

STUDY

Requested by the CULT Committee



# The Situation of Artists and Cultural Workers and the post-COVID-19 Cultural Recovery in the European Union

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## Background Analysis



**Culture and Education**



Policy Department for Structural and Cohesion Policies  
Directorate-General for Internal Policies  
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RESEARCH FOR CULT COMMITTEE

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# The Situation of Artists and Cultural Workers and the post-COVID-19 Cultural Recovery in the European Union

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## Background Analysis

### **Abstract**

This background analysis on the situation of artists and cultural workers and the post-COVID-19 cultural recovery in the European Union is prepared for the European Parliament. It provides an overview of key characteristics of artists' and cultural workers' status across Europe, their working conditions, precariousness and career paths. It outlines the justification for specific policy solutions and provides a mapping of key challenges for a European framework for working conditions in the cultural and creative sectors and industries.

This document was requested by the European Parliament's Committee on Culture and Education.

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## EXECUTIVE SUMMARY

### KEY FINDINGS

- **The coexistence** across Europe **of multiple definitions of ‘artists’ as well as competing frameworks** specifically aimed at them **hinders a unified recognition of artists’ labour status.**
- COVID-19 accelerated pre-existing trends and inequities, which created a sense of urgency to tackle the situation on a European level.
- Several factors explain the precariousness of artists. These include: the non-standard nature of their working conditions, status and income, and artists’ propensity for cross-border mobility.
- Recent and ongoing European initiatives (e.g. collective bargaining agreements) are likely to have a positive impact on the working conditions of artists. However, the former intersect with many other policy fields, e.g. competition, the internal market, social policy, fundamental rights. Therefore, such European initiatives are insufficient to address all challenges faced by artists.
- **A European framework for working conditions in cultural and creative sectors and industries would provide a multidimensional, holistic and coherent policy instrument**, helping to establish minimum standards, addressing structural fragilities and inequities. The framework would contribute to the sustainability of the cultural and creative sectors and industries after COVID-19, together with immediate forms of actions (access to funding, administrative support, etc.).

Culture is at the basis of the European project: it brings our societies together and shapes their common future. Therefore, it carries an important intrinsic value. It also contributes significantly to the economy, with 4.2%<sup>1</sup> of the EU GDP and 7.4 million jobs created<sup>2</sup>. As others have put it, “the cultural and creative economy is now a European heavyweight”.<sup>3</sup>

However, the sector faces an uncertain future. COVID-19 accelerated pre-existing trends, including precariousness and inequity. Facing destitution, many professionals may leave the sector and thousands of institutions may close. With them, accumulated knowledge and skills would be permanently lost, and the cultural and creative ecosystem would be profoundly weakened. A solution to tackle this challenge includes strengthening the status of artists and cultural workers and, with it, the resilience of the sector.

The 1980 UNESCO Recommendation concerning the Status of the Artist asks Member States to improve artists’ professional, social and economic status through policies and measures “related to training, social security, employment, income and tax conditions, mobility and freedom of expression.”

In 2018, the Commission’s New European Agenda for Culture acknowledged the social and economic impact of culture. More recently, in September 2020, the European Parliament adopted

<sup>1</sup> European Investment Fund (2019), Market Analysis of the cultural and creative sectors in Europe.

<sup>2</sup> Eurostat (2020), Cultural Statistics – cultural employment.

<sup>3</sup> Ernst & Young (2021), Rebuilding Europe: The cultural and creative economy before and after the COVID-19 crisis, p. 13.

the Resolution on Cultural Recovery of Europe, setting a vision for European institutions and Member States to address the recovery of the cultural and creative sectors (CCS), and recognising the importance of culture as a driver in Europe's recovery post-pandemic.<sup>4</sup> The Resolution also foregrounded the need to improve the working conditions of cultural and creative workers, which have been exacerbated by the pandemic, and proposed the creation of a European framework for working conditions in the cultural and creative sectors and industries.

Artistic and cultural work is characterized by intermittence, heterogeneity and instability that is much more pronounced than in other sectors. Also, it is often not fairly paid or sufficiently protected as in other sectors.

Several factors explain the precariousness of artists: **artists and cultural workers have atypical work patterns.** These include the non-standard nature of their working conditions, status and income, the unpredictability of the end product of artistic work and of its reception, the fact that artistic creation is both time- and labour-intensive, business models driven by artistic excellence and other societal values rather than market goals<sup>5</sup>, and propensity for cross-border mobility (which includes atypical situations that aren't easily translated into pre-existing categories associated with visas, social protection or taxation).

**Artists and cultural workers are more likely to work part-time, not to have an open-ended contract, and to combine employment and self-employment** in several countries throughout their careers, and in other sectors (services, education, etc). Self-employment is higher in the cultural and creative sectors (33%) than in employment for the total economy (14%).<sup>6</sup>

**The COVID-19 pandemic exacerbated the difficult financial situation faced by many artists and cultural creators.** According to a recent report written by Ernst & Young<sup>7</sup> revenues in the cultural and creative sectors<sup>8</sup> plunged by 31% in 2020 compared to 2019. The sectors were hit even harder than tourism, which lost 27% of its income. In 2020, the cultural sector lost approximately €200 billion in revenues. However, the economic impact of halting production will only be evident from 2021.<sup>9</sup> In light of the above, targeted measures to tackle these issues in a coordinated and coherent fashion<sup>10</sup> are needed.

The present background analysis aims to:

a) provide an overview of key characteristics of working conditions and career paths of artists and cultural workers, as well as artists' various status across Europe, focusing mainly on the most discussed aspects in recent times;

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<sup>4</sup> European Parliament (2020), European Parliament resolution on the cultural recovery of Europe.

<sup>5</sup> Rex, B., Kaszynska, P., Kimbell, L. (2019), Business Models for Arts and Cultural Organisations: Research Findings from Creative Lenses.

<sup>6</sup> Ernst & Young (2021), op. cit. p..21.

<sup>7</sup> Ernst & Young (2021), Ibid.

<sup>8</sup> Ernst & Young's description of the sector includes: TV, cinema, radio, music, publishing, video games and the performing and visual arts (2021, Ibid).

<sup>9</sup> Ernst & Young (2021), Ibid, p. 6.

<sup>10</sup> The need for such a holistic approach is also noted in the report by IDEA Consult, Goethe-Institut, Amann S. and Heinsius J. (2021), which argues that establishing a fair cultural and creative ecosystem requires simultaneous action across several pillars: fair income and earning opportunities, strong networks for rights enforcement and labour market entrance, and supportive regulatory and information systems (see pp.101-105).

b) summarise key points being discussed regarding artists' and cultural workers' specific status across Europe in light of the European Union's competences and provide justification of specific policy solutions as compared to other precarious sectors;

c) provide a mapping of key elements regarding a possible European framework for working conditions in the cultural and creative sectors and industries.



## 1. INTRODUCTION

The situation of artists and cultural workers has been the topic of several reports and publications, undertaken at the EU level, both before and since the beginning of the COVID-19 crisis.<sup>11</sup> There are specificities of the artistic and cultural work, characterized by intermittence, heterogeneity and instability, which are much more pronounced than in other sectors.

**The 1980 UNESCO Recommendation concerning the Status of the Artist** asks Member States to improve artists' professional, social and economic status through policies and measures "related to training, social security, employment, income and tax conditions, mobility and freedom of expression".<sup>12</sup> In doing so, the Recommendation calls on the States to grant artists analogous rights to those of other groups requiring special measures.

In the last decade, some aspects related to the working conditions of artists have been addressed albeit with fragmented actions at the EU level – e.g. through the recent copyright reform.<sup>13</sup> This effort, however, has not resulted in a unified approach on the complex status of the artists.

Yet, the topic, has been on the agenda for some time. **The 2007 resolution of the European Parliament on the social status of artists**<sup>14</sup> (hereafter, the 2007 EP resolution) called on the Commission and the Member States to improve the situation of artists' contracts in Europe, supporting their lifelong training and retraining and their mobility and employment, among other things.

**In 2018, the Commission's New European Agenda for Culture** acknowledged the social and economic impact of culture, as well as its role in external relations.<sup>15</sup> However, it recognised persistent obstacles to artistic work such as the lack of fair remuneration and the risk of double taxation. In a similar direction, **the Council's Work Plan for Culture 2019-2022** included within its priorities building an ecosystem that supports artists, cultural and creative professionals and the establishment of a new Open Method of Coordination (OMC) on the status and working conditions of artists (foreseen for the second half of 2021).<sup>16</sup>

More recently, **in September 2020, the European Parliament adopted the Resolution on Cultural Recovery of Europe**, setting a vision for European institutions and Member States to address the recovery of the cultural and creative sectors, and recognising the importance of culture as a driver in Europe's recovery post-pandemic.<sup>17</sup> The Resolution also foregrounded the need to improve the working conditions of cultural and creative workers, which have been exacerbated by the pandemic, and proposed the creation of a European framework for working conditions in the cultural and creative sectors and industries.

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<sup>11</sup> For example, European Commission (2017) Mapping creative value chains: A study on the economy of culture in the digital age and Panteia (2020), The status and working conditions of artists and cultural and creative professionals.

<sup>12</sup> UNESCO (1980). Recommendation concerning the Status of the Artist.

<sup>13</sup> European Union (2019) Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019.

<sup>14</sup> European Parliament (2007), European Parliament resolution of 7 June 2007 on the social status of artists (2006/2249(INI), P6\_TA(2007)0236.

<sup>15</sup> European Commission (2018) Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A New European Agenda for Culture COM/2018/267 final.

<sup>16</sup> Council of the European Union (2018) Council conclusions on the Work Plan for Culture 2019-2022 (14984/18).

<sup>17</sup> European Parliament (2020), European Parliament resolution on the cultural recovery of Europe.

The methodology used in this report consists of a desk review of relevant international literature in the field, in particular, studies and other documents made available by national governments, the UNESCO, the European Commission, the Education, Audiovisual and Culture Executive Agency (EACEA), the European Parliament and other European institutions, NGOs and stakeholders, both at national and European level, as well as academic literature and expert publications.

By summarising the main profiles of the relevant competences of the EU, this paper tries to outline the available instruments in the EU's toolbox to adopt a comprehensive policy approach towards a European framework for working conditions in the cultural and creative sectors and industries.

For the scope of this paper, the word "artist" will be used comprehensively, and thus will refer to all cultural and creative forms of work. This is aligned with the 1980 UNESCO Recommendation concerning the Status of the Artist, which defines an 'artist' as everyone "who contributes (...) to the development of art and culture".<sup>18</sup>

### ***The Impact of the COVID-19 Pandemic: Observed and Expected***

COVID-19 brought to the foreground the frequent mismatch between official requirements for support and the main patterns of artistic work.<sup>19</sup>

The loss for the cultural and creative sectors will be felt over several years. In 2020, it has been calculated that they lost approximately EUR 200 billion in revenues. However, the economic impact of COVID-19 in the cultural and creative sectors will only be evident from 2021 and beyond.<sup>20</sup> In the countries where live cultural experiences account for a larger percentage of the market, especially in Central and Eastern Europe, the sector has been particularly hit.<sup>21</sup>

The impact of the pandemic throughout the cultural and creative sectors' value chain will be massive and potentially long-lasting. As others have stated, the pandemic has led to an economy-wide shock that was not equally distributed – the arts, entertainment and recreations sector being one of the most affected therein.<sup>22</sup> This could "result not only in increased precariousness [...] but also in professional brain drain. Professionals that cannot make a living anymore with their cultural/creative job are more likely to leave the sectors and look for non-cultural jobs".<sup>23</sup> Many workers (authors, performers, technicians, administrative staff) are already seeking jobs outside the sectors, and many organisations are in fragile positions. Support is needed "to maintain the level of skills and entrepreneurship required throughout CCI value chains"<sup>24</sup> and, with them, the European cultural and creative ecosystem.

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<sup>18</sup> UNESCO (1980). op. cit.

<sup>19</sup> For an overview of the main measures that were introduced in the first months of the crisis (generic measures covering wider sectors than the CCS; culture specific frameworks modifications; and special help for artists) see IDEA Consult, Goethe-Institut, Amann S. and Heinsius J. (2021), Research for CULT Committee – Cultural and creative sectors in post-Covid-19 Europe: crisis effects and policy recommendations p. 62. For an overview of the main culture specific cost reduction and legal framework tools (tax related interventions, liquidity/ investment and flexibility for grants), see ibid, pp. 63-64. For an overview of the main tools to specifically support artists and freelancers (specific support for artists, better working context for artists) see op cit., p. 65.

<sup>20</sup> Ernst & Young (2021), Ibid, p.30.

<sup>21</sup> Ernst & Young (2021), Ibid, pp.30-35.

<sup>22</sup> IDEA Consult, Goethe-Institut, Amann S. and Heinsius J. (2021), op. cit., p.25.

<sup>23</sup> IDEA Consult, Goethe-Institut, Amann S. and Heinsius J. (2021), Ibid, p.38.

<sup>24</sup> Ernst & Young (2021), op. cit., p. 21.

Intensifying the already fragile position of artists and cultural workers, the pandemic further reinforces the need for direct action to address their precariousness. Among the unprecedented measures to tackle the fallouts of the COVID-19 pandemic, the EU has introduced support for short-time work schemes, such as the SURE mechanism<sup>25</sup>, and a dedicated instrument called REACT-EU<sup>26</sup> as a part of the Next Generation EU envelope to support workers in regions and sectors most affected by the pandemic – including cultural sector.

In principle, both tools could address self-employed workers, freelancers and the cultural and creative sectors, but it is a matter for national legislation to implement such support in national schemes.

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<sup>25</sup> European Commission (2020), The European instrument for temporary Support to mitigate Unemployment Risks in an Emergency (SURE).

<sup>26</sup> European Parliament and Council (2020) amending Regulation (EU) No 1303/2013 as regards additional resources and implementing arrangements to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and for preparing a green, digital and resilient recovery of the economy (REACT-EU).

## 2. WORKING CONDITIONS OF ARTISTS AND CULTURAL WORKERS ACROSS EUROPE

### KEY FINDINGS

This chapter identifies the main characteristics of the working conditions of artists and cultural workers across Europe.

- The coexistence of multiple definitions of 'artist' hinders a unified recognition of their labour status.
- Although there is a general acknowledgement of specific labour characteristics of the artists, none of the existing texts addresses them holistically.
- The multiple nature of artists' income sources (regular employment, self-employment, copyright, grants and subsidies, loans), combined with a fractured labour market, often leads to low income levels and precariousness.
- The high mobility of cultural workers and artists is accompanied by a lack of unified regulations or policy coordination regarding taxes, social security, minimum wage, recognition of diplomas, and related access to funding and up-to-date information on these issues.
- The digital environment has created specific challenges related to cultural production and distribution, monetisation and fair remuneration of digital activities, and maintenance of cultural diversity.
- Career transitions are common among artists, but there is a generalised lack of support beyond educational institutions.
- The sector is characterised by persistent inequalities and increased risk of exclusion related to gender, disabilities, ageism, racism and xenophobia. This is reflected in the trend towards digital homogeneity.
- Restrictions to freedom of artistic expression and precariousness endanger human rights protection.
- The atypical forms of employment of artists require specific policy responses to ensure social protection, career development and skills upgrading pathways, in particular in the face of the COVID-19 crisis.

### 2.1. Artists' Status

**The 1980 UNESCO Recommendation concerning the Status of the Artist** defines an 'artist' as "any person who creates or gives creative expression to, or re-creates works of art, who considers his [sic] artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not he is bound by any relations of employment or association."

**In the European Union, the coexistence of multiple definitions of 'artist' used by Member States hinders the implementation of the UNESCO Recommendation. There are five main**

**approaches to define 'artist'**, which may overlap.<sup>27</sup> Artists are defined: through membership of a recognised artist association; by a committee of experts or artistic peers (e.g. the Netherlands); by the taxing authority (e.g. Ireland); through artistic output (e.g. France and Ireland); by the nature of arts activity.<sup>28</sup>

**The status of the artist faces many specific challenges in the labour market.** Some Member States address them through omnibus legislation (e.g. Bulgaria and Germany); others provide legislation specifically targeting artists (e.g. Spain and Lithuania<sup>29</sup>); others also address this issue with cultural policies (e.g. The Netherlands<sup>30</sup>). The continued relevance of this issue is confirmed by the political attention that it recently received in several Member States. For example, it was referenced in the 2020 Belgian government agreement,<sup>31</sup> while the Committee on Culture of the Italian Senate asked the government to take action on this respect<sup>32</sup>. It is more and more recognised that dedicated laws relating to the status of the artist provide the latter with a greater level of importance<sup>33</sup>.

**COVID-19 foregrounded the impact of these complexities on the status of the artist and accelerated pre-existing trends.** For the purpose of the social security system, authorities should not only recognise an artist as such but also recognise that such an individual works as an artist for a living. During the pandemic, many artists working in the EU found it difficult to prove their working status and hence their eligibility for unemployment and other benefits.<sup>34</sup> The solution suggested in the 2007 EP Resolution to establish a Europass-type register of artists<sup>35</sup> would fall short to address structural challenges that have emerged since then, that have been reinforced by the pandemic and that might continue to intensify. These include: unprecedented income loss, growing precariousness, inequalities, social fractures marginalisation, and increased social polarisation.<sup>36</sup>

## 2.2. Working conditions

### *- Key Features of Artistic Work*

Compared with the wider labour market, **artists and cultural workers are more often self-employed than other workers are.** Self-employment is higher in the sector (33%) than in employment for the total economy (14%).<sup>37</sup> **Due to their very specific characteristics, such forms of employment raise several following issues:** access to support measures is a challenge, as programmes are ill-adapted to these hybrid forms of employment<sup>38</sup> and it is common for a self-employed cultural workers to lack access to safety nets, which reduces their resilience. In addition, official statistics in their current form do not capture the second jobs or voluntary work which are

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<sup>27</sup> Panteia (2020), The status and working conditions of artists and cultural and creative professionals, p. 45. based on SKKD (2013) Status of the Artist. Working Document for a General International Debate.

<sup>28</sup> For a summary of the main legislation implemented by Member States to provide a degree of status to artists, see Panteia (2020) op.cit. 46.

<sup>29</sup> Panteia (2020), op cit., p. 49.

<sup>30</sup> Panteia (2020), Ibid, p. 97.

<sup>31</sup> Government of the Kingdom of Belgium (2020), L'accord de gouvernement, p. 45.

<sup>32</sup> Senato della Repubblica (2020), Parere Approvato Dalla Commissione Sull'Atto N. 572. Legislatura 18ª - 7ª Commissione permanente - Resoconto sommario n. 189 del 06/10/2020.

<sup>33</sup> Panteia (2020), op cit, p. 45.

<sup>34</sup> Panteia (2020), Ibid, p. 51.

<sup>35</sup> European Parliament (2007), European Parliament resolution of 7 June 2007 on the social status of artists.

<sup>36</sup> IDEA Consult, Goethe-Institut, Amann S. and Heinsius J. (2021), op cit. pp.39-40.

<sup>37</sup> Panteia (2020), op.cit, p. 18.

<sup>38</sup> OECD (2020), [Supporting livelihoods during the COVID-19 crisis: Closing the gaps in safety nets.](#)

also very present in the cultural and creative sectors, thus not showing the real size of cultural employment and the importance of the CCS.<sup>39</sup>

Moreover, most cultural organisations and companies are small- and medium-sized (over 90%).<sup>40</sup>

**Artists and cultural workers are more likely to work part-time, not to have an open-ended contract, to combine employment and self-employment** in several countries throughout their careers, and in other sectors (services, education, etc). **Therefore, they often have atypical work patterns** differing from the traditional model of full-time, open-ended contracts with one employer. Such work patterns are particularly frequent among “artists, writers, creators, musicians, translators and interpreters”<sup>41</sup>, who often shift between “casual or part-time employed, self-employed, unemployed (with or without unemployment benefit) and engaged in unpaid activities such as volunteer work, retraining, study and family life.”<sup>42</sup>

Although the 2007 EP resolution acknowledges the need to improve the situation of artists regarding contracts and social protection, structural changes to the labour market since the adoption of the resolution and the pandemic situation **create the need for a revision of its demands**. In particular, **the pandemic exacerbated the difficult financial situation faced by many artists and cultural creators**, whose atypical positions have required the creation of special emergency support lines in several Member States (e.g. Portugal and Italy).<sup>43</sup>

#### - Precarious work

Artists and cultural workers tend to have more advanced education levels than workers in other sectors. As a result, they are **often both precarious and highly qualified**<sup>44</sup>. Moreover, “different patterns can exist within each sub-sector, highlighting a rather **fractured labour market**”<sup>45</sup> with a great disparity of needs according to each sub-sector.<sup>46</sup>

Several factors explain the precariousness of artists. These include the **non-standard nature of their working conditions, status and income**, the unpredictability of the end product of artistic work as well as its reception, the fact that artistic creation is both time- and labour-intensive, business models driven by artistic excellence and other societal values rather than market goals<sup>47</sup>, and high cross-border mobility (which includes atypical situations that aren’t easily translated into pre-existing categories associated with visas, social protection or taxation). A further aspect is the passionate dedication of many to their craft, as well as high levels of market competition in the

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<sup>39</sup> OECD (2020), [Culture shock: COVID-19 and the cultural and creative sectors](#).

<sup>40</sup> Ernst & Young (2021), op. cit., p. 4.

<sup>41</sup> Panteia (2020), op cit, p.19.

<sup>42</sup> Panteia (2020), Ibid, p. 20.

<sup>43</sup> Panteia (2020), Ibid, pp. 117-118.

<sup>44</sup> This is evident, for example, in a 2019 survey of members of the European Federation of Film Directors and the Federation of Screenwriters in Europe, as well as other stakeholders, focused on their earnings and working life. The survey discovered that at least 80% of directors, screenwriters and other audiovisual authors have a higher education degree. However the study also uncovered concerns about job insecurity, instability of income and poorly paid or even free work. See Willekens, M., Siongers, J., Pissens, L. and Lievens, J. (2019), European survey on the remuneration of audiovisual authors, pp.10 and 86.

<sup>45</sup> Panteia (2020), op. cit, p.20.

<sup>46</sup> See On the Move (2019), Operational study: Mobility Scheme for Artists and Culture Professionals in Creative Europe countries i-Portunus, pp. 42-44 and European Commission (2017) Mapping creative value chains: A study on the economy of culture in the digital age, pp. 12-13.

<sup>47</sup> Rex, B., Kaszynska, P., Kimbell, L. (2019), Business Models for Arts and Cultural Organisations: Research Findings from Creative Lenses.

sector, which may mean that creative workers will accept work for low or even no pay, hoping that it may lead to other opportunities.

The 2007 EP resolution acknowledges that the situation of artists is sometimes precarious. However, none of its suggestions would directly address this issue.

### - Social Security

Artists in regular employment tend to have access to the general rules and schemes available “for the purposes of health care, insurance, income interruption and pensions”.<sup>48</sup> However, the combination of freelance and self-employed working arrangements on the one hand, with the particularities of artists’ employment on the other, often result in their **difficult access to social security**.<sup>49</sup>

For self-employed artists, **some Member States apply the general provisions** on social security applicable to all self-employed workers, others **have specific rules and schemes for self-employed artists, and others adapt** existing public social benefits schemes to account for an artist’s unique circumstances. Other **Member States developed or sponsored a comprehensive parallel programme**, implement special provisions, or support implementation of complementary non-State systems.<sup>50</sup> For example, Germany has one of the most comprehensive social security systems for self-employed artists, covering health and pension insurance.<sup>51</sup>

Therefore, **the ability of artists to benefit from unemployment benefit regimes** or other support **differs significantly between Member States**. For example, France and Belgium have an employment benefit regime specific to the performing arts sector, while the Swedish alliance system is established by social partners and co-financed by the Ministry of Culture, to ensure that freelance theatre, dance and music professionals between engagements continue to receive a wage.<sup>52</sup> Some Member States have no specific social security measures targeted at artists (e.g. Denmark, Italy, Malta, Romania).<sup>53</sup> **These difficulties are associated with** the increasing use of **short-term contracts and self-employment**<sup>54</sup> and the fact that artists and creative professionals are often contracted for less time than they work.<sup>55</sup>

Moreover, **general social security systems do not meet the needs of professional artists**. To give some examples, benefits such as unemployment insurance or pension funds require meeting specific pre-defined criteria (which differ from country to country); artists’ income is often below the minimum required by pension schemes; pension calculations exclude some types of income (e.g. from copyrights); occupational and employment injuries are not always recognised; the calculation

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<sup>48</sup> Panteia (2020), op.cit., p. 56.

<sup>49</sup> Panteia (2020), *ibid.*, 56.

<sup>50</sup> For details regarding these schemes, see the Compendium of Cultural Policies and Trends.

<sup>51</sup> The artist’s share corresponds to the employee’s share in the statutory social insurance (i.e. 50%), while the so-called user’s share (30%) corresponds to the employer’s share. Finally, a federal subsidy covers another 20% of the contribution. For more regarding the German scheme, see Touring Artists (no date), The Artists’ Social Security Fund.

<sup>52</sup> Panteia (2020), op.cit., 61.

<sup>53</sup> Panteia (2020), *ibid.*, p. 63.

<sup>54</sup> EuroFIA (2014) Survey on the Situation of Work-Life Balance in the Audiovisual and Live Performances in Eight European Countries.

<sup>55</sup> Panteia (2020), op.cit., p 9.

of benefits does not always recognise periods of research or training; and, finally, there is often the assumption that artistic work is always available on the labour market.<sup>56</sup>

These challenges are intensified by **the fact that self-employed artists have to cover their own taxes and social security contributions or pay into guaranteed income schemes.** Moreover, universal public benefit schemes often require significant and regular contributions. Additionally, **different national social security systems remain uncoordinated, which creates added difficulties in the case of cross-border mobility.**<sup>57</sup>

The 2007 EP Resolution acknowledges the difficulties faced by artists who have short-term employment contracts to access social security and other workers' rights, as well as to obtain visas and work permits.

#### - Taxation

Taxation rules create several challenges for artists and cultural workers.<sup>58</sup> First, although artist mobility is a regular occurrence in the EU, **the EU has no competence to legislate on direct tax** since taxation remains a responsibility of Member States. To avoid double taxation, there are national tax rules and bilateral tax agreements coordinated by the OECD. Its Model Tax Convention allocates rules for various types of income. In the case of artists, the most important are Article 7 for business profits and self-employed income, Article 12 for royalties, Article 15 for employment income and Article 17 for entertainers.<sup>59</sup>

Moreover, **artists working cross-border encounter other difficulties**, e.g., due to having multiple employment status, "the (total or partial) absence of deductions for business expenses; the continued tax placed on irregular income (...), the status of royalties and copyright compensation as 'income'."<sup>60</sup> **This complex legal context, combined with the absence of an EU-wide approach to taxable performance income**, calculation of taxable income, rules on deductibility of business expenses, withholding tax rates and income tax returns<sup>61</sup> **may lead both to excessive taxation and to a discriminatory application of legislation.** Moreover, artists mention their inability to engage in income averaging in several Member States as another major difficulty, as are administrative and linguistic barriers, and difficult access to clear information regarding this topic.<sup>62</sup> Finally, although Value Added Tax (VAT), which is taxed when goods or services are sold, has been mostly harmonised in the EU by the VAT Directive (Directive 2006/112/EC), it nonetheless provides room for interpretation.<sup>63</sup>

The 2007 European Parliament resolution states that there is a continued need for easier access to coherent and comprehensive measures regarding artists' social security, sickness insurance, taxation, unemployment, health and pensions.

<sup>56</sup> Panteia (2020), *Ibid*, p. 55. One should also note that in 1990 the European Commission launched MISSOC, the "Mutual information system on social protection", to allow for the exchange of information on social protection in Europe.

<sup>57</sup> See European Union (2004), Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and IGBK (2010), Experts' Workshop on Social Security of Visual Artists in Europe.

<sup>58</sup> For Tax measures impacting self-employed artists and creative professionals in EU Member States, p.71.

<sup>59</sup> EFA/Pearle\* (2016a) *The Ultimate Cookbook for Cultural Managers - Artists Taxation of in an International Context*, p. 38.

<sup>60</sup> Panteia (2020), *op. cit.*, 79.

<sup>61</sup> Panteia (2020), *Ibid*, p. 79.

<sup>62</sup> Panteia (2020), *Ibid*, p. 80.

<sup>63</sup> Panteia (2020), *Ibid*, p. 82.



Considering the remaining challenges associated with the taxation of artistic work, the 2007 EP Resolution, which calls on Member States to adopt or apply coherent and comprehensive measures supporting direct and indirect taxation of creative activity, remains relevant.

### 2.3. Mobility

**Artists and cultural and creative professionals engage in a high degree of cross-border mobility.** This is key in the career development of many of them for several reasons (e.g. educational, capacity-building, networking, or economic purposes<sup>64</sup>), particularly in the live performance sector but not only. In this context, the sector faces transversal needs such as “the freedom from bureaucratic procedures, the need for mobility to be bi- or multidirectional, and the need for mobility to be integrated across all working processes.”<sup>65</sup> However, each sub-sector (e.g. visual arts, performing arts, music, literature, architecture, cultural heritage) has specific needs in terms of focus, timing, duration and need for support.<sup>66</sup>

**The sector witnesses a trend towards increasing cross-disciplinary partnerships and collaborations with non-artistic or other actors,** as well as the mainstreaming of mobility in the work of cultural organisations – as is evident in the development of international cultural projects and cross-border cultural cooperation projects.<sup>67</sup>

The characteristics of **mobility patterns vary widely.** They can be short-term or, in what is increasingly frequent, longer-term.<sup>68</sup> **Workers can be mobile in different ways:** by becoming employees in organisations in another EU country; they can be ‘posted’ with an organisation when it works in other EU countries or ‘self-posting’ in the case of a self-employed; they can also take up a contract as a self-employed person in another EU country. **Such statuses often overlap, particularly in the field of live performance.**<sup>69</sup> Furthermore, **artistic and cultural organisations and companies can also be highly mobile** (e.g. drama companies, dance companies and orchestras).

**Obstacles to mobility usually derive from the fact that rules, regulations and administrative requirements differ between countries.** Even where the EU has the competence to coordinate rules or procedures, differences between Member States make mobility particularly difficult. **Lack of information**<sup>70</sup> regarding applicable legislation, opportunities and resources also hinders artists’ mobility.<sup>71</sup> This is accompanied by other **limitations and obstacles: legal and administrative barriers, the atypical work force, and geographic imbalances.**<sup>72</sup> It is a positive step that the

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<sup>64</sup> Panteia (2020), *Ibid*, p. 23.

<sup>65</sup> On the Move (2019), Operational study: Mobility Scheme for Artists and Culture Professionals in Creative Europe countries i-Portunus, p. 32.

<sup>66</sup> On the Move (2019), *Ibid*, pp. 42-44.

<sup>67</sup> Panteia (2020), *op.cit.*, 23.

<sup>68</sup> Panteia (2020), *Ibid*, p. 24.

<sup>69</sup> Panteia (2020), *Ibid*, p. 24.

<sup>70</sup> This is addressed in a recent guide. See MobiCulture (2020) Zone Franche. Guide Pratique des Visas.

<sup>71</sup> See EFA/Pearle\* (2016a) and EFA/Pearle\* (2016b), two information brochures created by Pearle\*-Live Performance Europe (Performing Arts Employers’ Associations League Europe) and EFA to support cross-border mobility in relation to Schengen visa, taxation, VAT, social security and copyright.

<sup>72</sup> On the Move (2019), Operational study: Mobility Scheme for Artists and Culture Professionals in Creative Europe countries i-Portunus, pp. 28-30.

Mobility Information Points (MIPs)<sup>73</sup>, provide information and assistance to artists and cultural workers living in or planning to travel to different countries.<sup>74</sup> **Access to funding**, in relation to which there are major discrepancies in Europe, is another key difficulty.<sup>75</sup>

**Mobility also impacts social security.** Despite the unity of legislation principle<sup>76</sup>, which aims to provide for the elimination of double payment of social security contributions<sup>76</sup>, and the principle that “entitlement to social security benefits is linked to the obligation to pay contributions to the social security system related to the occupation an artist is holding”<sup>77</sup>, **the coexistence of different systems and rules leads to administrative difficulties.** To address them, the EU established five principles: equality of treatment; equality of benefits, income, facts or events; aggregation of periods; single applicable legislation; exportability.<sup>78</sup>

The 2007 EP resolution recognises mobility as a key characteristic of artistic activity. **To support and facilitate it, the resolution calls on Member States to recognise diplomas and other qualifications issued in Member States and third countries. The Resolution also calls for a recognition of the difficulties associated with the issuing of visas** to European and third-country artists – a particular challenge for artists with short-term employment contracts<sup>79</sup>. Specifically, it calls on the Commission to consider the introduction of a specific temporary visa for European and third-country artists. It also **asks the Commission to promote mobility for European arts students** and to provide funding for measures and pilot projects of models for art education, which could take the form of a European mobility fund similar to Erasmus for the exchange of teachers and young artists. On the topic of mobility, the resolution also calls for “measures to ensure the transfer of pension and welfare entitlements acquired by artists from third countries to their countries of origin and between Member States.”

**Although the pandemic paused physical mobility**, the urgency of the issue of visas for artists remains and even gets new centrality after the UK’s withdrawal from the EU and the missing chapter concerning individual mobility in the new EU-UK Trade and Cooperation Agreement.<sup>80</sup>

The recognition of artistic diplomas and qualifications remains a challenge – as does the lack of EU-wide approaches to arts education and training. Moreover, additional sanitary conditions add to the complexity of visa application procedures.<sup>81</sup>

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<sup>73</sup> MIPs ‘are information centres and/or websites that tackle administrative challenges that artists and cultural professionals can face when working across borders

<sup>74</sup> This initiative follows recommendations at the European level, particularly European Commission (2011), Information Standards for the Mobility of Artists and Cultural Professionals. Expert Group on Mobility Information Standards Convened by the European Commission. Other relevant policy documents at EU level can be found at <http://on-the-move.org/librarynew/policyandadvocacy/87/eu-documents/>

<sup>75</sup> On the Move (2019), *Ibid*, pp. 46-58.

<sup>76</sup> Panteia (2020), *op cit*, p. 63.

<sup>77</sup> Panteia (2020), *Ibid*, p. 63.

<sup>78</sup> See European Union (2004), Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

<sup>79</sup> On this topic, see On the Move (2012), Artists’ mobility and visas: a step forward. Final report of On the Move’s workshop on artists’ mobility and Schengen visa

<sup>80</sup> European Commission (2020c), Trade and Cooperation Agreement Between the European Union and the European Atomic Energy Community, of the One Part, and the United Kingdom of Great Britain and Northern Ireland, of the Other Part.

<sup>81</sup> See, for an example, <https://beursschouwburg.be/nl/events/the-power-of-the-fragile/>.

## 2.4. Income and fair remuneration

### - Nature of income

**Artists earn their income in many ways; both regular employment and, in many cases, income from self-employment.** Unfortunately, there are instances where, this might mean “a particular payment for a single performance through an arbitrary lump sum (...) rather than a pre-arranged and negotiated fee”<sup>82</sup> or even in-kind payments.

Additionally, the source of income of artists is often dependent on the sector or occupation within a sector and fluctuates greatly. For instance, authors tend to benefit from royalties, advances and copyright earnings; moreover, “median incomes are higher in film, music and the performing arts, and consistently lower in visual art and literature”.<sup>83</sup> Moreover, **some artists are often willing to engage in unpaid work**, which is used by some employers not to provide employees with fair remuneration.<sup>84</sup>

As a result and **despite the diversification of employment patterns of artists and cultural workers** (described earlier), **accompanied by non-standard working practices and multiple sources of income, artists often have low income levels**<sup>85</sup>. This has been accentuated by the deterioration of relative incomes<sup>86</sup> and the diminished opportunities for stable employment (e.g., in the music sector, where state funding in many Member States decreased considerably following the 2008 crisis).<sup>87</sup>

### - Fair remuneration

On the topic of fair remuneration, it should be noted that “**artists and creators receive two types of remuneration: salary and copyright**”.<sup>88</sup> However, for many artists the income from the latter is insignificant or non-existent, a trend that has been reinforced by the digital transition. Therefore, this section should be read in conjunction with the section on artists and the digital environment and the challenges of the streaming platforms for both the music and audiovisual sector. One should also take into consideration the fact that “overall growth and cross-sectoral innovation trends are **not translated into fair remuneration systems** within the sector”.<sup>89</sup>

**Artists increasingly require strong copyright protection and new mechanisms to ensure fair remuneration for the use of their work.** This is particularly evident in the music sector, which has been changed by digitalisation, leading to profound transformations in musicians’ sources of income. In practice, it is now difficult for most musicians to earn a living through music. In this context, piracy remains a particular challenge in some Member States: “The average Internet user in the EU accessed pirated content 9.7 times per month in 2018, ranging from almost 26 times per month in Latvia and Lithuania to less than 4 times per month in Finland”.<sup>90</sup>

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<sup>82</sup> Panteia (2020), op cit, p. 91.

<sup>83</sup> Panteia (2020), Ibid, p. 91.

<sup>84</sup> Panteia (2020), Ibid, pp. 92-93.

<sup>85</sup> FERA & FSE (2018), If the culture industries are so successful, why are so many artists poor?

<sup>86</sup> This refers to the earnings of some workers in relation to average incomes in their sectors.

<sup>87</sup> Panteia (2020), Ibid, p. 90.

<sup>88</sup> UNESCO (2020), Culture in Crisis: Policy guide for a resilient creative sector, p. 15.

<sup>89</sup> IDEA Consult, Goethe-Institut, Amann S. and Heinsius J. (2021), op cit., p. 19.

<sup>90</sup> Panteia (2020), op.cit., p. 96.

On this topic, Directive 2019/790 on Copyright and related rights in the Digital Single Market (hereinafter, DSMD) has taken a significant step. The directive establishes a set of harmonised mandatory principles and rights to strengthen the contractual position of authors and performers, and the principle of fair remuneration (Article 18) obliges national legislators to implement those mechanisms while also adjusting them to different sectors. The provisions in Chapter III of the directive should empower authors and performers and their unions to step up their fight against buy-out contracts and promote fair standards in the music and audiovisual industries. The directive references collective bargaining as a mechanism in achieving fair remuneration in exploitation contracts for authors and performers. This opens a significant door for unions in the cultural and creative sectors to achieve better return for workers in the sector for online use of their work through collective bargaining.

For this reason, it is all the more urgent to address the obstacles to collective bargaining discussed in the following section.

This said, statutory residual remuneration rights<sup>91</sup>, which are paid by users/licensees remain an effective mechanism to secure fair remuneration.<sup>92</sup> Among others, the European Parliament Cultural Creators Friendship Group (CCFG) has expressed their support in an Open Letter on Article 18, which calls for the effective implementation of the article to guarantee the fair remuneration of authors and performers for the use of their work on streaming services.<sup>93</sup> Member States have until 7 June 2021 to implement the Directive's provisions in their national legislations (Article 26).

The topic of fair remuneration also remains key in the visual arts sector, especially regarding the subject of exhibition remuneration rights.<sup>94</sup>

#### - Freedom of Association and Collective Bargaining

As the previous section noted, salary or income from work is the main source of livelihood for many operators in the cultural and creative sectors. In this context, ensuring decent pay that values the sector's highly qualified workers and, for example, remunerates preparation and rehearsal time, is key to ensure sustainable income levels for those working in the sector.

The 1980 UNESCO Recommendation recognises the rights of artists to be organised in trade unions or professional organisations. Reflecting this principle, wages are sometimes negotiated through collective bargaining between social partners (management and workers) in multiple sectors, including the cultural and creative sectors and across Europe. Those **collective agreements create a level playing field** for all those working in the particular sector and include often also other additional agreements, such as on training or pensions.<sup>95</sup>

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<sup>91</sup> They are "granted by law as unwaivable (and inalienable) rights to receive remuneration subject to collective management (mandatorily, if necessary) and paid by users/licensees" – see Xalabarder, R. 2020, The Principle of Appropriate and Proportionate Remuneration for Authors and Performers in Art.18 Copyright in the Digital Single Market Directive, p.1.

<sup>92</sup> Xalabarder, R. (2020), *ibid.* On this topic, also see Xalabarder, R. (2018). Audiovisual Authors' Right to Equitable Remuneration for the Exploitation of their Artworks.

<sup>93</sup> ECGFG (2020), Open Letter on Article 18.

<sup>94</sup> IGBK (2018), Exhibition Remuneration Right in Europe. For other relevant discussions, see the Flanders Arts Institute (see <https://www.kunsten.be/en/research/socio-economic-position-of-the-artist/werkomstandigheden-en-fair-practices/>) and the new 'Paying the artist' policy of Arts Council Ireland (see <https://visualartists.ie/paying-the-artist-the-arts-council-publish-new-policy/>).

<sup>95</sup> For more on the EU's approach to sectoral social dialogue, see European Commission (2010) Commission Staff working Document on the functioning and potential of European sectoral social dialogue.

A 2015 Study on the Remuneration of Authors and Performers, commissioned by the DG Communications Networks, Content and Technology (CNECT) of the European Commission, picked up on the particular role of trade union membership and collective bargaining in reducing asymmetries and improving the position of authors and performers. It noted that: “A measure at national or EU level that could contribute to the reinforcement of the authors’ and performers’ contractual position vis-à-vis the exploiters, and to reduce information asymmetries in particular, could be to create a more conducive environment to support the role of trade unions. Trade unions can indeed support authors and performers in at least three different ways that are most useful for securing remuneration: supply of information, collective negotiation and enforcement.”<sup>96</sup>

Thus, it was clear that the study’s authors considered that where it exists, collective bargaining and trade union membership delivers benefits for these workers. As mentioned previously, collective bargaining is referenced as a mechanism in achieving fair remuneration in exploitation contracts for authors and performers in the new European copyright directive.<sup>97</sup>

However, the high levels of freelancing and self-employment in the sector, including in professions where employment contracts were formerly common, has resulted in the emergence of a **new obstacle to collective bargaining, due to the application of competition rules to collective agreements for self-employed workers**. This has implications for rates of pay.<sup>98</sup>

The application of competition rules, designating such self-employed workers as undertakings, means that they are not eligible to be represented by their trade unions in collective bargaining, as this would constitute price-fixing. In many instances, the competition authority further warned unions not to recommend any minimum rates to members. Thus, individuals engaged on a self-employed contract could be engaged at rates below those that unions and employers had previously jointly established as a fair minimum, also undermining the rates themselves. While not all competition authorities in the EU have targeted collective bargaining agreements in the sector covering self-employed workers, the instances that have arisen have exerted a chill effect on collective bargaining generally.

Recognising the impact of digitalisation and other changes in the labour market, **the Commission has recently launched a roadmap on collective bargaining agreements for the self-employed**.<sup>99</sup> Its aim is to define the scope of application of EU competition law to support the improvement of working conditions of the self-employed through collective bargaining agreements. This initiative could finally remove the competition law obstacle to collective bargaining on behalf of cultural and creative workers by their representative unions, ensuring that social partners may engage to develop fair minimum floors for a sustainable sector.

The European social dialogue plays an important role in fostering and promoting collective bargaining and social dialogue, also at the Member State level. Social partners are recognised to undertake collective bargaining on wages and working conditions, which is rooted in the EU Treaty and national legislation.

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<sup>96</sup> IVIR, Europe Economics (2015), Remuneration of Authors and Performers, p. 149.

<sup>97</sup> Also see ETUC (2019), New Trade Union Strategies for New Forms of Employment.

<sup>98</sup> For more on the challenge of establishing collective bargaining rights by atypical workers, particularly in the live performance and audiovisual sectors, see FIA (2016), The Future of Work in the Media, Arts and Entertainment Sector: Meeting the Challenge of Atypical Working, pp. 34-50.

<sup>99</sup> European Commission (2020) Collective bargaining agreements for self-employed – scope of application EU competition rules.

The EP 2007 resolution does not mention freedom of association or collective bargaining.

### - Grants and Subsidies

**One of the main issues facing artists and cultural and creative workers is access to external sources of finance, i.e. grants.** Indeed, a 2019 survey confirmed the perception that grants are the most effective public source of finance in the cultural and the creative sector, followed by capacity building.<sup>100</sup> **Nevertheless, accessing such grants is often challenging.**<sup>101</sup>

Traditionally, **the other main external source of finance for individual artists is direct subsidies in the form of grants. The aim of subsidies is multiple:** support artistic and cultural value in careers and works, and/or social or economic values – whose importance is recognised and supported by public authorities through the allocation of funding. However, **the financial crisis led to a significant reduction of countries' budgets for culture.**

Grants and subsidies also impact the situation of artists in other ways: shrinking cultural budgets, rapidly changing priorities following short-term trends (which rarely privilege artistic value), their politicisation in many countries, a focus on outcomes rather than on processes, a focus on footfall (which does not fit the business models in many CCS), a trend towards project-based or even event-based funding. Paradoxically, grants may also incentivise low-pay by encouraging ambitious outcomes without ensuring decent pay.

Despite the many emergency funding and measures that were put together in response to the pandemic,<sup>102</sup> COVID-19 revealed the dependency of artists on such short-term funding, which contributes to their precariousness and economic fragility.

The EP 2007 resolution does not mention grants or subsidies.

### - Loans, guarantees

**In the case of some cultural and creative sectors, such as film production, the most important external sources of finance are loans or guarantee schemes.** However, the self-employed and small enterprises in the cultural sector, as well as artists and other cultural and creative professionals, often describe the **difficulty of accessing loans from banks.**<sup>103</sup> Moreover, loans do not suit all types of cultural activity – e.g. in the performing arts they rarely work.<sup>104</sup>

**The cultural and creative sectors also make use of private funding.** This may take the form of **debt finance, peer-to-peer lending<sup>105</sup> and, increasingly, guarantee schemes.** The latter are divided into two categories: “public guarantee schemes for small and medium enterprises (SMEs), and public-private guarantee instruments intended specifically for the creative sectors”.<sup>106</sup>

<sup>100</sup>Amann, S., De Voldere, I. (2020).

<sup>101</sup> Panteia (2020), op cit., 96.

<sup>102</sup>Such financial measures have been compiled by the Compendium and can be found at <https://www.culturalpolicies.net/covid-19/comparative-overview-financial>. Also see the CAE&ECF (2020), COVID-19 Solidarity and Emergency Response in Europe in Arts, Culture, Cultural heritage and Creative Sectors, Available at: <https://cultureactioneurope.org/files/2020/06/CAE-ECF-mapping-COVID19.pdf>

<sup>103</sup> Panteia (2020), op. cit., p. 96.

<sup>104</sup> European Commission (2017), Mapping creative value chains: A study on the economy of culture in the digital age”.

<sup>105</sup> Panteia (2020), op. cit., p. 99.

<sup>106</sup> Panteia (2020), Ibid, p. 103.

The EP 2007 resolution does not mention loans or guarantees.

## 2.5. Artists and the digital environment

### - Copyright

**The digital environment has changed distribution channels.** This is particularly evident in the music sector. "In 2016, digital music revenues in the music market grew by 17.7%, driven by a sharp 60.4% increase in the share of streaming revenues. This was the first time that digital revenues made up 50% of the recorded music market".<sup>107</sup> This trend has been accompanied by that of market concentration. **However**, despite more people listening to music and consuming cultural content online than ever, **many musicians and other artists find it hard to earn a living.**

**This suggests the need to improve copyright laws<sup>108</sup> or their implementation as, despite the steep increase in Video On Demand (VOD) consumption due to COVID-19, rewards to creators remain reduced.** Moreover, increased subscription revenues will not offset the drop in other income sources. For example, in 2019, only 21% or EUR 2.1 billion of creators' income represented online sources.<sup>109</sup>

Moreover, **cross-national taxation remains an issue.** "When the visual artist receives royalties from copyright from the other country, this income will most often be taxable under the national tax rules of the other country, but it depends on Article 12 of the bilateral tax treaty whether the source country can use this taxing right".<sup>110</sup> In addition, the lack of payment of royalties to authors involved in the films and series that are made available through on-demand services is **a problem that pre-existed the pandemic.** Furthermore, "copyright-dependent revenues that were not collected during the crisis in 2020 due to curfews, closures and other health restrictions will be lost in 2021".<sup>111</sup> Therefore, the lack of revenue pay-outs will affect workers and the self-employed beyond 2020.<sup>112</sup>

The 2007 EP resolution called on Member States to organise the payment of all equitable compensation in respect to copyrights, and urged the Commission to analyse if Member States effectively do so. These proposals remain relevant.

### - Changes created by the digital environment

The digital environment has created many changes that influence the work of artists and cultural workers both directly and indirectly. Among them, **the digitisation of the sector has resulted in major increases in the volume of data that circulates on the Internet.** In the case of film, one should note **the expansion of VOD (video on demand) platforms.**

Digitisation has also **accelerated the modernisation of sub-sectors such as books, music, film and video games.** Analogue industries have been digitised while the creation of digital content has been encouraged (e.g. in France in the field of music and in Slovakia in the film and audiovisual sector<sup>113</sup>). **The digital transformation has also impacted the infrastructure of libraries and museums.** In Europe, there are several national projects to digitise and aggregate multimedia

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<sup>107</sup> UNESCO (2018). Reshaping cultural policies: advancing creativity for development, p. 69.

<sup>108</sup> Panteia (2020), op. cit., p. 95.

<sup>109</sup> CISAC (2020), Covid-10: Crisis, Resilience, Recovery. CISAC Global Collections Report 2020.

<sup>110</sup> EFA/Pearle\* (2016a), op.cit, p. 33.

<sup>111</sup> Ernst & Young (2021), op. cit., p. 36.

<sup>112</sup> European Audiovisual Observatory (2020b) The European audiovisual industry in the time of COVID-19, p. 6.

<sup>113</sup> UNESCO (2018), op. cit., p. 43.

content.<sup>114</sup> Museums have also held initiatives to digitise and organise online collections. **In particular, the impact of digital transformation on the performing arts has been significant.**<sup>115</sup>

Additionally, although **digitisation has reduced costs and working times**, which has benefited new entrants in particular, artists and cultural workers still encounter challenges associated with regulations that are not always adapted to their way of working.

More broadly, **the digital environment has had a profound impact on the cultural value chain, which is "being transformed from a pipeline-like configuration to a network model"**.<sup>116</sup> While in the analogue model each cultural actor was associated with one of the four classic stages (creation, production, distribution and access, participation) arranged in a pipeline, in the digital model they are a network of nodes that overlap and interact.<sup>117</sup>

Creators have been impacted negatively by the pandemic in unequal ways. That is to say, the pandemic aggravated an existing "skewed level-playing field".<sup>118</sup>

The 2007 EP resolution does not mention this topic.

## 2.6. Careers paths and development

The pathways of career development of artists and cultural workers differ significantly. **A minority of them has a steep career path; however, most struggle.**<sup>119</sup> Overall, **there are major differences between the CCS and the traditional economy** in terms of the career paths of artists and cultural workers. Specifically, "the level of entrepreneurship and its nature vary widely between Member States"<sup>120</sup>, and some entrepreneurs are also precarious.<sup>121</sup> This is namely because **many professionals privilege the intrinsic value of culture** or their own artistic development rather than economic growth or economic added value. Apart from the non-linear path, there is also the need for the development of practice, of new work, which is always a question of time. The latter could be covered by a grant, but in reality it is often not remunerated.

**Career transitions are common in the sector.** This is due to several reasons, such as artists reaching the limits of their physical capacities, changes in personal situations (e.g. family) or within sub-sectors (e.g. from dancer to choreographer, from TV series to film, skills development demanded by technological changes). To keep artists active, support for this transition is crucial.<sup>122</sup> This is acknowledged, among others, by the International Organization for the Transition of Professional Dancers and has also been a key area of work of the International Federation of Actors (FIA) in Europe which published a 2011 Handbook on Dancers' Career Transition<sup>123</sup>. Artists and professionals **can be supported** in their career changes with **information, financial support, and**

<sup>114</sup> See Europeana, a portal containing digitalised collections of thousands of institutions across Europe.

<sup>115</sup> IETM (2020), Live Arts in the Virtual World.

<sup>116</sup> UNESCO (2018), Ibid, p. 14.

<sup>117</sup> UNESCO (2018), Ibid, p. 76.

<sup>118</sup> CISAC (2020), Covid-10: Crisis, Resilience, Recovery. CISAC Global Collections Report 2020.

<sup>119</sup> Panteia (2020), op. cit., p. 11.

<sup>120</sup> Panteia (2020), Ibid, p. 101.

<sup>121</sup> EU (2018), OMC Report – The role of Public Policies in Developing Entrepreneurial and Innovation Potential of the Cultural and Creative Sectors, p. 36.

<sup>122</sup> Panteia (2020), op. cit., p. 106.

<sup>123</sup> FIA (2011), Handbook on Dancers' Career Transition.



**the provision of (continuous) vocational training** outside the structures of schools or institutions focused on initial career development.

**More broadly, there is a need for** “sector specific training, education and support programmes”,<sup>124</sup> that **pay attention to the full career lifespan of artists and cultural workers** and not simply newcomers on the labour market. Rather **“training, education and support has to become a lifelong possibility”**<sup>125</sup>. To give an example, this is already the case in Flanders, whose Social Fund for Performing Arts (managed by social partners) allows freelancers to follow training courses (for which up to 600 euros is foreseen)<sup>126</sup>.

The 2007 EP resolution states that “it is still practically impossible for an artist in Europe to contemplate a change in career direction”<sup>127</sup>. Since its publication, the CCS have changed profoundly. This has been exacerbated by COVID-19. A European-wide approach to careers path and development is widely considered as urgent to avoid permanently losing artists to entirely different economic and professional sectors.

## 2.7. Education and training

### - Artistic education

Artistic education is one of the main areas of focus of the 2007 EP resolution. It calls on Member States to facilitate the recognition in the European Union of diplomas and other qualifications issued by national conservatoires and arts academies so as to facilitate the mobility of artists.<sup>128</sup> The acknowledgement of this need has led to the creation of Creative Skills Europe, a platform where stakeholders from the European audiovisual and live performance sectors meet to adjust the sector training offer to the needs on the ground and facilitate access to training, among other issues.

Among other points, the resolution also called on the Commission **“to encourage and promote mobility for European arts students** by stepping up programmes for the exchange of students from national conservatoires and arts academies” and on both the Commission and on Member States to investigate **the possibility of creating an Erasmus-type European mobility fund for the exchange of arts teachers and young artists, as well as to step up training for arts teachers.**

A 2018 evaluation by the French Ministry of Culture of the use of Erasmus+ by cultural higher education institutions found that the positive impact of the programme (institutional openness, mobility of students, network building, diversification)<sup>129</sup> was not accessible to smaller institutions due to bureaucratic complexity. Moreover, they rarely made use of possibilities such as the mobility of educators and admin staff as well as strategic partnerships. This finding should be combined with the point, highlighted by the Operational Study of the i-Portunus pilot project<sup>130</sup>, that cultural sub-sectors differ in their needs.

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<sup>124</sup> Panteia (2020), op. cit., p. 117.

<sup>125</sup> Panteia (2020), Ibid, p. 107.

<sup>126</sup> Panteia (2020), Ibid, p. 108.

<sup>127</sup> European Parliament (2007), European Parliament resolution of 7 June 2007 on the social status of artists.

<sup>128</sup> European Parliament (2007), Ibid.

<sup>129</sup> Ministère de la Culture (2018), Évaluation du Programme Erasmus Plus dans les écoles nationales supérieures d'enseignement du ministère de la culture et contribution à l'élaboration d'un Erasmus de la culture.

<sup>130</sup> On the Move (2019), Operational study: Mobility Scheme for Artists and Culture Professionals in Creative Europe countries i-Portunus.

*- Lifelong training and retraining*

The **2007 EP resolution called on Member States to provide specialised training structures for those working in the sector** and to recognise rehearsal time as working time for unemployment and for pension purposes. It also urged the Commission to promote European cooperation and exchange as regards vocational training in the performing arts.

This remains relevant today. Despite the pandemic, both artists and funders/partners express their commitment to international artistic mentoring programmes.<sup>131</sup>

## 2.8. Equality and inclusion

*- Gender equality*

When considering jobs in the full CCS, 48% were held by women in the EU-27 (versus 46% in the broader European economy).<sup>132</sup> However, as the UNESCO report on the implementation of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions notes, **“a multifaceted gender gap persists.”** Women are “severely under-represented (...) in key creative roles”.<sup>133</sup>

The promotion of gender equality overlaps strongly with that of artistic freedom. **Women artists are often silenced based on their gender.**<sup>134</sup> Moreover, many suffer negative repercussions when they express their opinions on issues such as body positivity, sexuality or to challenge gender inequalities,<sup>135</sup> particularly when gender intersects with ethnicity, class and sexual identities. In this context, **the development of online platforms** presents new challenges. Women and LGBTQI artists are more often the target of attack as well as more vulnerable to restrictions. When artists are dependent on public and semi-public funding, **this may contribute to self-censorship** and, subsequently, to diminished diversity of expression. Finally, artistic freedom – the freedom to “imagine, create and distribute diverse cultural expressions free of governmental censorship, political interference or the pressures of non-state actors”<sup>136</sup> – is also central in innovation policy. “In order to allow the CCS to fully participate as innovation partners”<sup>137</sup>, but not only, it is therefore necessary **to ensure that the arm’s length principle remains at play** in cultural policies and funding.<sup>138</sup>

The **2007 EP resolution on the status of the artists does not mention gender equality.** However, the conclusions of the Germany Presidency regarding gender equality in the cultural and creative labour market recognised obstacles in terms of access, equal payment, representation and visibility, and invited the Commission to “support transnational initiatives on gender equality in the field of culture”,<sup>139</sup> in particular considering the gendered impact of the COVID-19 pandemic in the workforce.

<sup>131</sup> Staines, J. (2020), *Joining the Dots/Bridging the Gap(s). A reflection on the European Project In Situ Act (2016-2020)*.

<sup>132</sup> Ernst & Young (2021), *op. cit.*, p. 24.

<sup>133</sup> UNESCO (2018), *op. cit.*, p. 189.

<sup>134</sup> Freemuse (2018), *Creativity Wronged: How Women’s Right to Artistic Freedom is Denied and Marginalised*.

<sup>135</sup> Panteia (2020), *op. cit.*, p. 114.

<sup>136</sup> UNESCO (2019), *Brochure on Artistic Freedom* p.2.

<sup>137</sup> IDEA Consult, Goethe-Institut, Amann S. and Heinsius J. (2021), *ibid.*, p.112.

<sup>138</sup> UNESCO (2018), *op.cit.*

<sup>139</sup> Council of the European Union (2020). *Presidency conclusions on gender equality in the field of culture*.

- Creators with disabilities and accessibility

**Artists and creative professionals with disabilities face unique challenges:** art, culture and cultural policies often fail to consider disabilities; funding bureaucracy is particularly challenging for artists with disabilities; mobility is more difficult (in particular, independent travel may be difficult or impossible for artists with disabilities and having an accompaniment increases travel costs).<sup>140</sup> This results in a form of cultural exclusion that can only be addressed with active policies.<sup>141</sup> The 2007 EU Resolution does not mention this issue.

- Sexism, sexual harassment, ageism, racism and exclusion based on cultural background/ immigration

**When combined with hierarchies and power relations, gender inequality often takes the shape of sexism and sexual harassment** in the cultural and creative sectors, where it “seems to be more prevalent than in other economic sectors”.<sup>142</sup> This said, it might also be helpful to apply an intersectional approach here, since several social dimensions intersect and contribute to discrimination.<sup>143</sup>

**Young artists are particularly vulnerable** in the cultural and creative sectors. Artists under 30 are more likely to be unemployed. Many accept unpaid work to enter the labour market and subsequently struggle with staying in employment.<sup>144</sup> In this context, exploitative practices and working circumstances are common; this includes unstable contracts and unpaid salaries, which are generally accepted.<sup>145</sup>

Finally, artists are often subject to racism<sup>146</sup>, xenophobia, discrimination and exclusion – explicit or implicit – based on their origin, ethnicity and/or cultural background. Immigrant artists and cultural workers do not always share the same narratives or reference frameworks. Although comparative analyses are made difficult by the existence of uneven data collection processes regarding data on ethnic origin across Member States<sup>147</sup>, it is increasingly recognised that structural and institutional racism as well as other related issues, such as tokenism<sup>148</sup> and white privilege, are still regular occurrences. Institutions often harbour ingrained habits and views that make collaboration difficult.

- Amateur activities

The 2007 EP resolution states that one should distinguish between amateur and professional artistic activity. However it also argues for the need “to support all artistic and cultural activities targeted at those who are socially deprived” due to their importance “as a crucial element in bringing together local communities and in building a citizen's society”.<sup>149</sup> This is one of the reasons why it “urges the Member States to encourage and promote amateur activities”.<sup>150</sup> However, in doing so by reference to professional artists, the resolution establishes a hierarchy between such practices. The existence of such a hierarchy is increasingly questioned in the artistic, cultural and creative sector.

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<sup>140</sup> Panteia (2020), op. cit., p. 30.

<sup>141</sup> Disability arts international (2019) Disabled artists in the mainstream: a new cultural agenda for Europe.

<sup>142</sup> Panteia (2020), op. cit., pp. 28-29.

<sup>143</sup> Dent, T. (2020), Diversity, intersectionality and care in the UK screen sector.

<sup>144</sup> Panteia (2020), op. cit, p. 29.

<sup>145</sup> Panteia (2020), ibid, p. 29.

<sup>146</sup> UNESCO (2020b), Webinar - Art-Lab for Human Rights and Dialogue Special Edition, no page. and European Audiovisual Observatory (2020a). op.cit..

<sup>147</sup> Farkas, L. (2017), Analysis and comparative review of equality data collection practices in the European Union – Data collection in the field of ethnicity, p. 5.

<sup>148</sup> This term refers to actions that pretend to give advantage to groups that are treated unfairly in society.

<sup>149</sup> European Parliament (2007), European Parliament resolution of 7 June 2007 on the social status of artists.

<sup>150</sup> European Parliament (2007), Ibid.

Nonetheless, while valuing amateur practice and its vital place, it is also important to avoid spurring recourse to unpaid work in the sector, which has been touched upon above. A professional production using unpaid amateurs is another erosion of the value of their artistic work. Performers' unions have campaigned for "professionally made; professionally paid" as the best approach and campaigns such as #paythedancers have found resonance globally.

#### - Digital diversity

**There is progress in promoting and protecting the diversity of cultural expressions in the digital environment. Moreover, new technologies can contribute to the diversity of cultural expression.**<sup>151</sup> To give two examples, the EU's portal 'Your Voice in Europe' hosted public consultations on Creative Europe and, in 2013, the Slovakian Ministry of Culture set up a website that allowed artists, cultural professionals and the public to comment on the draft texts of the country's Cultural Development Strategy 2014–2020.

However, **this possibility coexists with the rise of big platforms, which "may represent a risk for diversity**, while also causing a growing drought of data in the creative ecosystem which may seriously affect decision making on public policies and leave local creative actors defenseless".<sup>152</sup> COVID-19 has reinforced these inequalities: major platforms severely increased their number of users and income while independent artists and creators had their income dramatically reduced. The 2007 EP resolution does not refer to the digital.

## 2.9. Human rights

#### - Artistic freedom

**According to UNESCO, artistic freedom** refers to the "freedom to imagine, create and distribute diverse cultural expressions free of governmental censorship, political interference or the pressures of non-state actors. It includes the right of all citizens to have access to these works and is essential for the wellbeing of societies".<sup>153</sup> This definition **includes the right to guarantee freedom of not only artistic expression but also artistic enjoyment and consumption.** This falls under the scope of the universal human right of **freedom of expression, which is enshrined in Article 27 of the Universal Declaration of Human Rights** and states that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".<sup>154</sup>

**Regarding EU legislation, Article 11 of the Charter of Fundamental Rights defines freedom of expression, which includes freedom to participate in cultural life and freedom of thought.** Additionally, the Constitutions of several EU Member States include provisions that enshrine the freedom of speech or expression. However, Governments and courts have the right to limit them based on the principles of necessity and proportionality. This has led to the use of **public morality as a justification for the restrictions of artistic expression.** For example, the "Italian Constitution states that publications, performances, and other exhibits offensive to public morality shall be prohibited".<sup>155</sup> Such restrictions can result in censorship and persecution.

<sup>151</sup> UNESCO (2018), op. cit.

<sup>152</sup> UNESCO (2018), *Ibid*, p. 83.

<sup>153</sup> UNESCO (2018), *Ibid*, p. 211.

<sup>154</sup> UN (1948), The Universal Declaration of Human Rights.

<sup>155</sup> Panteia (2020), op. cit., p. 111.

A 2020 report by Freemuse listed the imprisonment of 71 artists, including 42 in Europe, and stated that government authorities were often found to be violators of artistic freedom.<sup>156</sup> It also identified **the main ways how artistic freedom is challenged**. This includes: the use of anti-terrorism legislation to silence political dissent, artistic representation of religious doctrines and symbols, allegations that their artistic work insults officials or state symbols, and in response to artists' support for LGBTQI rights.

Moreover, COVID-19 has contributed to a climate of securitisation, which may result in additional restrictions to freedom of artistic expression. This situation also suggests the need for a revision of visas restrictions for artists at risk who are willing to enter the Schengen Area.

The 2007 EP resolution on the status of the artists does not mention the issue of artistic freedom. The Council Work Plan for Culture 2019-2022<sup>157</sup> includes a discussion on this topic among its priorities.

- Social and economic rights

The socio-economic system in which artists work can limit free expression. Artists are "caught up in various "survival solutions", especially precarious artists, and can become dependent on funding, platforms and broadcasters and institutions that artists might find difficult to criticise for the risk of exclusion.<sup>158</sup> COVID-19's negative impact on the finances of artists increases this risk.

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<sup>156</sup> Freemuse (2020), The State of Artistic Freedom 2020.

<sup>157</sup> Council of the European Union (2018), Council conclusions on the Work Plan for Culture 2019-2022 (14984/18).

<sup>158</sup> Panteia (2020), op. cit., p. 115.

### 3. ARTISTS' SPECIFIC STATUS IN LIGHT OF THE EU COMPETENCES AND ACTIONS

#### KEY FINDINGS

This chapter briefly analyses the main characteristics of artists' specific status across Europe in light of the European Union's competencies and actions and justifies the framework policy solutions that are included in the following chapter.

- According to Article 151 and Article 153(1) point b of the Treaty on the Functioning of the European Union (TFEU), the EU can define minimum requirements at European level in the field of working conditions by means of directives.
- The Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the EU, published in October 2020, could give new impetus to the access to minimum wages in Europe, either through collective agreements or through statutory minimum wages.
- Regarding the self-employed, the Commission has recently launched a roadmap on collective bargaining agreements in order to define the scope of application of EU competition law. This initiative could remove the competition law obstacle to collective bargaining on behalf of cultural and creative workers by their representative unions.
- However, the working conditions of the artist and cultural workers intersect with many other policy fields. Therefore, these two initiatives may prove to be insufficient to address all the challenges that artists face in the European Union.
- Among other challenges, tensions remain between the freedom of movement of workers on the one hand and non-tariff barriers limiting the freedom of movement of artistic services on the other hand<sup>159</sup>.
- Some of the principles of the 2017 European Pillar of Social Rights provide a pathway to strengthen the status of artists. However, other principles (such as its encouragement of open-ended forms of employment) do not sit easily with the work patterns of artists.

#### Artists' Status and Working conditions

The absence of a uniform definition of artist under a single employment status, combined with the unpredictability of employment patterns of artists, results in potentially weakened access to the social security system, especially in a cross-border perspective.

As said above in Chapter 2, self-employment and atypical working patterns are prevalent among artists and cultural workers. This is often combined with high levels of education. However, artists often have difficult access to social security, different access to benefits and rights depending on their Member State, and different access to unemployment benefits given to artists. Moreover, there is no European legislation on income tax.

As was argued in the 2007 EP resolution, there is a continued need for easier access to coherent and comprehensive measures regarding artists' social security, sickness insurance, taxation,

<sup>159</sup> Creative Skills Europe (2016), Trends and skills in the European audiovisual and live performance sectors, p. 107.

unemployment, health and pensions on the one hand as well as information regarding national and European provisions on the other hand.

This is consistent with Article 151 of the Treaty on the Functioning of the European Union (TFEU), which states that the Union and Member States “shall have as their objectives the promotion of employment, improved living and working conditions”. To achieve these, both the Union and Member States “shall implement measures which take account of the diverse forms of national practices”. The definition of minimum requirements in the field of working conditions at European level by means of directives, as provided for by Article 153(1) point b supports the goal of setting common minimum standards, while keeping the improvements and recognising diversity among Member States.

**The 2007 EP resolution on the social status of artists calls on the Commission and Member States to apply coherent and comprehensive measures** regarding artists’ social security, sickness insurance, direct and indirect taxation, unemployment, health and pensions, among others. The Resolution also argues that doing so requires providing artists with easier access to information, for example by compiling a comprehensive handbook for European artists and the authorities dealing with them that summarises provisions regarding sickness insurance, unemployment and pension provisions at the national and the European levels. Finally, **it suggests taking into account periods such as rehearsals** in the effective working time of artists both for the purposes of unemployment and pensions.

Intensifying the already fragile position of artists, the COVID-19 pandemic further reinforces the need for direct measures to address their precariousness, in particular by making the existing employment funding support schemes such as SURE and REACT-EU (see above) available to artists and cultural workers.

#### *Artists’ Work Patterns and the European Pillar of Social Rights*

The 2017 European Pillar of Social Rights<sup>160</sup> jointly proclaimed by the main EU institutions aims to reinforce social rights to address economic and social insecurity in the EU caused by changes to labour markets and emerging challenges brought by “globalisation, the digital revolution, changing work patterns and societal and demographic developments: such as significant inequality, long-term and youth unemployment or intergenerational solidarity” (p. 7). Although the pillar “does not affect the right of Member States to define the fundamental principles of their social security systems”, **it defines workers as “all persons in employment, regardless of their employment status, modality and duration”** and as “Union citizens and third-country nationals with legal residence”. **This has consequences for the status of artists.**

Regarding equal opportunities and access to the labour market, the Social Pillar states that everyone has “the right to receive support for job search, training and re-qualification” as well as “to transfer social protection and training entitlements during professional transitions”. **This suggests the need for the Commission and Member States to strengthen lifelong training provisions, ensure that the transfer of social protection and other entitlements are made easier, and train career support to provide specialised assessments for professionals in the sector.**

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<sup>160</sup> European Parliament, European Council and European Commission (2017), European Pillar of Social Rights.

The pillar also states the need to provide **fair and equal treatment regarding working conditions, access to social protection and training – principles that support strengthening the status of artists in Europe**. One should also note that the idea that “workers have the right to fair wages that provide for a decent standard of living” (which requires ensuring “adequate minimum wages” that are “set in a transparent and predictable way”<sup>161</sup>) supports the idea of publicly communicated minimum wages for artists set by consultation with social partners. Additionally, the pillar’s chapter on social protection and inclusion states that all workers, including the self-employed, “have the right to adequate social protection”<sup>162</sup> and unemployment benefits as well as a pension that ensures living in dignity. Translated to the status of the artists, **this recognises the possibility that Member States identify their own rules**.

However, **some principles of the Pillar do not sit easily with the characteristics of work patterns of artists**. This is evident, for example, when the Pillar encourages “the transition towards open-ended forms of employment” as well as “entrepreneurship and self-employment”<sup>163</sup> – two ideas that are in tension with the goal of preventing “employment relationships that lead to precarious working conditions”<sup>164</sup>.

Finally, the Pillar states that all workers should have access to “affordable, preventive and curative health care of good quality” and mentions the right of people with disabilities “to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs”<sup>165</sup>. Translated to the status of the artist, **this demands specific adaptations to ensure that citizens with disabilities can participate in the labour market as artists and cultural workers**.

### **Mobility**

Artists and cultural workers engage in a high degree of cross-border mobility, as stated above. However, the characteristics of mobility patterns vary widely. Obstacles to mobility usually derive from the fact that rules, regulations and administrative requirements differ between countries. Moreover, lack of information regarding applicable legislation, opportunities and resources hinders artists’ mobility. This is accompanied by other limitations and obstacles: legal and administrative barriers, the atypical work patterns, geographic imbalances and access to funding.

### **Income and fair remuneration**

As already said above, despite the diversification of employment patterns of artists and cultural professionals, accompanied by non-standard working practices and multiple sources of income, artists often have low income levels. New mechanisms are needed to ensure fair remuneration.

### Minimum Wage

The Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the EU<sup>166</sup>, published in October 2020, could give new impetus to the access to minimum

<sup>161</sup> European Parliament, European Council and European Commission (2017), *ibid*, p. 15.

<sup>162</sup> European Parliament, European Council and European Commission (2017), *ibid*, p. 9.

<sup>163</sup> European Parliament, European Council and European Commission (2017), *ibid*, p. 14.

<sup>164</sup> European Parliament, European Council and European Commission (2017), *ibid*, p. 5.

<sup>165</sup> European Parliament, European Council and European Commission (2017), *ibid*, p. 21.

<sup>166</sup> Proposal for a Directive of the European Parliament and Council (2020) on adequate minimum wages in the European Union.



wages in Europe, either through collective agreements or through statutory minimum wages<sup>167</sup>. This could also serve to strengthen collective bargaining for the cultural and creative sectors (see following point).

### Freedom of Association and Collective Bargaining

**Most Member States have legislation containing provisions that “recognise artists’ associations and authorise the negotiation of agreements on compensation and working conditions”.**<sup>168</sup>

**The Commission has recently launched a roadmap towards a proposal of a regulation to define EU’s competition law’s scope of application, to enable an improvement of working conditions through collective bargaining agreements not only for employees, but also for the self-employed**<sup>169</sup>. This initiative aims at removing the competition law obstacle to collective bargaining on behalf of artists and cultural workers by their representative trade unions, ensuring that social partners may engage to develop fair minimum floors for a sustainable sector. The initiative is not to introduce obligations on Member States to enter into such negotiations or to conclude collective agreements. Rather, **the Commission will consider different policy options that may be implemented at the Member State level.**

### Loans and guarantee schemes

Among the main issues facing artists and cultural and creative workers is access to external sources of finance such as grants and subsidies. In the case of some cultural and creative sectors, such as film production, the most important external sources of finance are loans or guarantee schemes. However, artists often describe the difficulty of accessing loans from banks. **At the EU level**, the 2014–2020 Creative Europe programme ring-fenced 121 million EUR to a financial mechanism acting as insurance to financial intermediaries: **the Cultural and Creative Sector Guarantee Facility**, implemented through the European Investment Fund.<sup>170</sup> The Guarantee is not included in the new generation Creative Europe programme 2021–2027, since it has been moved, together with other guarantee schemes, in the new InvestEU regulation<sup>171</sup>. **Similar mechanisms exist in some Member States.**<sup>172</sup>

### **Artists and the digital environment**

Despite more people consuming cultural content online than ever, artists find it hard to earn a living. This suggests the need to improve copyright laws and their implementation. Member States have until the beginning of June 2021 to implement the copyright reform<sup>173</sup> in the national legislations.

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<sup>167</sup> State of the Union speech, (2020), Building the world we want to live in: a union of Vitality in a world of fragility.

<sup>168</sup> Panteia (2020), op. cit., p. 45.

<sup>169</sup> European Commission (2020a) Collective bargaining agreements for self-employed – scope of application EU competition rules. This follows European Union (2019), Directive 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.

<sup>170</sup> Panteia (2020), op. cit., p. 103.

<sup>171</sup> European Commission (2020b) Proposal for a Regulation of the European Parliament and of the Council establishing the InvestEU programme.

<sup>172</sup> Panteia (2020), op. cit., p. 103.

<sup>173</sup> European Union (2019) Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019

More broadly, the digital environment has created many changes that influence the work of artists and cultural creators. It has accelerated the modernisation of several sectors and has benefited new entrants. However, regulations are not always adapted.

### Monetisation and fair remuneration of digital activities beyond copyright

Making sure that artists and cultural workers have the opportunity to develop digital skills is an important part of ensuring that they may be able to take advantage of digital opportunities. The pandemic was a catalyst for many to seek new ways to connect with their audiences. Some of the approaches that emerged may offer a basis to examine new ways of performing, but also of organising box office and remuneration so that creators engaging audiences in new ways may also monetise performances or other creative endeavours. There is scope to add value to these discussions at European level by fostering exchange and discussion, such as those developed by a network of national creative skills bodies and European social partners in the CreativeSkillsEurope.eu project<sup>174</sup>, funded by the European Commission.

### **Careers paths and development**

Artistic training and education should recognise that artistic and cultural careers do not develop in a linear way, and support not only newcomers to the labour market but also mid-career and other professionals.

The need for lifelong training and retraining remains relevant.

A European-wide approach to careers path and development is deemed to be urgent.

### **Education and training**

Artistic education is a key concern of the 2007 EP resolution, which suggests the need for increased recognition of arts diplomas and certifications, to promote mobility and to step up training for educators.

There is a continued need for the recognition of training time as working time, and to strengthen European cooperation and exchange regarding professional and vocational training.

### **Equality and inclusion**

Artists are often subject to racism, xenophobia, discrimination and exclusion. A gender gap persists in most cultural fields. Young artists, artists with disabilities, and cultural workers are particularly vulnerable. Amateur and professional activities are increasingly seen as parallel (albeit occasionally overlapping) sectors of cultural activity.

The digital environment creates opportunities to promote and protect the diversity of cultural expressions but also increases inequities. As is detailed below, the Treaty on the functioning of the European Union offers avenues for EU action in these and other fields – e.g. as indicated in article 153 TFEU.

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<sup>174</sup> Creative Skills Europe, No date. European platform for employment and training in the audiovisual and live performance sectors.

## Human rights and artistic freedom

The EU has continuously emphasized the importance of artistic freedom. However, current developments suggest that there is evidence of restrictions on artistic freedom in some European countries and that action is needed to defend a fundamental right that is also at the heart of European values.<sup>175</sup>

On the other hand, legal protection for artistic freedom in the EU and its Member States comes predominantly from international human rights law or the ECHR. In fact, it is not unfair to say that a certain discrepancy seems to exist between the ambitions of the EU and the available protection in EU law where artistic freedom is concerned. The immediate reaction to such an interpretation is that further legislative action is needed to create explicit protection for artistic freedom specifically in EU law.

However, such legal action amounts to a harmonization measure and is possible only when the EU uses its competence (provided for in the Treaties). Needless to say, it is a question of long and complicated legislative processes. Nevertheless, the complexity of these processes does not disqualify the value of a more explicit legal protection for artistic freedom in EU law *per se*.

Moreover, the socio-economic system in which artists work can also limit free expression. Among the priorities of the Council Work Plan for Culture, this topic might need to be further investigated and linked to overarching EU strategies, including the implementation of the European Democracy Action Plan.

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<sup>175</sup> See Freemuse (2020), *The State of Artistic Freedom 2020* and Al-Zubaidi, Yamam (2020), *Protecting Artistic Freedom as a European value: Bringing Arts, Law and Decision-making Together*.

## 4. TOWARDS A EUROPEAN FRAMEWORK FOR WORKING CONDITIONS IN THE CULTURAL AND CREATIVE SECTORS AND INDUSTRIES

### KEY FINDINGS

This chapter scrutinises EU competences in the field of culture and in other policy fields in order to identify several potential instruments for action to support a European framework for working conditions in the cultural and creative sectors and industries, a framework which could support negative and positive integration processes.

- A European framework for working conditions in the cultural and creative sectors and industries might address the following challenges:
  - the need for minimum standards and minimum requirements within the scope of the legislative and social protection frameworks regarding e.g. working conditions, taxation and access to social security and other benefits, fair remuneration;
  - a comprehensive and common approach to ‘artistic work’ and ‘cultural work’ across Member States and EU documents;
  - the need to ensure that the social protection systems also allow for artists to access benefits, such as unemployment, health protection, pension
  - the persistence of non-tariff barriers to trade within the EU as well as information asymmetries;
  - the need to recognise the EU added value or contribution of the cultural practices of artists whose work is not (or barely) monetised, and hence the multiple forms of value of artistic work;
- Considering the particularities of the working conditions of artists, the development of a European framework will require articulation with EU policies on competition, the internal market, social policy, fundamental rights and equality, among others, and initiatives such as the Copyright in the Digital Single Market Directive.

This chapter articulates the background elements of a European framework for working conditions in the cultural and creative sectors and industries. Concrete recommendations related to these elements are addressed in the Policy Recommendations Briefing on “The Situation of Artists and Cultural Workers and the post-COVID Cultural Recovery in the European Union” (to be published soon as a separate research paper).

### Scrutinising EU competences

**EU competences in the field of culture** were originally identified in the Treaty of Rome and the Maastricht Treaty. Although Article 167(1) TFEU states that the EU “shall contribute to the flowering of the cultures of the Member States while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore”, Article 167(2) TFEU states that the EU can develop “action aimed at “encouraging cooperation between Member States” and “if necessary,” “supporting and supplementing” their action in specified areas, such as non-commercial cultural exchanges. This includes the possibility that the Council may adopt recommendations on proposals from the Commission (Article 167(5) TFEU); however, “harmonisation of the laws and regulations of the Member States” are excluded (Article 167(5) TFEU).

**Direct intervention or EU-initiated reforms** in Member States' cultural policy field **is not possible**. Indeed, Article 6 (TFEU) explicitly states that culture is one of the areas in which the Union does not have exclusive or shared competence. Rather, EU action in the cultural domain can only contribute to supporting the development of the cultures of Member States, nourishing a common European cultural heritage, and supplementing the action of Member States.

Against this backdrop, it is worth saying that a European framework for working conditions in the cultural and creative sectors and industries could also be adopted without following a legislative procedure. The framework could well have “a non-binding character, similar to the European Pillar of Social Rights (...). Establishing such a framework would be a crucial political message and a signal to policymakers of all levels - and the cultural sector itself - that European culture has a future, that artists are valued (...).”<sup>176</sup>

However, **competences in the field of culture and the non-binding nature of the document are not the only pathway available** for the establishment of a European framework for working conditions in the cultural and creative sectors and industries. Article 3 TFEU states that the **Union has exclusive competence** to legislate and adopt binding acts regarding, for example, the customs union and **competition rules**. Article 4 TFEU states that the Union and Member States **enjoy shared competences** in, among other policy fields: the **internal market, social policy**, cohesion, freedom, security and justice. For example, regarding **social policy**, although it remains primarily the responsibility of Member States, Article 5 (3) states that the Union “may take initiatives to **ensure coordination of Member States' social policies**”. In this direction, the European Parliament and the Council may adopt measures to support and complement the actions of Member States in areas such as the fight against social exclusion.

Moreover, Article 5 (2) states that “the Union shall take measures to ensure **coordination of the employment policies** of the Member States”. Therefore, the Treaty allows the EU to define **minimum requirements** at the European level on the topic of working conditions **in the form of Directives**. Minimum requirements, in particular, can be set by means of directives to “support and complement the activities of the Member States” in e.g. the fields of working conditions, social security and social protection of workers, representation and collective bargaining, employment for third-country nationals, integration in the labour market, gender equality, combating of social exclusion (Article 153 TFEU). The 1994 Directive on the protection of young people at work could serve as an example.<sup>177</sup>

In summary, considering the particularities of the working conditions of artists and cultural workers, **the development of a European framework for working conditions in the cultural and creative sectors and industries will require a modular articulation with EU policies** on competition, the internal market, social policy, fundamental rights and equality, among others, and initiatives such as the Copyright in the Digital Single Market Directive. The use of non-cultural pathways is also justified by the fact that the treaty allows for the **inclusion of cultural considerations in non-cultural EU policies** (see Article 167 (4) TFEU, which states that the EU ‘shall take cultural aspects into account in its action’).<sup>178</sup>

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<sup>176</sup> Polivtseva, E. (2020), Culture, Creativity and Coronavirus: Time for EU Action, Green European Journal.

<sup>177</sup> Council Directive (1994) on the protection of young people at work, 94/33/EC.

<sup>178</sup> Psychogiopoulou, E. (2015), Cultural Governance and the European Union: Protecting and Promoting Cultural Diversity in Europe.

In this context, and considering the multiple policy fields that coalesce around the working conditions of the artist, **several instruments might be required to support a European framework**. These instruments could support **negative and positive integration processes**, which would take place simultaneously and would accompany the forthcoming OMC process.<sup>179</sup>

**Positive** integration could occur through, namely:

- A new **Resolution** on the Status of the Artist by the European Parliament taking into account structural shifts to the cultural sector and the impact of Covid-19, and their overlap with topics such as the internal market, social exclusion, cohesion, freedom, security and justice. This would provide impetus for research into the topics that would be included in a Directive (see below).
- The adoption of **minimum requirements** (regarding the simplified taxation of cross-border work and simplified access to social security and other benefits associated with the working conditions of artists) in the form of a **Directive**, setting goals for Member States to achieve while also giving them the ability to devise how they reach them.
- The establishment of **minimum standards** for fair remuneration of digital and non-digital activities set through the same **Directive**. This would recognise that the legal systems of some EU countries have already set – and have the right to continue to set – higher standards.
- Such minimum standards should be embedded as **conditions in EU grants and subsidies**.

A more ambitious process of positive integration could be enabled by:

- Ensuring that the **protections** that are accorded to workers and the self-employed by the Social Pillar are **effectively granted to artists** throughout the Union.
- A **White Paper** by the Commission embedding lifelong access to artistic work (for producers and consumers) within the Union's long-term strategy.

Finally, the use of **economic instruments** to support positive integration in this context might also need to be examined. In this regard, the situation of artists and cultural workers would need to be taken into account in the debate following the proposal for a Directive of the European Parliament and Council (2020) on adequate minimum wages in the European Union<sup>180</sup>, as already stated in the previous chapter.

As mentioned above, **culture** is one of the areas in light of which Article 6 TFEU states that the EU can only intervene to support, coordinate or complement the action of EU countries. This means that **legally binding EU acts in the cultural policy field must not require the harmonisation of EU countries' laws or regulations**.

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<sup>179</sup> Scharpf, F. W. (1997), Balancing positive and negative integration: The regulatory options for Europe.

<sup>180</sup> Proposal for a Directive of the European Parliament and Council (2020) on adequate minimum wages in the European Union.

Nonetheless, this is compatible with **negative** integration, which occurs through the removal of barriers to freedom of movement and obstacles to trade and competition.<sup>181</sup> In the case of the working conditions of artists and cultural workers, negative integration could occur through:

- **Impact Assessment** processes evaluating the persistence of non-tariff barriers in the Single Market and their removal<sup>182</sup>.
- The **removal of information asymmetries**.

**Education and training** is another policy field in which the EU does not hold exclusive or shared competency. Nonetheless, significant advances towards harmonisation have been made. The cultural sector can draw lessons from this success and support **positive integration**.

### Value of the sector

The review of the status of the artist uncovered the difficulties that they face as workers. By definition, the literature consulted focuses on artists as workers and, therefore, fails to highlight the EU added value or contribution of the cultural practices of artists whose work is not (or barely) monetised. Rather, research shows that culture is an ecosystem that generates social and cultural impact: it strengthens European identity and democratic participation, advances a future-oriented education and contributes to the overall quality of life and wellbeing.<sup>183</sup> In polarised societies, artists can build bridges.<sup>184</sup>

Finally, as the Union joins forces to address climate change, artists and cultural workers play a crucial role in imagining and visualising a more sustainable model of development<sup>185</sup> – both within and beyond the borders of the EU via the Strategy for International Cultural Relations, for example. Indeed, the cultural and creative sectors are both drivers and enablers of sustainable development<sup>186</sup>; however, their role “as change enablers was underplayed during the 2020 crisis”.<sup>187</sup> Thus, **a future European framework for working conditions in the cultural and creative sectors and industries might need to take into consideration the multidimensional and long-lasting value of the sector**, which not only includes but goes significantly beyond economic considerations. This would contribute to addressing the challenge of anchoring cultural systems “in practices and needs [...] of the 21st century”.<sup>188</sup>

### Shared definitions of key concepts

Another challenge to a European framework includes the **lack of agreed definitions on concepts such as ‘artist’ and ‘culture’**, including within EU documents. The 1980 UNESCO Recommendation concerning the Status of the Artist defines an ‘artist’ as not only individuals that ask to be recognised as one but also everyone “who contributes (...) to the development of art and culture”. As

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<sup>181</sup> Craig, P. (2012), *Subsidiarity: A Political and Legal Analysis*, p. 78.

<sup>182</sup> Creative Skills Europe (2016), *Trends and skills in the European audiovisual and live performance sectors*, p. 107.

<sup>183</sup> Culture Action Europe (2018), *The Value and Values of Culture*, p. 2.

<sup>184</sup> EA (2019), *Research for CULT Committee – Culture and creative sectors in the European Union – Key future developments, challenges and opportunities*.

<sup>185</sup> See *Creative Climate Leadership*, a programme for artists and cultural professionals to explore the cultural dimensions of climate change co-funded by Creative Europe <https://www.creativeclimateleadership.com> and Ernst & Young (2021), *op. cit.*, p. 45.

<sup>186</sup> IDEA Consult, Goethe-Institut, Amann S. and Heinsius J. (2021), *op. cit.*, p. 83.

<sup>187</sup> IDEA Consult, Goethe-Institut, Amann S. and Heinsius J. (2021), *ibid.*, p.76.

<sup>188</sup> IDEA Consult, Goethe-Institut, Amann S. and Heinsius J. (2021), *ibid.*, p.76.

mentioned, Member States differ in their definitions of the term artist, which has consequences for tax and benefit purposes.<sup>189</sup> Considering the diversity of artists' working practices and conditions, and given the 'sense of urgency' due to COVID-19, a common inclusive, process-based definition of key concepts for artists and cultural workers at EU level would be preferred.

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<sup>189</sup> Panteia (2020), *op.cit.*, p.45.



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This background analysis on the situation of artists and cultural workers and the post-COVID-19 cultural recovery in the European Union is prepared for the European Parliament. It provides an overview of key characteristics of artists' and cultural workers' status across Europe, their working conditions, precariousness and career paths. It outlines the justification for specific policy solutions and provides a mapping of key challenges for a European framework for working conditions in the cultural and creative sectors and industries.

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