activity, social risks and unemployment risks, being designed to protect employed workers against work hazards, still needs to harmonise its internal logic to the requirements of the specific case of self-employed creators and artists. While performing artists have achieved a certain homogenisation of their social protection, being generally recognised as employed persons, other categories of creative self-employed professionals still need a tailored system of social protection that would meet their specific needs. Although the regulatory solutions vary greatly from country to country, the general approach is to grant self-employed creators the minimal protection available under the general system, via a total or only partial assimilation to employed persons. While this is, in certain cases, an improvement compared to non-existent protection, the minimum protection is still not sufficient. In this respect, an additional factor should be taken into consideration: the irregularity of income of self-employed creators.

In addition, the labour regulatory system needs further amendments and corrections so as to address issues related to health, safety and welfare that are specific for different categories of creative activities (such as, inter alia, working hours, rehearsals, shooting hours, minimum basic rates of remuneration and conditions, overtime premiums, working environment - stress, high levels of sound, health hazards, etc.).

The situation is further complicated by the existence of a black labour market, where creators are completely unprotected.

Another important aspect that needs to be addressed is that related to the application of the principles of free movement of persons, freedom of establishment and freedom to provide services. The mobility of creators and of persons working in the cultural sector not only enforces international and regional cooperation within this sector, it also enhances peoples' access to culture and promotes cultural diversity.

These principles are guaranteed under international and EU law. Moreover, these principles are further implemented through the international system of recognition of diplomas and qualifications and through the specific programmes of the Council of Europe and of the European Union.

However, mobility has not only an international dimension; it has a national dimension as well. Therefore, at the national level public policies should also address the issues related to mobility in a cross-sectoral approach that would include training, employment, labour protection and social protection and identify the regulatory measures specific to the situation in each country. Public policies should also address the issue of the need for new skills for improved job prospects, by implementing programmes aimed at developing specific skills.

Decision makers should also take into account the fact that a significant part of the jobs within the creative industries sector are project-specific, short-term and part-time engagements and therefore should consider the possibilities of creating sustainable jobs within the sector in the context of their national employment plans, as well as addressing the issue of social protection between jobs.

In addition, the restructuring of the public cultural sector would result, more often than not, in a reduction of full time jobs, and therefore appropriate measures ought to be designed and implemented, such as professional training and job reorientation, support for setting up micro, small or medium size cultural enterprises, etc.

Decision-makers should address all the above issues via an approach that ideally would combine regulatory measures needed for setting up the general framework and for defining the different categories of beneficiaries of each protection system, with regulatory provisions that would allow for further collective bargaining which would result in a system that would eventually meet the specific needs of the different categories of creators both employed and self-employed. (...)

## ***2.2. Advocating for collective agreements and trade-unions***

Although the beneficiaries of a balanced labour regulatory system are the creators and their employers, this is established by extensive consultations between the social dialogue partner organisations and by their participation in the actual drafting, as well as by extensive bargaining held collectively between creators' trade unions or professional associations and employers' associations.

Hence, respect for the principles of freedom of association is essential for a proper functioning of the labour relations system. The basic ILO instruments dealing with the right to organise are the Freedom of Association and Protection of the Right to Organise Convention of 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention of 1949 (No. 98). In application of these conventions, creators and their employers may form and join organisations "of their own choosing", which means that they also may form new organisations if and when they so choose.

Although a diversity of such organisations is necessary for a healthy environment and prevents a trade-union monopoly, an excessive fragmentation of creators' trade-unions is however a negative development, as it may significantly weaken their bargaining power and therefore prejudice their members' interests. In this respect, it must be recalled that in some countries certain bargaining rights, especially for inter-occupational collective agreements, are reserved only to the "most representative organisation".

It is yet another of the paradoxes of post-communist countries that the trade-union movement is quite weak, especially where creators are involved. But when considering that for more than 50 years membership to state-controlled and totally ineffective trade-unions was compulsory, the creators' refusal to engage in union activities is understandable.

Another non-negligible factor, which is adding to the confusion, is the existence of revamped former Stalinist-type "unions of creators". Although such professional associations or guilds have been initially created in the early 1920s, the advent of communism changed completely their statutes, transforming them in acquiescent tools of political control and censorship. During that period, these "unions" also performed some functions of collective management - within the limitations of the copyright regulation of that period - and some functions of social protection. As a general rule, they were closed clubs of the elites, and membership was difficult to obtain, being subjected to various political conditions and criteria, not necessarily related to artistic excellence. Thus membership of such a "union" was a consecration of the status of "professional creator" and entailed important advantages, both social and economical. This discriminatory

system of members and non-members, of haves and have-nots, led to the development of an "esprit de corps" based on extra-artistic criteria. After the collapse of the communist regime, these organisations have undergone major changes but in many cases they have yet to determine their future role and functions.

However, and irrespective of their role and functions, the rationale of these professional associations is that of recognition of achieved excellence and therefore they must establish eligibility criteria accordingly. In contrast to this legitimate approach, trade-unions are opened to all creators or artists, as their roles and functions are to protect creators' social and economic rights. Thus, the two approaches are not contradictory; they are, in fact, complementary and both should be promoted. The third pillar of the organisational structures that would help creators in achieving an adequate protection of their rights is represented by the collective management societies.

Despite the initial reluctance expressed by many creators and artists with regard to trade-unions, it has become more and more evident that substantial improvements in their social and economic status can be achieved especially through collective labour agreements, where the bargaining parties are trade-unions and employers associations.

Collective bargaining is recognised and protected by several ILO Conventions and Recommendations, in particular the Right to Organise and Collective Bargaining Convention of 1949 (No. 98) and the Collective Bargaining Convention of 1981 (No. 154). Article 2 of Convention No. 154 defines collective bargaining as extending to "... all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for:

- (a) Determining working conditions and terms of employment; and/or
- (b) Regulating relations between employers and workers; and/or
- (c) Regulating relations between employers or their organisations and a workers' organisation or workers' organisations."

The importance given to collective bargaining in these international instruments recognises the fact that collective protection of interests, collective power to negotiate better terms and conditions of employment with employers are far more effective than individual negotiations<sup>106</sup>. Thus, national regulatory frameworks should recognise, promote and encourage free and voluntary collective bargaining, allowing the bargaining parties the greatest possible autonomy. In addition, the regulatory framework should expressly provide for the right of freelance creators to join or organise trade-unions and for the right of these to participate in collective bargaining. (...)

***From Chapter 6, Part 1 ("Creativity and Intellectual Property Rights")***

(...) Collective management organisations negotiate with users or groups of users and authorize those to use copyrighted works from their repertoire against payment and on certain conditions; these organisations also distribute copyright royalties to their members, according to certain distribution rules. Collective management organisations perform the same services to owners of related rights inasmuch as the national legislation provides for a right of remuneration payable to performers or producers of phonograms or both, whenever commercial sound recordings are communicated to the public or used for broadcasting. The fees for such uses are collected and distributed either by joint organisations set up by performers and producers of phonograms, or by separate ones, depending on the regulatory framework applicable.

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<sup>106</sup> For further analysis, see Promotion of Collective Bargaining, International Labour Conference, 66<sup>th</sup> Session, 1980



In certain countries, collective management organisations may also establish for their members various systems of social protection, generally under the form of health insurances, pensions or a guaranteed income based on the members' previous royalties. Thus, collective management organisations tend to involve themselves more actively in social protection issues and, therefore, the theoretical divide between collective management as part of copyright protection and trade unions, as players within the social and labour protection system, seems to fade away. Although such developments might help creators in asserting their rights, it should nevertheless be noted that in many countries the regulatory framework for social and labour protection (Labour Law) need to be amended accordingly. This is especially true in post-communist countries where the pension schemes of the former communist "creators unions" (i.e. professional associations or guilds) have collapsed in the early 90's because of the lack of an adequate system of guarantees of these funds.

In addition, collective management organisations may, according to mandatory legal provisions or to their statutes, devote part of the royalties collected to promote and foster creativity via, inter alia, the organisation of festivals, competitions etc., prizes and other awards, or the organisation of programmes devoted to youth creativity.

Insofar, the management of intellectual property has not been harmonised at EU level. This harmonisation is however necessary for a proper functioning of the Internal Market but, even more so, in the context of the development of the new communication services.

Although collective management societies represent an important development and are essential for a full enjoyment by the creators of their rights and for securing them an important part of their revenues, these organisations are not fully operational in the former post-communist countries, with the notable exception of composers societies, that have a long tradition of sound organisation.

One of the main causes for the apparent disinterest of creators to actively engage in the organisation of such societies lies with the fact that there is little, if anything, to be collected by these organisations since, as stated above, compliance and enforcement have very low levels. Creators are further dissuaded to involve themselves in the organisation of collective management by the fact that the almost "standard" copyright agreement contains clauses of exclusive licensing of all their rights against a lump sum, without any further royalties. Here, again, information, promotion and awareness raising campaigns should be seriously taken under consideration by the respective authorities.

The collective management of rights is a very good solution, if correctly understood, to help creators collect extra money as benefits of their creativity.

However, it is only a partial solution and, more often than not, it will not work properly unless it is seen as part of a more broader approach, aiming at setting up other complementary structures of which the most important is the trade union-type structure or a similar professional organisation. (...)

### ***From "Conclusions. Quid Prodest?"***

(...) Regulation is an ongoing process, as it has to adjust to ongoing social and economic developments. But the regulatory approach takes time if it is to be done correctly. And time is what post-communist countries are lacking. Therefore, decision-makers should explore alternative possibilities to implement their policies and should be aware that problems are not necessarily solved by regulation. The regulatory approach might well become a trap. Excessive proliferation of regulation will have, more often than not, the opposite effect: it will determine regulatory instability which in turn will undermine trust in government and lead to non-compliance to enacted regulation. Therefore, regulation should be kept at a minimum and it should be flexible, establishing general frameworks or, in short, "quality regulation".

However, an overall assessment of any piece of regulation could be achieved by the answer to a simple question: *Quid Prodest?*

When drafting a new piece of regulation the question "*Quid Prodest?*" is sometimes forgotten, or receives only partial answers. Actually, this question should be addressed not only to regulators, but to policy-makers as well and therefore it could be reformulated as follows: Who should benefit from the proposed regulation and who really benefits from the enacted regulation?

A "good" cultural policy and a "good" regulation should ideally give identical answers to this question. But to answer it, an *ex post* impact assessment of the regulation enacted should be compared with the results of the *ex ante* assessment. Sometimes the regulatory answer to "who benefits?" is not the same as the policy statement to the question "who should benefit?" This is an indication that either the policy itself was ill-conceived or that the regulatory approach failed. Moreover, the answer to this question must be analysed and assessed against the overall cultural policy objectives, of which the fundamental cultural rights of access and participation to culture should be the pillars. And sometimes lobbying pressures may lead to partial answers of policy-makers and to the enactment of regulation that tend to cater only for the needs expressed by certain groups, at the exclusion of other interests or views. Cultural or cultural-related regulation should ideally benefit the public and as well the creators. Cultural institutions and creative industries are not to be forgotten, but primarily they are vehicles enabling access and participation to culture and creativity.

In this respect, Article 8 of the UNESCO Universal Declaration on Cultural Diversity could be quoted: "in the face of present-day economic and technological change, opening up vast prospects for creation and innovation, particular attention must be paid to the supply of creative work, to due recognition of the rights of authors and artists and to the specificity of cultural goods and services which, as vectors of identity, values, and meaning, must not be treated as mere commodities or consumer goods".

The foregoing analysis suggests the importance of cross-sectoral cultural policies as a holistic, integrative approach to the cultural sphere that would help establish short-term and medium-term priorities and design strategies that could be implemented through, *inter alia*, regulation. In turn, it should always be acknowledged that regulation is a subsequent step to designing cultural policies and that regulation cannot compensate for the lack of clear policy goals and objectives. Cultural policy objectives may sometimes conflict other public policies as is the case, for example, with competition and communications policies encouraging free competition and cultural policies arguing the case for the strengthening of copyright protection. Such potentially conflicting interests would require a balancing and proportionate policy from the government. However, it must be reaffirmed that governments or governmental policies cannot and should not be too intrusive and therefore enough leverage should be given to cultural players to act according to their best interests, within a broad regulatory framework.

The challenge for every cultural policy is not only how to prescribe an environment of protection for a received body of art and tradition, or how to construct one of creative dynamism and innovation in all areas of the arts and sciences, but how to address both these issues in a balanced and proportionate approach and how to implement these policies. The ensuing challenge is thus how to conceive a regulatory framework that would help attain these objectives, without being unduly prescriptive and restraining while at the same time ensuring adequate accountability of public cultural players.

Failure to meet these challenges will transform countries into passive consumers of imported creative content, will put at risk their cultural identity and will impoverish all our cultures.

#### VI.4. Judith Staines: "from pillar to post"

##### **Excerpt from a comparative review of the frameworks for independent workers in the contemporary performing arts in Europe**

Summary of a Study prepared for the Informal European Theatre Meeting (IETM) with the support of the Irish Arts Council, November 2004  
 <[http://www.ietm.org/docs/1535\\_4948\\_2838.pdf](http://www.ietm.org/docs/1535_4948_2838.pdf)>

This study incorporates detailed country profiles for nine countries and shorter synopses for sixteen more. What emerges is a picture of entirely different systems and frameworks for independent workers in the contemporary performing arts across Europe. There are certain similarities but many more differences. It is difficult to make useful comparisons between these systems since each was set up and has evolved in the context of the country's history, legislation and current economic and employment policy. There are many positive examples of special measures for artists. Occasionally these extend to other cultural workers. Some measures were set up decades ago and others are more recent, responding to current realities of career patterns and working structures in the cultural sector. Whether the policy is historic or contemporary, the existence and extent of such measures are an indication of a state's relationship to its artists. Cultural policy, socio-economic research and lobbies by practitioners, organisations and trades unions help build arguments for such policies, revise and refine proposals. Nevertheless, it must be acknowledged that economic policy is a major influence on the scope and generosity of such measures for artists.

As a rule, where no special measures apply, independent cultural operators and artists work within statutory frameworks applying to all self employed workers. The level of social protection and other benefits is largely dependent on national employment policy, state legislative systems and social welfare. There are a few examples where the specific nature of work in the cultural sector or the performing arts is recognised by state authorities (e.g. special pension and retraining options for dancers with short careers), but much of the employment frameworks for independents is not specific to the cultural sector. Rather than make direct comparisons, it seems more appropriate for this study to examine, in the context of each country, whether the systems in place for independents create advantages or disadvantages for them as compared to regular employees. The survey of practitioners and other evidence from the sector indicates national trends and current issues which are explored under each country profile. It is useful to note whether working as an independent is a growing phenomenon in the contemporary performing arts and in the cultural sector as a whole in each country. Also to explore whether increases in self employment are seen as a positive move towards a more flexible, varied and independent work structure or are forced on practitioners as a result of inadequate career paths, fragmented project-oriented budgets within cultural organisations and the high charges on permanent salaries for employers.

Although it varies from country to country, the self employed are broadly disadvantaged in terms of security and protection: reduced social insurance, ineligibility for unemployment and other benefits and decreased employment protection legislation. With variations, the advantages include tax benefits from the deduction of professional expenses and many practitioners appreciate the flexibility and freedom of working as an independent. However, these advantages and disadvantages are set against the background of a growing independent/self employed/freelance sector in many countries (e.g. Ireland and Austria) and reforms in social insurance, pensions and welfare systems reducing social insurance benefits and employment protection, especially for non-salaried workers (e.g. Netherlands, Denmark and, for *intermittents*, France). The widespread use of short term, temporary contracts and low overall

earnings, often below the national average, are a source of concern for independents in the contemporary performing arts.

All these factors combine to create a culture of precariousness for independents who may find themselves marginalised through their low level of earnings and reduced social and employment protection. Although it has not been widely researched, there are some indications that a career as an independent worker in the cultural sector is time-limited and ultimately not sustainable under current arrangements.

In several of the countries surveyed, independent workers are relatively common in the contemporary performing arts (e.g. Portugal and United Kingdom). But although they enjoy some solidarity in their numbers, there are few signs of an associative movement to argue for better employment frameworks, social protection, career structures, access to training and other benefits. In most, if not all, countries independent workers are excluded from collective agreements and employers' negotiating platforms. This might confirm suggestions from some quarters that a larger self employed workforce starts to fragment the sector and erode solidarity. The reality is that independent workers have to focus on the next contract and their responsibility to clients to survive financially. There may be benefits in creating alliances with other sectors of 'precarious' and 'atypical' workers and there are some signs that this is happening.

Across the countries surveyed several points stand out:

- Hybrid systems  
An intermediate employment situation (not a separate statute), often described with the English word 'freelancer'; this allows a worker legally to undertake a mix of self employed and salaried work. Examples: Netherlands, Denmark, Austria
- High financial and legal obligations for employers  
The cost of social security contributions for salaried employees was mentioned as a factor in the growth of independent workers in the cultural sector in several countries. Examples: Belgium, Portugal, Sweden
- Proof of entrepreneurial success  
Employment policy, support measures and stringent evaluation designed to encourage sustainable self employment for artists and others. Evidence of work hours, number of clients and (for artists) growth in income required. Example: Netherlands.
- Semi-freelance work - grey zones of self employment  
Concerns about semi-subordinate, para-subordinate and quasi-freelance work (often undertaken for a sole employer) abound. The relationship of authority between worker and employer is crucial to which charges and obligations apply. A proliferation of alternative solutions and practices reduce employers' costs by outsourcing work to freelancers. Examples: Portugal, Italy, Hungary

## **Annex V.5. Manifesto of the EUROPEAN ORCHESTRAS' FORUM**

We, Orchestras on the initiative of the European Orchestras' Forum, believe that:

1. Arts and culture are not dispensable lifestyle accessories but essential for every person's quality of life and wellbeing.
2. Pan European artistic interaction over many centuries has played an important part in moulding each member state's civilization and cultural development, and the advancement of the European Union itself.
3. The European Union's current and future member states have a common responsibility to nurture their own regional and national culture and artistic activity. In addition, they have a common responsibility, with the Union itself, of ensuring continued and balanced exchanges and promotion of arts and culture throughout Europe and beyond.

In particular, we call upon the European Union and its member states to adopt the following principles for preserving and promoting cultural diversity:

- Real cultural diversity cannot be achieved purely on the basis of market demand and profitability and needs strong protection to withstand market forces.
- Public funding to artists and cultural institutions is required to sustain a broad spectrum of non-profit cultural and artistic activity.
- To be effective, cultural organisations need extensive interaction to advance their interests and activities, through healthy professional networks and social dialogue.

In implementing these beliefs:

- The European Union should take action to increase its direct cultural and artistic funding as a priority.
- The European Union, its current and future member states, should take immediate positive action to remove the known barriers from cultural organisation mobility, for instance, double taxation.
- The European Union must ensure that mobility is not prejudicial to artists because of the relative strengths of the economies of the EU member states.

And concerning the musical sector:

- Ensure music teaching, particular instrumental teaching, is a key component of the National Curriculum, for all school ages.
- Increase the media profile of classical music and orchestral performance
- Encourage new music
- Help to develop a network for venues throughout Europe
- Promote cultural diversity

In making these calls upon the European Union, and all its current and future member states, we, Orchestras on the initiative of the European Orchestras' Forum, recognise our active role in civil society.

24 June 2005, Strasbourg France

## Annex V. 6. Recommendations For Mobility Of The Cultural Sector

**Drafted by SICA/ CCP NL<sup>107</sup> following the conference *Artists on the Move*, the informal CCP meeting and the Expert meeting on Culture 2007, in Rotterdam, 7/8 October 2004**

After two fruitful days of conferencing about the EU Cultural programme Culture 2007 and the mobility of people working in the cultural sector within Europe, several conclusions were formulated.

The organisers of the conference and its participants would like to call on the Council of European Ministers of Education, Youth and Culture in their meeting on 15 and 16 November 2004 to consider the following recommendations on availability of information, artist tax, social security and Culture 2007.

### **General recommendation:**

One of the general conclusions of the conference was that a lot of information is not readily available. This concerns specific cultural information about funds and mobility programmes, but also overall issues like artist tax, social security, visa and work permits. We would like to recommend a structure whereby this information can be easily found, not necessarily by creating a new organisation, but by integrating an extensive information task into the already existing EU-structure. The information given should not only be on EU-level, but should also contain characteristic national level information.

### **Action Plan for Mobility in the Cultural Sector:**

The European Commission should support the immediate creation of an *Action Plan for Mobility in the Cultural Sector* as formulated during the Sharing Cultures conference in July 2004, with timetabled objectives, shared input and shared responsibilities including sustainable financial engagements from the Member States, the European Commission, private sector (foundations) and civil society actors (networks, NGO's, unions).

### **Artist Tax:**

- **Deduction of expenses.** Member States need to implement the *Arnoud Gerritse* decision (2003, C-234/01) in their tax legislation for non-resident artists as soon as possible. Non-deductibility of expenses for non-resident artists is not in accordance with the EU-Treaty and puts non-resident artists in an unequal position towards resident artists.
- **VAT exemption.** Member States need to implement the *Matthias Hoffmann* decision (2003, C-144/00) in their tax legislation for non-resident groups and individual artists as soon as possible. Most EU countries use a VAT exemption for cultural organisations, but charge VAT to the performance fees of non-resident artists performing at these institutions. This is not in accordance with the EU-Treaty and puts the non-resident artists in an unequal position.
- **Lack of information.** A database of information about national artist tax systems, rates, allowances, exemptions and refund procedures needs to be created. At the moment there is too little information available about the various tax provisions applicable in EU countries, which inhibits the mobility of performing artists in Europe.

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<sup>107</sup> Stichting voor Internationale Culturele Activiteiten/ Cultureel ContactPunt.

**Social Security:**

- **Employment status.** One of the main ambiguities in the social security system for the arts is the distinction between employees and self-employed people, because this employment status affects a worker's level of social protection and entitlement to benefits. Many artists are self-employed (freelance, independent) and their professional mobility can be hindered through reduced levels of social protection and the complex variations in the way self-employed artists are treated by the social security systems across EU Member States.
- **Unjust deduction.** Member States need to monitor the implementation of the *Barry Banks/Théâtre de la Monnaie* decision (2000, C-178/97) in their social security regulation. If an artist is self-employed in their country of residence, this status should be respected in the country where he/ she temporarily works. Neglecting the employment status is not in accordance with the EU-Treaty and puts non-resident artists in an unequal position towards resident artists.
- **Lack of information.** A database of information about national social security regulations and the tools available for artists temporarily working abroad needs to be created. At the moment there is too little information available about the social security systems applicable in EU countries, which inhibits the mobility of performing artists in Europe.

**Culture 2007:**

- **Scale of the projects:** supporting European cultural co-operation and artistic innovation should imply at least some access to European funding schemes by cultural operators that initiate projects on a scale similar to the current one-year projects (action 1). A European programme that aims to increase the mobility of artists and their work should not focus solely on large projects.
- **Quality of the jury:** it is felt that abandoning the sectoral approach completely, may create obstacles for an effective and convincing assessment by the jury. Where can one find the experts that have a complete and profound overview of all artistic fields in Europe? Ensure the quality and profile of the jury structurally, not on an ad hoc basis.
- **Sector specific:** in case the sector specific approach is abandoned this might lead to an 'unfair' competition, in which less 'sexy' disciplines are likely to lose the battle from more 'fashionable' arts disciplines or arts disciplines that are more suitable for big events. An endangered sector in this regard is literature (especially translations).
- **The position and role of the CCP's,** both in the current programme and in the Culture 2007 proposal, should be reconsidered. Special attention should be given to the co-ordination between the communication efforts of the EC itself (among other things the cultural portal, studies and research activities) and other information services. The CCP's should be integrated more in the implementation of the programme. Multi-annual funding of the CCP's would be a prerequisite for further professionalisation.
- **Subsidiarity** remains the leading principle for EC activities in the cultural domain. However, the question remains whether the EC should not play a more co-ordinating role in this respect, without touching upon the no-go area of harmonisation of national cultural policies. More co-ordination between the EC and the cultural policies in the member states could maximise the effect of each Culture 2007 grant.
- Establish **better links with Community programmes in other fields,** for instance education, youth, research and development and external relations (co-operation with third countries).





## Annex VI. Professional Artists' Agencies

### Annex VI.1. AUDIENS (France)

#### *A professional group*

Audiens, which officially came into being on 1 January 2003, is the result of a merger between **two longstanding welfare protection groups**:

- **IPS Bellini-Gutenberg**, geared towards professional people working in the press, media and communications;
- **Griss**, aimed at people working in showbusiness and the audiovisual media.

Drawing, through its institutions, on **more than 50 years' experience** in the area of welfare protection, our group is able to adapt and respond to changes in the pensions and healthcare sectors.

By way of an example, on 1 January 2004 the Arrco additional pension institutions - Anep Bellini, CREP and Capricas - were merged to form a single institution: **IRPS**.

The Agirc additional pension institutions - Carcicas and CNC Presse - were merged to form a single institution: **IRCPS**.

On 2 January 2006 the provident institutions **Bellini Prévoyance, Ipicas and Gutenberg Prévoyance** merged to become **Audiens Prévoyance**.

Audiens offers **broadened protection** covering additional pensions, health and welfare, along with savings schemes, 1% building loans, social measures and leisure activities.

#### *Key figures for 2004*

30 000 member firms.

120 000 persons in receipt of a pension.

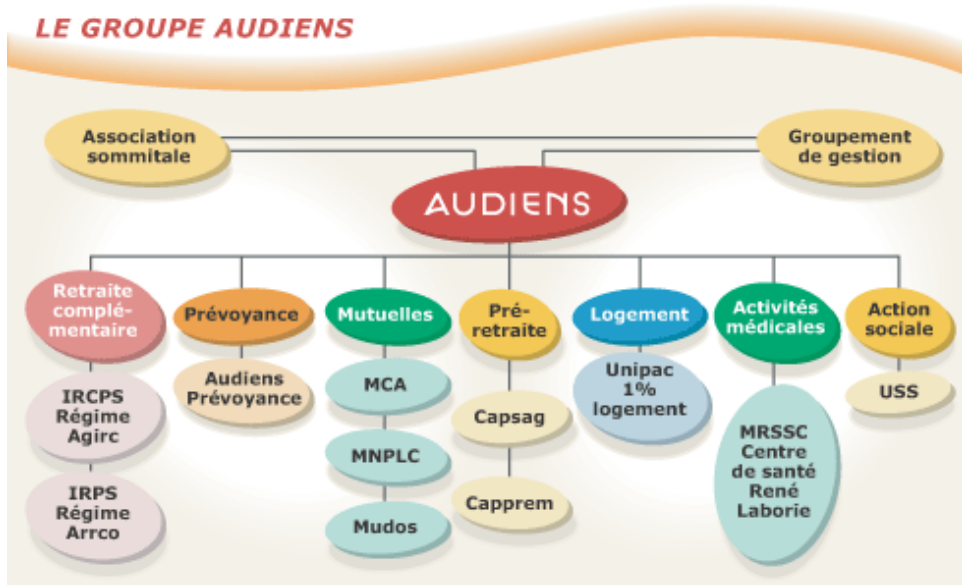
500 000 employees and their families.

#### **Our organisation**

An association set up under the **Law of 1901**, Audiens brings together the various institutions responsible for carrying out our professional activities.

These institutions are administered jointly by **representatives of the employees and the employers**.

At group level, political governance is based on **two bodies**: the joint board of governors and the management board.



## Annex VI.2. KUNSTENAARS&CO (The Netherlands)



*Successful artists do have more than talent and professional skill only. To earn a living with the profession of an artist is much more extensive: an artist has to be able to communicate, to maintain a network, to make plans, to draw up an estimate, to negotiate...*

Kunstenaars&CO supports artists to acquire an independent income for working as an artist.

In the first place we do this by offering them a wide range of **products and services** that they are able to use for their further professionalization. We offer:

- **Information** that an artist needs for his/her professionalization. Together with the Amsterdam Academy of Art (= *Hogeschool voor de Kunsten*, AHK) we have, for example, set up the website [www.beroepkunstenaar.nl](http://www.beroepkunstenaar.nl). On this site there is a mine of information on the business(like) aspect of professional practice of artists. Employees of '*De Kunstenaarslijn*' are available five days a week to answer questions about the professional practice.
- For artists purpose-developed **education and training** varying from short workshops to longer education, from basic courses on business skills to project management for the advanced.
- **Personal guidance** in the form of advisory consultations and coaching.
- **A credit regulation** for artists (in co-operation with Triodosbank).

Secondly, we **stimulate the request for artists** inside and outside the art sector. We develop projects in which the artists can call forth all their knowledge and skills inside and outside the art. An example of the latter is the project 'professional artists in class' (*Beroepskunstenaars in de klas*), in which artists are trained to execute projects at primary schools as an artist. Under the authority of the Ministry of Economic Affairs and in co-operation with the AHK/School of Art we developed a post HBO education (= Higher Vocational Education) for performing artists who also want to deploy their qualities outside the stage.

Furthermore, we annually **examine the professionalism** of thousands of artists who want to make use of the WWIK (= The Income Provisions for Artists Act). Artists who want to make use of the WWIK must be able to prove that they have received art training or are professionally active as an artist. That is why Kunstenaars& CO has the legal duty to execute the professionalism researches. We execute these researches on the basis of six set standard measures: education, equipment, activities as an artist, presentations, market position and income.

### More information?

Have a look at: [www.beroepkunstenaar.nl](http://www.beroepkunstenaar.nl) or [www.kunstenaarsenco.nl](http://www.kunstenaarsenco.nl).

## Annex VI.3. SMart (Belgium)

*Summary: SMart is an association of more than 8000 professional artists in Belgium. It has been founded to address the often difficult administrative procedures resulting from the precarious work conditions and changing levels of income of artists. Funded by a fixed levy on every contract it handles, SMart offers tailor-made services to its members, including consulting; contract management; project administration; insurances and legal services; etc. In addition, it tries to represent and support professional artists in social, economic and political contexts.*

# SMart

SMart is a professional association representing artists and performers. It is governed by a **charter** and offers its members **a range of services**.

SMart is an **association representing professional artists and performers** set up in response to the problems artists and performers face in managing their rights and obligations and their activities, problems often linked to the constraints imposed by the **intermittent nature of employment in the arts sector** and the irregular income earned from such activities.

SMart has established **a framework tailored** to each individual's professional situation. Information material and administrative and legal tools and resources have been developed with a view to enabling artists and performers to cope with the demands of their profession.

At the same time, SMart is active in the social, political and economic fields with a view to securing recognition of artistic activity as a productive professional activity just like any other form of work.

## Funding

At present, the association's activities are funded by means of:

- an annual **contribution** of € 25
- a **4.5% levy** on every contract to cover the cost of the services provided by the association.

The General Meeting lays down these rates.

## SMart in figures

	2004	2003	2002	2001
Number of members as at 31/12	8018	5350	3250	2000
Number of contracts	36 646	20 341	9986	6680

## Charter

The aim of our charter is to secure **professional recognition** for artistic professions and to **highlight the specific characteristics of those professions**. The **founding principles** of our charter are that SMart should:

- be a **democratic** structure
- strengthen artists' **independence**
- foster the **development** of creative activities
- put relations in the artistic and cultural spheres **on a professional basis**
- create a **secure legal framework** for the arts sector
- improve the **representation** of our members

### The services offered by SMart:

#### Information - Advice

Artists work against a background of complex administrative, social and fiscal arrangements. Each week, SMart organises **free information sessions** open to everyone.

**Individual advice:** the free information sessions are very comprehensive and warmly recommended! However, specific, individual questions may be left unanswered.

SMart has developed, in partnership with legal advisers and specialist lawyers, a service offering **specialist advice concerning copyright, neighbouring rights and agreements** for its members.

SMart has developed, in partnership with legal advisers and specialist lawyers, a **negotiation, mediation and legal support service** for its members.

#### Contract management

SMart **transforms into salaries** budgets for the provision of artistic services agreed between an artist or performer and a client or organiser. This service offers the artist or performer **employee status** for each engagement and the client/employer **simplified management arrangements** involving no more than the settlement of an invoice. In this way, the client and the artist or performer comply with **the law** and at the same time avoid administrative problems. An artist or performer must be a member of the association in order to be eligible for these services.

**On the basis of authorisation given by the artist/performer and the client, we:**

- **manage** contracts
- deal with contract-related **administrative formalities**
- **deduct** and **pay** social security contributions and income tax deducted at source
- manage the **collection** of invoiced amounts and issue **reminders**
- draft **documents relating to social security and tax** (salary statement, C4, etc.)
- **pay an income** to the artist or performer.

#### Project management

Are you planning an exhibition or a performance?

SMart can **develop your activities** using the resources at its disposal, whilst giving you **responsibility** and **control** over decision-making. We will take care of the administrative and financial management of your project. SMart will

- make a simple, user-friendly on-line **interface** available to you
- draw up **invoices** and forward them to clients
- **receive payments** from clients against invoices or of sums due under funding agreements

- **reimburse** sums advanced by the member and justified by fee statements
- deal with your ‘**contracts and requests for payment of fees**’
- make payments relating to **copyright** and/or neighbouring rights
- increase your budget by securing reimbursement of **VAT**
- manage with you the **accounts** for your project.

### Protection

Strengthened by the **increase** in the number of its members, SMart defends their **shared interests** on their collective and individual behalves.

- **Insurance against professional accidents:** it is a legal requirement that all employees **must be protected** by an insurance policy covering accidents which occur at or on the way to the workplace. In the sphere of the arts, it is sometimes very difficult to define notions such as the beginning and end of the working day or the way to work. This insurance is provided automatically for a year from the date on which SMart first manages a contract for an artist or performer.  
On the basis of the **joint strength** of its members, SMart has negotiated a professional accident insurance policy **whose scope has been broadened to cover accidents which occur in private life** (e.g. on a rest or rehearsal day, or even an accident in day-to-day life, etc.).
- **The Guarantee Fund:** with a view to **mutualising** risks, the association has set up a Guarantee Fund to cover the payment of sums owed to a member by a **bankrupt** client. The fund is financed by a **systematic 2% levy** on invoiced amounts.
- **Legal support:** SMart’s legal service takes every opportunity to further the **development of a body of case law** beneficial to artists and performers. SMart **represents** its members in negotiations, whether institutional or legislative and administrative, dealing with performers’ social, tax and economic status. The association **supports** its members in some court cases.

### Service through partners

With the aim of carrying out all its **tasks** as effectively as possible, SMart has engaged partners who endorse the **principles set out in its charter**.

- **Accountant**
- **Plastic arts:** services covering the **rental and sale of works of art**
- **Tour management**

*Smart asbl - Rue Coenraets 56, B-1060 Bruxelles - <http://www.smartasbl.be>*

## Annex VI.4. '*Portage salarial*' (umbrella company system): France

### Labour Law

#### Current state of French law on '*portage salarial*'

In the absence of legal provisions governing the performance by self-employed persons of one-off jobs for third parties, a system which became known as '*portage salarial*' (see definition given below), gradually grew up in the mid-80s. In time, a trade association, the SNEPS (National Association of Umbrella Companies), and a national federation, the FENPS (National Federation of Umbrella Companies), were formed. The former organisation has published a *code of professional practice* and the latter a *code of professional ethics*. The two codes set out the obligations incumbent on the member companies vis-à-vis both contractors ('*portés*') and client companies and the tax and social security authorities. With a view to *institutionalising* the system, the FENPS has also produced a specimen agreement setting out, among other things, standard working conditions for contractors.

'Portage' has been implicitly *recognised* by the French Employment Office (the ANPE), which has posted a data sheet on its Internet site ([http://www.anpe.fr/actualites/affiche/aout\\_2004/portage\\_salarial\\_2655.html](http://www.anpe.fr/actualites/affiche/aout_2004/portage_salarial_2655.html)), in which it calls '*portage*' a *new type of salaried employment*. As far as the system's *legal status* is concerned, the ANPE merely states that the contractor signs a traditional contract of employment with the umbrella company, without making any further comment on the matter. The '*Guide du créateur d'entreprise*' (business start-up guide) published with the cooperation of the Office of the State Secretary for SMEs draws attention to the usefulness of a system that has grown up outside any formal structures. '*Portage*' therefore can no longer be portrayed as systematically illegal, as some legal experts were still doing until only recently.

However, irrespective of the efforts made by trade organisations and the recognition given to the system by the public authorities, the question remains: where exactly does '*portage salarial*' stand with regard to the law?

#### **Definition of '*portage salarial*'**

*In the absence of a legal definition of the term, '*portage salarial*' may be defined as a **contract-based three-way relationship** between:*

- *a person providing what is generally a one-off service (job), referred to as the '*porté*' (contractor),*
- *a company which handles the administrative and accounting side of the initial recruitment and the performance of the work (the declarations that the contractor needs to make to social security bodies, production of the contractor's wage slips, the conclusion of the service contract negotiated by the contractor, the drawing up and issuing of invoices, etc.), referred to as the '*société de portage*' (umbrella company),*
- *a company to which the contractor provides a service, normally involving highly technical or specialised work, referred to as the client or client company.*

'Portage' is quite different from temping, to which it is sometimes compared, in particular because it is the contractor, not the umbrella company, which finds clients and negotiates with

them, whereas finding jobs for the temps they have on their books is the core activity of temporary employment agencies.

### **Types of contract and types of 'portage'**

The three-way contractual relationship calls for the drafting of at least **two contracts**:

- a contract which, as the law currently stands, cannot be anything other than a **contract of employment** (open-ended or fixed-term contracts, intermittent employment contracts under the Aubry II law or, in some cases, '*contrats de chantier*' (job-specific contracts, the duration of which cannot be determined at the outset)) **between the contractor and the umbrella company**, setting out relevant details (e.g. why a fixed-term contract has been chosen, the terms governing the provision of services by the contractor and the termination of the work, etc.), which *must be signed before the commencement of the work (and, of course, completion of the DUE* (document covering the necessary administrative formalities));
- a second contract concluded between the **umbrella company and the client** (although actually negotiated by the contractor) which, whatever the name given to it (e.g. service contract), sets out the terms and conditions governing the performance of the work (price, practical and financial arrangements, duration, etc.).

The arrangement is similar to that under which IT service companies make specialised staff available and which is authorised by the courts where it involves the *transfer of know-how or the implementation of a technique coming within the supplying company's specific area of expertise*. Legal experts' hesitations as to the legality of the '*portage salarial*' system stem from the fact that many umbrella companies do not have their own *specific area of expertise*, since the expertise being supplied is that of the contractors.

**In practice, there are almost as many types of 'portage' as there are different types of job.**

The individuals and companies involved therefore need to **pay particular attention to the drafting of contracts, which must be specifically tailored to the job at hand.**

A 'portage' arrangement involving a highly specialised engineer clearly will clearly not be handled in the same way as one involving an inexperienced freelance journalist working for a magazine. It is therefore strongly advisable to ensure that contracts setting out the terms under which the job is to be performed are drawn up or read through by a lawyer, since otherwise serious legal problems could arise (see our article on the advantages and risks of the 'portage' concept).

The contractor is, in effect, *a self-employed person with the status of a salaried employee, mainly for social security purposes*. It should be noted that this disparity between the fact that the contractor is a self-employed person and his or her status for social security purposes also exists in other areas (e.g. trading company managers and people employed in some of the professions).

Pascal Alix, Barrister at the Paris Court of Appeal

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