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# EU framework for the social and professional situation of artists and workers in the cultural and creative sectors

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European added  
value assessment

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STUDY

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with Christof Cesnovar

European Added Value Unit  
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EN



# EU framework for the social and professional situation of artists and workers in the cultural and creative sectors

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## European added value assessment

This European added value assessment (EAVA) supports the European Parliament's legislative initiative 2023/2051(INL) entitled 'EU framework for the social and professional situation of artists and workers in the cultural and creative sectors'. The study reviews the existing legal framework and identifies gaps in the cultural and creative sectors (CCS) relating to working and social conditions. It explores possible policy options to tackle the challenges, and assesses the potential impacts of those policy options. Four policy options are identified: i) streamlining existing soft-law; ii) making changes within the existing legislative framework, iii) setting up a platform by means of a decision, and iv) establishing a new (framework) directive. The proposed policy options complement each other. Policy option 4 explores whether a new sector-specific (framework) directive would close the gap, although feasibility depends on scope and purpose. The combination of policy options 1 to 3 has the highest potential impact, addressing the gaps and generating potential economic benefits. These three options together would have a positive social impact and improve working conditions and access to social rights. They would reduce the vulnerability and risk of poverty of CCS professionals, and contribute to the sustainability of social security systems.

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## Executive summary

The cultural and creative sectors (CCS) play an important role in the identity and economy of the European Union (EU). The CCS employ an estimated 7.7 million people, or about 3.8 % of the EU's workforce.<sup>1</sup> The challenges facing these sectors are long-standing, and worsened during the COVID-19 pandemic.<sup>2</sup> These challenges are due in part to the business model of producing art and culture, which often produces experiences, unlike other sectors that produce goods and services.<sup>3</sup> This economic sector, classified as 'Arts, entertainment and recreation', is characterised by the diversity of its activities and an enormous variety of subsectors. Member States organise the structure, activities and products of the CCS within differing legal frameworks, showing a heterogeneous picture with important differences between the subsectors.

Many artists and cultural workers (referred to as CCS professionals in the study) have atypical employment contracts and working conditions (e.g. part-time or fixed-term, temporary work, intermittent project-based employment or economically dependent solo self-employment).<sup>4</sup> CCS professionals, in particular artists, are more likely to be self-employed compared with the rest of the labour market (32 % versus 14 %).<sup>5</sup> Fewer people in the CCS work in full-time employment compared with the economy as a whole. The situation can result in job and income insecurity, and subsequently have an impact on pension provisions for example. Bogus self-employment in the CCS lies at between 1.6 % to 10.8 % in the EU, depending on the definition and the method of estimation. Actors in the CCS, the European Parliament, the Council and other EU institutions<sup>6</sup> and academia have identified problems and have called for action to address the gaps.

Limitations in statutory social security conditions and the employment relationships applied in the CCS hamper access to social security. Differing laws regulating social security and the EU's limited competence in this area worsen the fragmentation. The high level of cross-border mobility is an additional factor. Although cross-border mobility offers benefits in terms of more working opportunities, and enables CCS professionals to build an international reputation, it comes with challenges arising from the lack of coordination between national social security systems<sup>7</sup> and inconsistent application of social security rights across borders, in particular for the self-employed. Short-term, project-based financing in the CCS is a fact, and it is often mirrored in the nature of project-based work contracts; this impacts the working conditions and social protection of CCS professionals.

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<sup>1</sup> [Cultural employment](#), Eurostat, 2023.

<sup>2</sup> [The Situation of Artists and Cultural Workers and the post-COVID-19 Cultural Recovery in the European Union](#), Policy Department for Structural and Cohesion Policies, European Parliament, March 2021.

<sup>3</sup> [The Future of Work in the Arts and Entertainment Sector](#), Report for the Technical Meeting on the Future of Work in the Arts and Entertainment, International Labour organization, February 2023.

<sup>4</sup> [Social protection rights of economically dependent self-employed workers](#), Policy Department of Economic and Scientific Policy, European Parliament, 2013; [Statistical definition and measurement of dependent 'self-employed' workers](#), Room document, International conference of labour statisticians, International Labour organization, October 2018.

<sup>5</sup> [Cultural employment by sex and selected labour market characteristics](#), Eurostat, 2021.

<sup>6</sup> [Opinion](#) of 17 April 2013 on Communication – Promoting cultural and creative sectors for growth and jobs in the EU', European Economic and Social Committee.

<sup>7</sup> Ibid.

## Why should the EU act?

The challenges for CCS professionals are compounded by the fragmentation resulting from the differing national structures of CCS and diverging legislation on working conditions, social security benefits, income and taxation. The lack of uniform definition of who is a CCS professional, the absence of a common approach to the classification of CCS professionals, inconsistent use of criteria to define bogus self-employment and the consequences of intermittent project-based employment (amplified by the way CCS projects are financed) have been identified as just some shortcomings among others. These elements lead to inconsistencies in how CCS professionals are categorised, which in turn determines their working conditions rights and entitlements for access to social security. They contribute to the growing structural vulnerability, and vulnerability of specific target groups (such as women, young and older people). Figures indicate that all these issues are more dominant in the CCS compared to others (see study in Annex). Moreover, the cultural and creative sectors were among the hardest hit by the COVID-19 pandemic.<sup>8</sup>

The current EU regulatory framework primarily covers workers with standard employment contracts, leaving economically dependent, solo, self-employed and non-standard workers vulnerable to unpredictable working conditions. Formal coverage of social protection for the self-employed is excluded from regulation at EU level; it therefore remains a major concern for CCS professionals, in particular concerning access to unemployment benefits, occupational accident and sickness benefits, and old-age pensions. Moreover, the coverage varies significantly among Member States, ranging from no access, to voluntary or mandatory coverage. In addition, mobility is essential in the CCS but is complicated because of multiple employment statuses across countries, the portability of social security rights and taxation issues. Challenges relating to cross-border mobility include the administrative complexities of EU-wide coordination of national social security systems and of other aspects.

Addressing the aforementioned challenges requires a coordinated approach at both EU and Member State levels. This approach should focus on the gaps identified in the study, in particular addressing the lack of labour and social security protection, tackling bogus self-employment, promoting fair treatment of self-employed individuals and workers with non-standard contracts (e.g. intermittent project-based employment) and facilitating cross-border mobility, while considering the sector's diverse nature. Schemes providing an adequate level of protection at EU level and appropriate income replacement seeking to prevent poverty would contribute to sustainable social cohesion. The shrinking number of contributors to social systems can also have an economic and social impact. Finally, the growing numbers of people not covered, and subsequently deprived of access to social safety nets,<sup>9</sup> has a cost for the society as a whole. Beyond that, the study identifies more challenges faced by the CCS, such as recognition of qualifications, social dialogue, skills and training, wages, income sources, the design of funding programmes, and taxation.

## Description of key findings

The study proposes potential solutions and emphasises the need for EU-level action to address these issues effectively. The analysis in this study and its annex show that maintaining the status quo would further deteriorate the working conditions and social security rights of certain groups of workers in the CCS, and increase their vulnerability and the risk of poverty if certain aspects are not tackled. Fewer contributors to social security schemes because of the increasing number of self-employed and atypical employment relationships could also undermine the sustainability of social security systems.

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<sup>8</sup> European Parliament [resolution](#) of 7 June 2007 on the social status of artists; European Parliament [resolution](#) of 20 October 2021 on the situation of artists and the cultural recovery in the EU.

<sup>9</sup> [Impact assessment](#) for the recommendation on access to social protection for workers and self-employed, European Commission, 2018.

Four policy options are suggested to address some of the most pressing shortcomings in the CCS, namely: the non-existent or inconsistent definition of artists and status of CCS professionals across Member States, the high proportion of bogus self-employed and dependent, solo self-employed, the intermittent project-based employment, the lack of access to social protection for solo self-employed, irregularities in the income of CCS professionals, the challenges in cross-border mobility for highly mobile CCS professionals and the role that EU funds play.

**Four policy options were framed and assessed:**

- Policy option 1 – enhancing the existing non-legal framework, such as the open method of coordination, targeted work on bogus self-employment in the CCS by the European Labour Authority, the efforts of the Employment Committee (EMCO) and Social Protection Committee (SPC) on the working and social conditions of CCS professionals, and social partners' involvement.<sup>10</sup>
- Policy option 2 – amending the existing legal framework, for instance with a sector-specific directive amending the Posting of Workers Directive (PWD), enlarged use of the exception under Article 3(4) of the PWD, amending Regulation (EU) 987/2009, and changing the design of EU funds.
- Policy option 3 – setting up a European platform to tackle the social and professional situation of CCS professionals, by means of an EU decision to provide a holistic approach to the multifaceted challenges facing the CCS.
- Policy option 4 – exploring the feasibility of whether a new sector-specific (framework) directive would help to close the gaps at EU level relating to diverging rules on working conditions and social security rights across Member States.

Policy options 1 to 3 complement each other: policy option 3 supplements option 1 and option 2, suggesting setting up a platform by a decision of the Council and Parliament to improve social protection with a coordinated and streamlined approach. The goal of the European platform would be to create a more equitable and supportive environment for CCS professionals across Member States and to serve as catalyst for change; by coordinating Member States, social partners and other relevant stakeholders, and by providing a holistic approach, the platform would ensure a common understanding of the different approaches in Member States. The ultimate aim would be to lower the fragmentation by means of EU-wide definitions and criteria.

The combination of enhancing the non-legislative framework (policy option 1), amending relevant legislative acts (policy option 2), and setting up the Platform (policy option 3) would have the highest potential to improve the employment and social situation of CCS professionals; they provide a wide range of EU actions aiming to improve the situation of CCS professional and to narrow the gaps within the EU treaty provisions. The feasibility of policy option 4 – an EU directive – depends on its purpose and scope; this would need to be assessed on the basis of the competencies laid down in the Treaties.

**On the quantitative assessment**, the monetary multiplier effect is estimated at 2.1: every euro invested by the CCS in 2019 helped to generate additional added value of €1.2 in the economy as a whole (estimation is based on the example of Poland in study in Annex). It is estimated that **1.2 million CCS professionals** without permanent employment, i.e. 17% of the total CCS workforce, would be affected by these policy measures, in a sector that employs an estimated 7.7 million people or approximately 3.8% of the EU's workforce. EU-wide measures to improve access to social security rights, in particular to unemployment benefits for self-employed CCS professionals, would expand the social protection of this group in those Member States where they are not entitled to use social security schemes or where they fall under the general system. The scenarios developed for 18 Member States in the study's annex that do not envisage unemployment benefit coverage for self-employed CCS professionals demonstrate that the system could be beneficial for over **1.5 million**

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<sup>10</sup> [Identifying 'vulnerable' self-employed](#): Ad hoc request to Eurofound from the Directorate-General for Competition, Eurofound, 2021.

**self-employed CCS professionals**; depending on the level of the public contribution to the unemployment scheme the costs might be significant. In the case of countries that include self-employed CCS professionals within the general system, additional costs might apply owing to different access entitlements, but would be effectively lower. The inclusion of self-employed workers<sup>11</sup> in occupational safety and health directives could impact the situation of **over 2.3 million self-employed professionals** in the CCS.

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<sup>11</sup> [Report](#) from the 3-year SESAME project, European Agency for Safety and Health at Work, 2018.



## Table of contents

1. Introduction	1
1.1. Why this EAVA assessment?	1
1.2. Methodology	2
2. Cultural and creative sectors: Facts and figures	3
2.1. The characteristics of the sectors and their size	3
2.1.1. Overview of employment in the cultural and creative sectors	3
2.1.2. Creative and cultural sectors' contribution to gross domestic product	5
2.2. Impact of the COVID-19 pandemic on the creative and cultural sectors	6
2.3. The existing international framework and EU normative setting	8
2.3.1. International instruments and measures	8
2.3.2. EU legal instruments and non-legislative measures	9
3. Main problems and gaps at EU level	13
3.1. Problems affecting CCS professionals: An overview	13
3.2. Labour and working conditions	14
3.3. Social right benefits	19
3.4. Cross-border mobility	24
3.4.1. Posting of workers and social security coverage in cross-border mobility situations	24
3.4.2. Recognition of professional qualifications and mutual recognition of higher education	25
3.4.3. Taxation in cross-border performance	26
3.5. Social dialogue and collective bargaining	27
3.6. Skills, training, re-training	28
3.7. Wages and income	29
3.8. Relevance of the design of funds for CCS professionals' working conditions	31
3.9. EU right to act: Principles of subsidiarity and proportionality	32

4. Policy options and related impacts	33
4.1. Policy option 1 - Quasi status quo, but further actions within the existing non-legislative framework	34
4.2. Policy option 2 – Actions within the existing legislative framework	36
4.3. Policy option 3 – Setting up a European platform for the CCS sectors through an EU decision	39
4.4. Policy option 4 – A new (framework) directive addressing the employment and social conditions of CCS professionals	41
4.4.1. Overall quantitative assessment	42
5. Conclusions	44
ANNEX	51

## Table of figures

Figure 1 – Share of self-employed in cultural employment and total employment (2021)	4
Figure 2 – Share of employees without a permanent job in the cultural sector (2021)	5
Figure 3 – Evolution of gross value added by CCS subsectors (2008-2019) (€ million)	6
Figure 4 – Cultural employment changes by country in 2020 and in 2021 compared with 2019 (%) during the COVID-19 pandemic	8
Figure 5 – Creative and cultural workers declaring non-standard working time	15
Figure 6 – Creative and cultural workers: Selected dimensions of structural vulnerability	17
Figure 7 – Cultural employment by level of educational attainment (2019)	29

## Table of tables

Table 1 – List of EU labour law acquis for employed, self-employed and other categories of workers	18
Table 2 – Overview of EU social protection legislation	23
Table 3 – Overview of status quo relating to cross-border workers	27
Table 4 – Overview of status quo relating to social dialogue	28
Table 5 – Overview of status quo relating to income	31
Table 6 – Overview of status quo relating to funding	32
Table 7 – Qualitative assessment of policy option 1	35
Table 8 – Qualitative assessment of policy option 2	38
Table 9 – Qualitative assessment of policy option 3	40
Table 10 – Qualitative assessment of policy option 4	42

## List of acronyms

<b>ACSH</b>	Advisory Committee on Safety and Health at Work
<b>CCS</b>	Cultural and creative sectors
<b>CEEP</b>	European Centre of Enterprises with Public Participation
<b>CJEU</b>	Court of Justice of the European Union
<b>CSRs</b>	Country-specific recommendations
<b>CULT</b>	Committee on Culture and Education
<b>DK</b>	Denmark
<b>EAEA</b>	European Arts and Entertainment Alliance
<b>EAVA</b>	European Added Value Unit
<b>EC</b>	European Commission
<b>ECSA</b>	European Composer and Songwriter Alliance
<b>EEA</b>	European Economic Area
<b>EEC</b>	European Economic Community
<b>EENA</b>	European Expert Network on Culture and Audiovisual
<b>EESSI</b>	Electronic Exchange of Social Security Information
<b>ELA</b>	European Labour Authority
<b>EMCO</b>	Employment Committee
<b>EMPL</b>	Committee on Employment and Social Affairs
<b>EPSCO</b>	Employment, Social Policy, Health and Consumer Affairs Council
<b>EPSU</b>	European Public Service Union
<b>ESSPASS</b>	European Social Security Pass
<b>ETUC</b>	European Trade Union Confederation
<b>ETUI</b>	European Trade Union Institute
<b>EU</b>	European Union
<b>EU-LFS</b>	EU Labour Force Survey
<b>EU-OSHA</b>	European Agency for Safety and Health at Work
<b>EURES</b>	European Network of Employment Services
<b>EU-SILC</b>	EU statistics on income and living conditions
<b>EWCS</b>	European Works Council Survey
<b>GDP</b>	Gross domestic product
<b>GVA</b>	Gross value added
<b>HOSPEEM</b>	European Hospital and Healthcare Employers' Association
<b>IE</b>	Ireland
<b>ILO</b>	International Labour Organization

<b>INL</b>	Legislative-initiative procedure
<b>NACE</b>	Nomenclature of Economic Activities
<b>NL</b>	The Netherlands
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OMC</b>	Open method of coordination
<b>OSH</b>	Occupational safety and health
<b>Pearle</b>	Performing Arts Employers' Associations League Europe
<b>PWD</b>	Posting of Workers Directive
<b>SESAME</b>	Safe Small and Micro Enterprises
<b>SLIC</b>	Senior Labour Inspectors Committee
<b>SPC</b>	Social Protection Committee
<b>TEU</b>	Treaty on European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UK</b>	United Kingdom
<b>UNESCO</b>	United Nations Educational Scientific and Cultural Organization
<b>USA</b>	United States of America
<b>VAT</b>	Value added tax
<b>VOD</b>	Video on demand



# 1. Introduction

## 1.1. Why this EAVA assessment?

In accordance with Article 225 Treaty on the Functioning of the European Union (TFEU) the European Parliament has a right to request the European Commission to take legislative action by adopting own-legislative initiative reports. On 13 April 2023, the Committee on Culture and Education (CULT) and the Committee on Employment and Social Affairs (EMPL) were authorised to draw up a joint own-initiative report<sup>12</sup> on an 'EU framework for the social and professional situation of artists and workers in the cultural and creative sectors' to define requirements for an EU framework. In accordance with Article 10 of the Interinstitutional Agreement on Better Law-Making of 13 April 2016, the European Commission should respond to Parliament's request for a proposal on EU actions within 3 months.

The European Added Value Unit (EAVA) of the European Parliamentary Research Service (EPRS) provides unique expertise for the European Parliament and underpins the European Parliament's right to request legal action with an evidence-based review of the problem, exploring the possible policy options and their potential impact. This EAVA study draws on an extensive literature review, an analysis of the legal basis and a quantitative and qualitative assessment of gaps and obstacles.

The European Parliament's legislative initiative, the reason for this study, builds on Parliament's 2021 resolution on 'The situation of artists and the cultural recovery in the EU'<sup>13</sup> and the 2007 resolution on the 'social status of artists'.<sup>14</sup> The latter emphasises the need for access to social protection for all artists and workers in the creative and cultural sectors (CCS), regardless of their employment status. It calls for access to unemployment allowance, healthcare and pensions and for efforts to tackle unstable income, unpaid work and job insecurity, and safeguard a minimum standard for their income. In both 2021 and 2007 resolutions, Parliament emphasises the need to develop a legal framework and establish a European Status of the Artist, setting out a common framework for working conditions and minimum standards common to all EU countries.

The study is intended to identify possible legislative and non-legislative EU-level policy options to improve the social and professional situation of artists and workers in the cultural and creative sectors in the EU, taking into consideration problems and challenges in the CCS, the competences conferred to the EU, and experts' views. The potential impacts of each policy option for artists, creative workers, and the EU economy and society have been identified and assessed, and are based on quantitative data and analysis where possible, as well as the potential economic gains to be made by addressing the shortcomings.

In the study, artists and workers in the cultural and creative sectors are referred to as 'CCS professionals' and non-standard employment includes atypical working arrangements.

After the introduction in Section 1, Section 2 presents an objective, evidence-based review of the status quo, including key issues and their impacts. Section 3 identifies the main problems and gaps at EU level. Section 4 reviews possible EU actions and assesses their potential impacts on individuals and society. Section 5 summarises the European added value of the policy options and highlights the key findings from the assessment in the final report.

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<sup>12</sup> [Rules of Procedure](#) of the European Parliament, 2023 (Rule 58).

<sup>13</sup> European Parliament [resolution](#) of 20 October 2021 on the situation of artists and the cultural recovery in the EU.

<sup>14</sup> European Parliament [resolution](#) of 7 June 2007 on the social status of artists.

## 1.2. Methodology

The starting point for the study is the analysis of the status quo by identifying the problems. Policy options are drawn up on the basis of the EU-level analysis; each option is assessed by highlighting whether EU added value can be observed. The study concentrates mainly on working conditions, social protection and the (cross-border) mobility of workers with atypical working conditions (intermittent project-based employment), economically dependent solo self-employed, and bogus self-employed, although other issues – such as copyright, buy-out contracts and double taxation – are also perennial problems in the CCS. The assessment draws on an externalised study by Anna Gromada and Karol Muszyński, which can be found in the Annex, and on in-house expertise.

As regards the definition of the sectors, the classification used in this study is based on Eurostat's NACE Rev.2.1 economic category<sup>15</sup> 'Arts, entertainment and recreation', as there is no universally agreed definition of the activities included in the cultural and creative industry sectors.<sup>16</sup> Moreover, the sector offers a heterogeneous picture, with important differences between the subsectors, and diverging approaches by Member States regarding the status of CCS professionals and the definition of who is a CCS professional, and differing rules relating to working conditions, social protection, income and taxation. This causes structural vulnerability and vulnerability of specific target groups (such as women, young people). The aim of the study is to analyse the reasons for this, possible ways to overcome heterogeneity in the social field, and the added value of EU actions.

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<sup>15</sup> [NACE Rev. 2.1](#), Eurostat website.

<sup>16</sup> [Social and economic consequences of COVID-19](#), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, March 2023, page 94.



## 2. Cultural and creative sectors: Facts and figures

### 2.1. The characteristics of the sectors and their size

The CCS are characterised by the diversity of their activities and the wide variety of subsectors – 'Arts, entertainment and recreation' in NACE Rev.2.1.<sup>17</sup> The sectors include performing arts, support activities for the performing arts, artistic creation, the operation of arts facilities, libraries, archives, museums, the operation of historical sites and buildings and similar visitor attractions, botanical and zoological gardens and nature reserve activities, gambling and betting activities, sports facilities and activities, amusement and recreation activities, and activities of amusement parks and theme parks. The statistics in this study reflect only a few selected sectors. The CCS are covered by differing frameworks in the different Member States' economies, structures, activities and products. Most cultural and creative industry enterprises in the EU can be found in the following areas: architectural activities (25.1 %); specialised design activities (17.4 %); photographic activities (12.0 %); motion picture, television and music; videotape and disc rental (12.2 %); printing and reproduction of recorded media; manufacture of jewellery and related articles; and manufacture of musical instruments (11.4 %)<sup>18</sup>. The average size of enterprises<sup>19</sup> in the EU cultural sectors is 2.7 people per enterprise.

According to the study in the annex, CCS professionals can be grouped either as artists, or a broader category of workers in the CCS and other creative professions, performing work in beyond the art sector.

#### 2.1.1. Overview of employment in the cultural and creative sectors

The cultural and creative sectors (CCS) play an important role in the identity and economy of the Union. In 2022, the CCS employed an estimated 7.7 million people or about 3.8 % of the EU workforce,<sup>20</sup> ranging from 1.5 % in Romania to 5.4 % in the Netherlands.

Compared with women's share in total employment (46.3 %),<sup>21</sup> slightly more women were employed in the cultural field (49.2 %).<sup>22</sup> Women represent the majority in the CCS, especially in Baltic countries (Latvia 63.0 %, Lithuania 62.8 %, and Cyprus 58.6 %, while men are predominant in southern countries such as Malta 60.8 %, Spain 54.7 % and Italy 54.4 %. The gender pay gap in the EU 'Arts, entertainment and recreation' industry<sup>23</sup> is lowest in Luxembourg (-16.8 %) and highest in Italy (62 %). The data show a generally higher level of educational attainment for the cultural field<sup>24</sup> as compared to the average economy (see study in annex).

More than three quarters (76.5 %) of CCS professionals in the EU were employed on a full-time basis in 2022, five percentage points fewer than in the whole economy.<sup>25</sup> For two other indicators – employees with permanent employment contracts and employees with single jobs – only five

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<sup>17</sup> [NACE Rev 2.1](#), Eurostat website: It provides statistics on cultural employment for economic activity (sector of employment), ISCO-08 for occupation and ISCED 2011 for educational attainment level.

<sup>18</sup> [Social and economic consequences of COVID-19](#), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, March 2023, page 94.

<sup>19</sup> [Size of enterprises](#), Eurostat website.

<sup>20</sup> [Cultural employment](#), Eurostat website.

<sup>21</sup> [Culture statistics](#) – cultural employment, Eurostat website.

<sup>22</sup> [Cultural employment by sex](#), Eurostat website.

<sup>23</sup> [Gender pay gap](#), Eurostat website.

<sup>24</sup> [Education](#), Eurostat website.

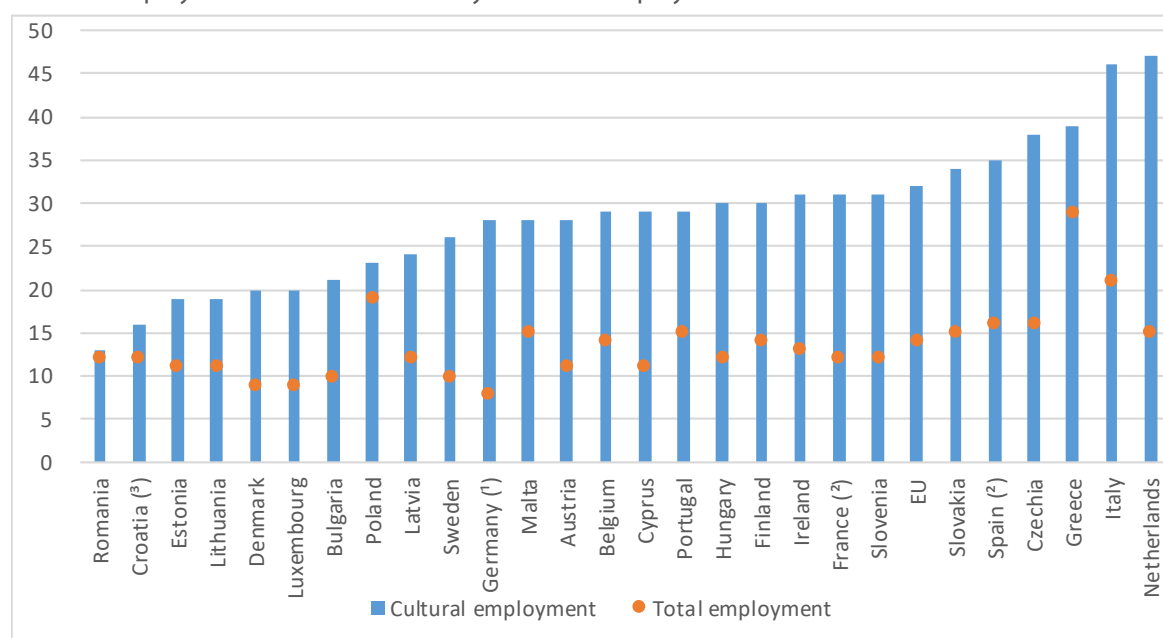
<sup>25</sup> [Culture statistics](#) – cultural employment, Eurostat website.

countries showed a significant difference (of more than five percentage points) between cultural and total employment. CCS professionals are more likely to occupy multiple jobs compared with overall employment, except in Romania. The highest rate of full-time employment exists in Romania (96.7 %) and in the Netherlands (60.7 %).

In 2022,<sup>26</sup> across the EU almost one third (31.7 %) of CCS professionals were self-employed, compared with an average of 13.8 % in the whole economy, with a high share of bogus self-employed in the sectors, ranging from 1.6 % to 10.8 % in the EU.<sup>27</sup> Self-employment accounted for almost half of all cultural employment in the Netherlands (47.2 %) and Italy (46.2 %), see more examples in Figure 1. The number of solo self-employment overall and in the CCS sectors in particular has been growing in the last decade, given the characteristics of the sectors.

According to the study in the annex, the estimated number of bogus self-employed is between 38 000 (according to EU Labour Force Survey/EU-LFS) and 254 000 bogus self-employed (according to the European Works Council Survey – EWCS), depending on the definition of bogus self-employment, which is not aligned across Member States. Eurostat defines bogus self-employment in its EU-LFS differently compared with the EWCS<sup>28</sup> or the EU statistics on income and living conditions (EU-SILC). It is noted that the economically dependent solo self-employment described in this study differs from that of the liberal professions<sup>29</sup> (lawyers, architects), as the latter have bargaining power and control over the employment situation; this group is not targeted in the study.

Figure 1 – Share of self-employed in cultural employment and total employment (2021)  
Cultural employees are over twice as likely to be self-employed



Notes: <sup>(1)</sup> Provisional data. <sup>(2)</sup> Definition differs (see EU Labour Force Survey metadata). <sup>(3)</sup> Cultural employment – self employed persons: low reliability.

Source: Compiled by the authors of the study in the annex, using Eurostat [cultural employment by sex and selected labour market characteristics](#) datasets.

<sup>26</sup> [Ibid.](#)

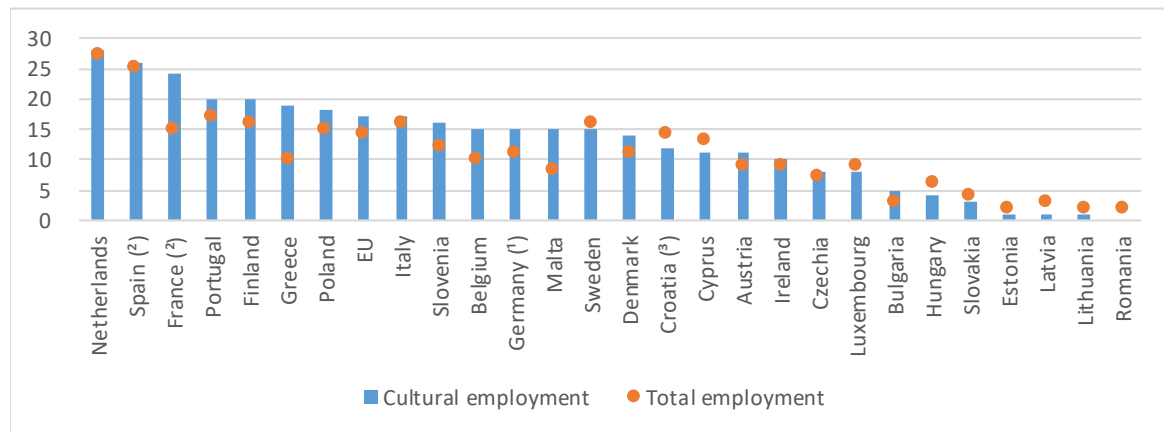
<sup>27</sup> C.C. Williams, M. Llobera, A.V. Horodnic, [Working paper](#) on tackling undeclared work in the collaborative economy and bogus self-employment, 2020.

<sup>28</sup> [Identifying 'vulnerable' self-employed](#): Ad hoc request to Eurofound from the directorate-General for Competition, Eurofound, 2021.

<sup>29</sup> [Report](#) European Trade Union Institute, Report 140, 2018.

Even when looking at CCS employees with an employment contract, the CCS show more diversity among Member States, with manifold forms of work contract, such as part-time, fixed-term, temporary or very short intermittent project-based employment. The share of short-term employment in the sectors ranges from zero in Romania to over a quarter in the Netherlands and Spain (Figure 2). This diversity is mirrored in the varying responses regarding social protection between Member States. In this respect, the impact on the highly mobile CCS professionals across borders needs particular attention. Permanent job holders are less present in the CCS compared to the whole economy. They face unpredictable access to social security, unpredictable income and insecure job prospects, compared to the average for the economy as a whole.

Figure 2 – Share of employees without a permanent job in the cultural sector (2021)



Note: <sup>(1)</sup> Provisional data. <sup>(2)</sup> Definition differs (see LFS metadata). <sup>(3)</sup> Cultural employment - self employed persons: low reliability.

Sources: see study in Annex. Compiled by the authors using Eurostat [cultural employment by sex and selected labour market characteristics](#) indicator.

## 2.1.2. Creative and cultural sectors' contribution to gross domestic product

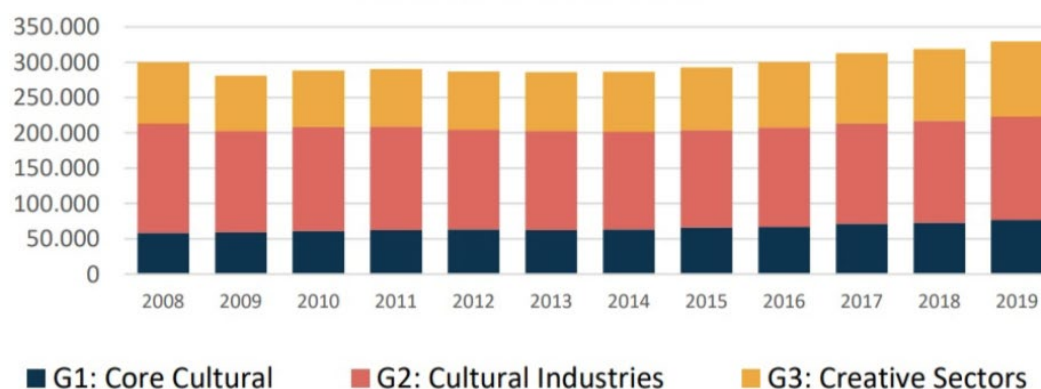
With a turnover of €643 billion,<sup>30</sup> the core activities of the cultural and creative industries represented 4.4% of the EU's gross domestic product (GDP) in 2019. In terms of total turnover, the three main areas of CCS activity are the visual arts (€138 billion), advertising (€129 billion) and audiovisual (€119 billion) sectors, which together account for almost 60% of the CCI's total revenue. General government expenditure on culture in the EU totalled €71.2 billion, or 0.5% of GDP,<sup>31</sup> in 2021 (or 1% of total expenditure), ranging from 1% in Latvia and Hungary to 0.2% in Ireland, Greece and Cyprus.

<sup>30</sup> [Rebuilding Europe: The cultural and creative economy before and after the COVID-19 crisis](#), Ernst & Young, 2021.

<sup>31</sup> [General government expenditure by function](#), Eurostat website.

Figure 3 shows the development of gross value added<sup>32</sup> by CCS subsectors for the period between 2008 and 2019.

Figure 3 – Evolution of gross value added by CCS subsectors (2008-2019) (€ million)



Notes: Core cultural: performing arts, visual arts and writing, library and archives, museums and heritage sites. Cultural industries: radio, TV, publishing, audiovisual, recorded music. Creatives sectors: advertising, design, architecture, videogames.

Sources: [Measuring the Cultural and Creative Sectors in the EU](#), The Measuring CCS-Consortium 2022. See study in annex.

## 2.2. Impact of the COVID-19 pandemic on the creative and cultural sectors

Before the COVID-19 pandemic in 2020, the cultural and creative economy was growing steadily in the EU. From 2013 to 2019, it grew by 2.6 % per year, while EU average GDP growth was 2.0 %. The pandemic illustrated the fragility and fragmentation of the cultural and creative sectors, which were amongst the economic sectors hardest hit.<sup>33</sup> In 2020, the total turnover generated by the CCS in the EU decreased to €444 billion.<sup>34</sup> Compared with the turnover in 2019 (see above) this represents a net decrease of €199 billion or 31 % of total revenues.

The cultural and creative sectors were affected by the pandemic in different ways across Member States (Figure 4). With regard to revenues,<sup>35</sup> central and eastern European countries were among the worst affected, with year-on-year revenue trends ranging from -36 % in Lithuania to -44 % in Bulgaria and Estonia. In all these countries, the performing and visual arts represent a larger share of the national creative economy than in the rest of the EU. Video streaming platforms have expanded their activities worldwide since 2019 and throughout the COVID-19 crisis 'the real winners of the crisis are definitely streaming sites',<sup>36</sup> as stated by the Parliament.

In terms of the number of CCS professionals, the figures show a severe decrease from 2019 to 2021 in Romania (-18 %), Malta (-11 %) and Luxembourg (-10 %). On the contrary, some countries, such as

<sup>32</sup> Gross value added (GVA) is defined as output (at basic prices) minus intermediate consumption (at purchaser prices); it is the balancing item of the national accounts' production account. The sum of GVA over all industries or sectors plus taxes on products minus subsidies on products gives gross domestic product.

<sup>33</sup> European Parliament [resolution](#) of 7 June 2007 on the social status of artists; European Parliament resolution of 20 October 2021 on the situation of artists and the cultural recovery in the EU.

<sup>34</sup> [Rebuilding Europe: The cultural and creative economy before and after the COVID-19 crisis](#), Ernst & Young, 2021.

<sup>35</sup> Ibid.

<sup>36</sup> [Resolution](#) of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences, European Parliament.

France (+13 %), Latvia (+13 %) and Greece (+12 %), experienced major rebounds from 2019 to 2021 in terms of cultural employment. Greece gained +17 % between 2020 and 2021, after experiencing a decrease between 2019 and 2020 of about -5 %. This result can be explained by the fact that Greece adopted measures to support CCS professionals in response to the COVID-19 pandemic.<sup>37</sup>

The 'creative, arts and entertainment activities' and 'motion picture, video and television programme production, sound recording and music publishing activities' in particular were impacted by the COVID-19 pandemic. Parliament's study<sup>38</sup> on the social and economic consequences of COVID-19 showed that the (financial, tax-related and employment-based) measures implemented by Member States to stabilise employment cushioned the negative effects on households. The fragmentation of the CCS has an influence on the status of workers (employed, temporary, part-time, and dependent self-employed). As almost one third of CCS professionals are self-employed or in another form in non-standard employment, facing often a precarious employment situation, this group of workers did not enjoy that privilege and often lacked adequate access to social protection. The companies in the CCS, which delivered physical entertainment in festivals, concerts or live performances, suffered most from the COVID-19 restrictions, followed by impacts on museums or cinemas. In contrast to this, the COVID-19 pandemic did not have a negative impact on video gaming or streaming, where the turnover increased.<sup>39</sup> Another effect observed was that the pandemic accelerated the digital transformation of some CCS sub-sectors,<sup>40</sup> such as online streaming and virtual events as another form of entertainment and revenue generation. One study<sup>41</sup> showed that in Europe structural problems in the cultural and creative sectors, in particular in the audiovisual sector, which was supported by national emergency funds or grants during the pandemic, existed already before the pandemic occurred.

Data<sup>42</sup> from 2023 show that the cultural sectors seem to have overcome the COVID-19 pandemic and employment is increasing again – in Cyprus from -5.7 % in 2019-2020 to +21.5 % in 2021-2022. France, Lithuania, and Portugal were the only EU countries with an increase in employment in the cultural sector both between 2019 and 2020 and between 2021 and 2022.

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<sup>37</sup> [Compendium](#) of Cultural Policies & Trends. Measures included temporary economic support to wage earners and self-employed, payment of social security contributions for employees whose labour contracts have been suspended, deferral of taxes and social security contributions including tax instalment schemes for at least 3 months for all companies, self-employed and wage earners). It is estimated that approximately 40 000 people in the cultural and creative industries benefited from the horizontal measures. Certain relief measures were adopted specifically for the cultural and creative sector.

<sup>38</sup> [Social and economic consequences of COVID-19](#), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, March 2023.

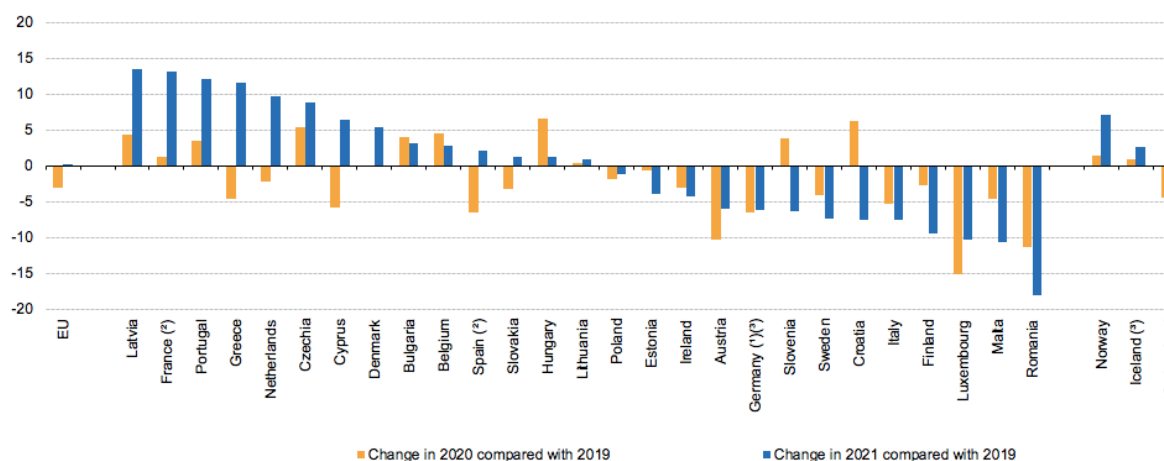
<sup>39</sup> Ibid.

<sup>40</sup> M. Vecco et al., [The impact of the COVID-19 pandemic on creative industries, cultural institutions, education and research](#), World Intellectual Property Organisation, 2022.

<sup>41</sup> F. Blázquez et al., [The European audiovisual industry in the time of COVID-19](#) European Audiovisual Observatory, 2020.

<sup>42</sup> [Cultural employment](#), Eurostat website.

Figure 4 – Cultural employment changes by country in 2020 and in 2021 compared with 2019 (%) during the COVID-19 pandemic



Source: Eurostat. See study in Annex.

## 2.3. The existing international framework and EU normative setting

This section offers an overview of the existing regulatory framework at international and EU levels. It also presents existing non-legislative measures at EU level complementing legislation.

### 2.3.1. International instruments and measures

At international level, the need to address the status of CCS professionals has been long acknowledged, dating back to 1980 and the 21st session of the **UNESCO** General Conference. During this conference UNESCO adopted a recommendation to improve the professional, social, and economic status of artists through the implementation of policies and measures relating to training, social security, employment, income and tax conditions, mobility, and freedom of expression.<sup>43</sup> The recommendation also recognises the right of artists to be organised in trade unions or professional organisations that can represent and defend the interests of their members, and in addition calls for freedom of artistic expression. Now, decades later, the recommendation remains relevant, considering the challenges worldwide in the area of social and economic rights and the impact of digital technology on the work of artists. In 2005, UNESCO countries adopted an international agreement, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions,<sup>44</sup> to promote and protect artistic freedom by upholding human rights and fundamental freedoms, such as the freedom of expression.

To protect workers, international labour standards have been developed by the **International Labour organization** (ILO), which has adopted recommendations for guidance as well as conventions, which are international treaties creating obligations under international law for the ratifying countries. The recommendations and conventions cover, among other things, the right to

<sup>43</sup> [Recommendation concerning the Status of the Artist](#), UNESCO, 1980. UNESCO Member States are required to submit a report on the legislative and administrative provisions and other measures they have taken to implement the conventions and recommendations adopted by the General Conference.

<sup>44</sup> [Convention](#) on the Protection and Promotion of the Diversity of Cultural Expressions, UNESCO, 2005.

social protection,<sup>45</sup> fair wages and remuneration, the right to freedom of association and collective bargaining<sup>46</sup> and the right to be protected against discrimination, violence and harassment.<sup>47</sup> Recommendation R202 on Social Protection Floors<sup>48</sup> specifies that the basic social guarantees should 'ensure at a minimum that, over the life cycle, all in need have access to essential health care and to basic income security'. ILO standards have been set for workers in an employment relationship, however, the ILO highlights the need to also protect the self-employed. The ILO continues advocating for achieving universal access to social protection floors<sup>49</sup> that enable people, including self-employed people, to cope with the challenges in life and work. The ILO repeated the demand, in the conclusions<sup>50</sup> of the 2023 technical meeting on the future of work in the arts and entertainment sectors, to allow all CCS professionals, including self-employed people, universal access to social protection systems, complemented with bilateral agreements for cooperation on the portability of social benefits across borders and employment status.

### 2.3.2. EU legal instruments and non-legislative measures

At EU level, the Treaties<sup>51</sup> clarify the division of competences between the EU and the Member States. **Cultural policy** is a competence of the Member States; the Union has a supporting and coordinating role aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing actions in artistic and literary creation including the audiovisual sector by respecting 'national and regional diversity' (Article 167 of the Treaty on the Functioning of the European Union – TFEU). The supporting competence in the field of culture in Article 3 of the Treaty on European Union (TEU) is an obligation to respect the Union's 'rich cultural and linguistic diversity, and [...] ensure that Europe's cultural heritage is safeguarded and enhanced'. Article 6 TEU stipulates that the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights (i.e. Articles 11 and 13).

Under the division of competences, the Union contributes within the regulatory framework of culture<sup>52</sup> to actions for instance protecting climate change (e.g. sustainable cultural tourism) or improving the working conditions of artists among others. Some legislative acts, in particular the modernisation of the EU copyright framework, the Audiovisual Media Services Directive, the sustainable ecosystems of online platforms or the action plan on VAT<sup>53</sup> for fairer and simpler taxation<sup>54</sup> have an impact on the CCS.

In the field of **social policy**, the Union has developed a wealth of legal instruments and soft-law measures over decades. The Union can act based on shared competence by taking 'into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health' (Article 9 TFEU). The European Pillar of Social Rights<sup>55</sup> is the guiding

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<sup>45</sup> [Convention C102](#) on Social Security (minimum standards), 1952, International Labour organization.

<sup>46</sup> [Convention C098](#) on the Right to organise and collective bargaining, 1949, International Labour organization; [Convention C154](#) on collective bargaining, 1981, International Labour organization.

<sup>47</sup> [Recommendation R206](#) on Violence and Harassment, 2019, International Labour organization.

<sup>48</sup> [Recommendation R202](#) on Social Protection Floors, 2021, International Labour organization.

<sup>49</sup> [Improving access to social protection for the self-employed](#), Newsletter International Labour organization, June 2022.

<sup>50</sup> Conclusions of the [technical meeting on the future of work in the arts and entertainment sector](#), International Labour organization, February 2023.

<sup>51</sup> [EU Treaties](#), EUR-Lex website.

<sup>52</sup> [Culture regulatory framework](#), Commission website.

<sup>53</sup> Communication on an action plan for fairer and simpler taxation supporting the recovery strategy, [COM\(2020\) 312 final annex](#), European Commission, July 2020.

<sup>54</sup> [Ibid.](#)

<sup>55</sup> Interinstitutional [Proclamation](#) of the European Pillar of Social Rights, December 2017.

compass to support the Union in delivering the implementation of social rights; it centres its 20 principles on three key areas: equal opportunities and access to the labour market; fair working conditions; and social protection and inclusion. For instance, Principle 5 stipulates that employment relationships that lead to precarious working conditions must be prevented, including by prohibiting abuse of atypical contracts. Principle 12 notes that self-employed people should have the right to adequate social protection, if their situation is comparable to that of workers.

The EU has not adopted specific sectoral legislation to cover the social rights or working conditions of CCS professionals. Nevertheless, the EU offers a **wide range of labour and social legislation** based on Articles 151 to 153 TFEU and following applicable to **all workers with an employment contract**. Article 151 TFEU promotes the harmonisation of living and working conditions and the implementation of 'measures which take account of the diverse forms of national practices in the field of contractual relations' and by favouring the harmonisation of social systems. The Union can adopt minimum requirements for working conditions, social security and social protection of workers<sup>56</sup> in an employment relationship to ensure a high level of employment and social protection for workers independently of the CCS sectors. An employment relationship can cover: part-time work, short-term and fixed-term work, temporary work, posting of workers, (cross-border) mobility of workers,<sup>57</sup> portability of social rights, and coordination of social security rights. Platform work is another important recent development on which the European Parliament has pushed for legislation. The Commission has now tabled a legislative proposal<sup>58</sup> for a directive on improving the working conditions in platform work, which has yet to be adopted by the co-legislators at the time of writing. Some pieces of EU legislation cover workers' rights in specific sectors, if addressed by a framework agreement between specific EU social partners in the cultural and creative sectors.<sup>59</sup> In this respect, European social partners are playing an important role in shaping social and working conditions in general and also in given sectors, in particular when such agreements translate into EU legislation.

The following list of Union law demonstrates the wealth of legislation in the areas of labour law, social protection, equal treatment and mobility.

Exemplary list of EU legislation addressing **labour law**:

- Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time
- Directive (EU) 2022/2041 of 19 October 2022 on adequate minimum wages in the European Union
- Directive (EU) 2019/1152 of 20 June 2019 on transparent and predictable working conditions in the European Union
- Directive 2008/104/EC of 19 November 2008 on temporary agency work
- Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-time work concluded by UNICE, CEEP and ETUC
- Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP
- Directive 2019/1158 of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU
- Proposal for a Directive on improving conditions in platform work and Parliament's position thereof.

<sup>56</sup> [Article 153](#) of the Treaty of the Function of the European Union.

<sup>57</sup> E. van Ooij, Highly mobile workers and the coordination of social security in the EU: Opening and closing Pandora's Box, [doctoral thesis](#).

<sup>58</sup> [Proposal](#) for a directive on improving working conditions in platform work, European Commission, 9 December 2021.

<sup>59</sup> Examples: Council Directive 97/81/EC of 15 December 1997 on Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC. Council Directive 2010/32/EU of 10 May 2010 implementing the Framework Agreement on prevention from sharp injuries in the hospital and healthcare sector concluded by HOSPEEM and EPSU.



Exemplary list of EU legislation addressing **social protection and equal treatment**:

- Regulation (EC) No 883/2004 of 29 April 2004 on the coordination of social security systems and its implementing regulations
- Directive 2010/41/EU of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

Exemplary list of EU legislation addressing **mobility**:

- Regulation (EU) 2019/1149 of 20 June 2019 establishing a European Labour Authority;
- Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services (amended by Directive (EU) 2018/957) and its enforcement Directive 2014/67/EU
- Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications.

Non-legislative instruments complement legislation in many policy areas, in particular in those policy fields where the competence of the Union is a supportive one; soft-measures serve to supplement and coordinate actions, as is the case for cultural policy. Recommendations<sup>60</sup> are an example of non-binding EU acts (Article 288 TFEU). They contain suggestions specific to Member States and EU institutions in a certain policy field. While a recommendation does not constitute a legally binding obligation and is without prejudice to the powers of the Member States, a recommendation can raise expectations and might serve to set standards for the future. Some relevant non-binding measures, adopted in the field of social protection, collective bargaining and recognition of training, are listed below.

Exemplary list of non-legislative EU instruments addressing **employment policy, social protection, recognition of training and qualification**:

- Council decision of 21 November 2022 on guidelines for the employment policies of the Member States
- Council recommendation of 8 November 2019 on access to social protection for workers and the self-employed 2019/C 387/01
- Council recommendation of 30 January 2023 on adequate minimum income ensuring active inclusion
- Communication of 29 September 2022 on Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons;
- Council Recommendation of 22 May 2018 on key competences for lifelong learning
- Council recommendation of 26 November 2018 on automatic mutual recognition of higher education and upper secondary education periods abroad
- Council recommendation of 16 June 2022 on a European approach to micro-credentials for lifelong learning and employability.

Under Article 153(2)(a) TFEU, the Union may adopt measures to encourage cooperation between Member States, excluding any harmonisation of the laws and regulations of the Member States, in the form of a decision. **Decisions** can be useful to encourage cooperation at Union level between Member States. For example, the decision to establish the EU platform undeclared work<sup>61</sup> seeks to foster cooperation and exchange between Member States on complex matters.

**Guidelines** are another non-binding tool, suggesting measures serving to coordinate national policies, as is the case for employment guidelines 5 to 8 (Articles 148 and 149 TFEU) of the integrated

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<sup>60</sup> [EU Monitor](#) explanation on recommendations, website.

<sup>61</sup> [Decision](#) of 9 March 2016 on establishing a European platform to enhance cooperation in tackling undeclared work.

guidelines (together with the broad economic policy guidelines addressed in guidelines 1 to 4) within the European Semester (the Semester). The objective is that Member States consider the employment guidelines (Article 148 TFEU)<sup>62</sup> when implementing national policies. Subsequently, Member States submit their national reform programmes to the European Commission demonstrating implementation of the guidelines. The Commission assesses the economic and employment strategies and presents draft country-specific recommendations (CSRs) tailor-made to each Member State. Overall, the Semester helps to improve labour and working conditions and social protection by coordinating national policies, while coordinating and monitoring convergence and stability in the EU.

The **open method of coordination** (OMC) was developed as a soft-instrument for the governance of the European employment strategy in 1997 as the Union has only a coordinating role in the employment policy field. The OMC facilitates coordination and exchange of best practice and is geared towards convergence in policy areas within the Member States' competence. Since 2011, the OMC has also been used for culture and provides the framework for cooperation between Member States through the OMC group of Member States' experts. The experts are mandated to deal with the status and working conditions of artists and cultural and creative professionals.

**Social partners** play an increasingly important role in the social dialogue at EU level, which is key for the development of social rights and improvement of working conditions. The European social partners must be consulted prior to any legislative proposal in this field (Articles 153 and 154 TFEU). EU social partners can agree on social partners' work programmes and conclude autonomous agreements, such as the one on digitalisation (2020). These agreements can be implemented through EU law (Article 155 TFEU) and translated into an EU directive, if social partners request to do so and when these agreements fulfill certain criteria.<sup>63</sup> The annexed study suggests that they could intensify social dialogue and foster collaboration within the audiovisual and live performance sectors. Moreover, social partners are involved in the Semester process at European and national levels.

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<sup>62</sup> [Council decision of 21 November 2022](#) on guidelines for the employment policies of the Member States.

<sup>63</sup> [Communication](#) of 25 January 2023 on strengthening social dialogue in the European Union: harnessing its full potential for managing fair transitions, European Commission.

### 3. Main problems and gaps at EU level

Challenges in the cultural and creative sectors are due in part to the business model of producing art and culture, which often produces 'experiences', unlike other sectors that produce goods and services,<sup>64</sup> and in part to the differences within the CCS and differing national legislation on working conditions and social benefit rules, generating fragmentation. Artificial intelligence and digitalisation, accelerated by the COVID-19 pandemic, have accelerated the transformation of the sectors,<sup>65</sup> with an impact on working conditions and social protection.

Despite existing legal and non-legislative instruments, CCS actors, the European Parliament, other EU institutions,<sup>66</sup> EU social partners and academics have identified problems and gaps (see study in the Annex). This section will focus on the gaps regarding labour and working conditions, social rights, mobility, social dialogue, income and access to funds, which have been identified as key issues for the social and professional situation of CCS professionals with a special focus on workers with non-standard employment contracts and self-employment.

#### 3.1. Problems affecting CCS professionals: An overview

Many CCS professionals face atypical employment arrangements and working conditions, including part-time, fixed-term or intermittent project-based employment, temporary work, freelance work, economically dependent self-employment<sup>67</sup> or a combination. They are more likely to be self-employed as compared with the rest of the labour market (31.7% versus 13.8%),<sup>68</sup> limiting their access to rights relating to working conditions or social protection. The share of bogus self-employment is higher than in other sectors. The high level of cross-border mobility, which offers benefits in terms of working opportunities and building an international reputation, comes with challenges such as the lack of coordination between national social security systems<sup>69</sup> and inconsistent application of social security rights across borders, in particular for the self-employed. Self-employment offers flexible working arrangements and work-life balance, but it can lead to a lower decent working conditions, when workers have no or only limited access to social protection or decent working conditions because they do not meet the entitlement criteria.

Women in the cultural and creative sectors, representing 48.9% of workers in the industry,<sup>70</sup> are at greater risk of experiencing precarious working conditions, leading to a persistent multifaceted gender pay gap. This is often due to dependency on public or semi-public funding, as well as workplace harassment.<sup>71</sup> Young artists are at greater risk of exploitation.<sup>72</sup> In some artistic professions, ageing implies shorter careers requiring adequate retirement and pension schemes.

Usually, income consists mainly of salary and copyright, royalties in some CCS sectors. The absence of mechanisms to ensure fair remuneration constitutes another perennial, structural obstacle to

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<sup>64</sup> [Report](#) on The Future of Work in the Arts and Entertainment Sector, International Labour organization, 2023.

<sup>65</sup> [Resolution](#) of 13 December 2016 on a coherent EU policy for cultural and creative industries, European Parliament.

<sup>66</sup> [Opinion](#) of 17 April 2013 on Communication – Promoting cultural and creative sectors for growth and jobs in the EU', European Economic and Social Committee.

<sup>67</sup> [Social protection rights of economically dependent self-employed workers](#), Policy Department for economic and scientific policy, European Parliament, 2013; [Document](#) on Statistical definition and measurement of dependent 'self-employed' workers, International conference of labour statisticians, October 2018.

<sup>68</sup> [Cultural employment by sex and selected labour market characteristics](#), Eurostat, 2021.

<sup>69</sup> Ibid.

<sup>70</sup> [Cultural employment by sex](#), Eurostat, 2021.

<sup>71</sup> [The Situation of Artists and Cultural Workers and the post-COVID-19 Cultural Recovery in the European Union](#), Policy Department for Structural and Cohesion Policies, European Parliament, March 2021.

<sup>72</sup> Ibid.

artistic work, leading to a situation where preparation and rehearsal time are generally not remunerated and therefore do not count for unemployment or pension schemes. Part of the income is expected to be constituted by royalties and copyright, which can potentially be (negatively) affected by digitalisation, the rise of streaming and VOD platforms, piracy, buy out contracts and work-for-hire contracts.

The CCS employ highly skilled CCS professionals; many with multiple jobs, sometimes in work for which they are over qualified. Over-education of the CCS professionals and the high number of self-employed, for whom no data exist regarding skills and access to training, characterise the sectors. The CCS see a high turnover of the workforce, with CCS professionals leaving the sectors after a few years only.<sup>73</sup>

## 3.2. Labour and working conditions

The Union regulatory framework of labour law and working conditions (transposed into national legislation) applies in general to all employed workers with a standard employment contract. They benefit from protection against unemployment, sickness, healthcare and occupational accidents, as well as invalidity; and they profit from pension rights, and maternity and paternity rights.

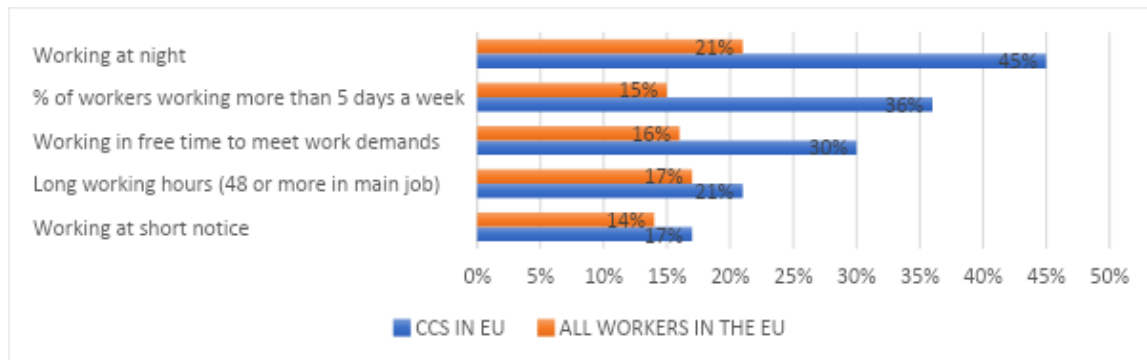
As described in the above section on facts and figures and on the basis of the study in the Annex, the CCS are characterised by **differing categorisation of the status** of CCS professionals across the EU and the **lack of an uniform definition** of who is an artist across Member States. Depending on the national system, CCS professionals they can be employed either by standard employment contracts (defined as full-time, open-ended employment contracts) or by non-standard employment contracts, such as part-time, fixed-term, temporary, intermittent project-based work contracts, or zero hour or on-demand contracts. Statistics show a higher share of solo self-employed compared to the entire economy and a growing prevalence of intermittent employment in the CCS sectors. This is partly a consequence of the project-based funding structure. CCS organisations organise employment contracts in such a way as to fit with the temporary nature of the project and to reduce labour costs at the end of the project. According to a study,<sup>74</sup> most contracts are still based mainly on the criteria of the lowest price or cost, whereas criteria such as social or environmental impact or innovation are not considered.

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<sup>73</sup> S.P. Fraiberger et al., [study](#) on quantifying reputation and success in art. Science. 2018.

<sup>74</sup> [Social impact of public procurement](#), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, October 2023.

Figure 5 – Creative and cultural workers declaring non-standard working time



Notes: Working at short notice (at least several times a month). Working at night (sometimes, often, always).

Source: Eurofound, 2021. See study in Annex.

Workers in the CCS sectors face unpredictable working arrangements and long working hours that are above average compared with the EU workforce as a whole (Figure 5), with consequences for their work-life balance.

CCS professionals are more exposed to certain **occupational safety and health risks**, such as noise (musicians) (44 % versus 34% of EU average), carrying and moving heavy loads (42 % versus 35 % of EU average) or tiring and painful positions (54 % versus 50 % of EU average) (see study in Annex). The EU's legislative framework for occupational safety and health<sup>75</sup> covers mainly employed workers and does not apply to the self-employed, with a few exceptions.<sup>76</sup> In most Member States self-employed individuals are not covered by the general social security system and are responsible for their own coverage. Other dimensions of vulnerability the job instability and uncertain job prospects, owing to project-based funding, pressure to achieve cost efficiency and low predictability of earnings (Figure 6), and discrimination and sexual harassment above the EU average.

While the labour and social protection legislation applies to all workers with an employment contract, irrespective of the sectors in which they work, people in **atypical work**, in particular economically dependent solo self-employed, do not profit from Union-wide legislation. The literature<sup>77</sup> shows that artistic work is growing towards atypical project-based intermittent work or self-employment, which are not covered by specific EU protective social and employment rights. This is left to the discretion of Member States and national circumstances, resulting in differing rules and contributing to fragmentation.

The situation described above leads to the following gaps: **First**, the employment status of CCS professionals depends on national criteria for classification laid down in statutory legislation or collective agreements. **Second**, only a few Member States offer social protection rights for atypical

<sup>75</sup> Council [directive](#) 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work; [communication](#) on EU strategic framework on health and safety at work 2021-2027, European Commission; EU occupational safety and health [legislative framework](#), European Agency for Safety and Health at Work (EU-OSHA).

<sup>76</sup> Council [recommendation](#) 2003/134/EC concerning the improvement of the protection of the health and safety at work of self-employed workers.

<sup>77</sup> [The status and working conditions of artists and cultural and creative professionals](#), European Commission, 2020.

workers and self-employed individuals. Some Member States have introduced laws to include these persons in their national social security schemes.<sup>78</sup>

The fact that this group faces 'large gaps in protection' was addressed by the Council<sup>79</sup> recently, and Parliament has called for the right to fair working conditions for everyone regardless of their employment status<sup>80</sup>. A few Member States have created intermediary categories of self-employed workers<sup>81</sup> to allow access to social protection and protective measures for this group, by lowering the qualifying period for easier eligibility. France, for instance, has introduced the 'intermittent du spectacle' worker category. The study in the Annex assessed the case of France and found that intermittent workers' project-based employment could be regulated by applying the legal presumption. Although intermittent workers benefit from social protection, it is underlined that the system is extremely costly with a low number of beneficiaries and high public spending, favouring a specific sector.

It should be noted that the **concept of 'worker'** is yet not legally defined at Union level. The jurisdiction of the Court of Justice of the European Union (CJEU) remains valid; it draws on three criteria, i.e. the employment performance, the relationship of subordination, and remuneration. Despite the European Commission's attempt in 2006 to argue that the distinction between employees and independent self-employed does not reflect the reality of work, and despite Principle 12 of the European Pillar of Social Rights stating that 'regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection', the EU legislators did not agree on a Union-wide definition of 'worker' during the negotiations on the proposal for a directive on transparent and predictable working conditions.<sup>82</sup> The definition of worker was eventually deleted from the final version of the directive that was adopted.<sup>83</sup> As self-employed workers do not usually fulfil the requirements of the three criteria, they are not covered by this directive.

The ILO, acknowledging recent developments, provides non-binding guidance on criteria (i.e. work carried out under the instruction and control of another party, periodic payment of remuneration) to determine the existence of an employment relationship in its Employment Relationship Recommendation<sup>84</sup> and requests universal access to social protection floors. Reports by Eurofound<sup>85</sup> and ETUI<sup>86</sup> suggest using the economic dependency of solo self-employed as a criterion, if persons are working for only one or a very small number of contractual partners. Economically dependent self-employed people find themselves in a vulnerable situation comparable to that of traditional workers with a higher risk of an unstable income and working time and unpaid work. The extended concept of 'worker' could be applied, among others, to journalists, freelancers (especially in the communications and creative industries) under the provisions of labour law.<sup>87</sup>

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<sup>78</sup> [Social protection rights of economically dependent self-employed](#), Policy Department for Economic and Scientific Policy, European Parliament, 2013.

<sup>79</sup> [Council conclusions of 9 October 2023](#) on social protection for the self-employed, Council of the European Union.

<sup>80</sup> [Resolution](#) of 18 October 2022 on the proposal for a Council decision on guidelines for the employment policies of Member States.

<sup>81</sup> [Resolution](#) of 20 October 2021 on the situation of artists and the cultural recovery in the EU, European Parliament, 2021.

<sup>82</sup> [Proposal](#) for a directive on transparent and predictable working conditions in the European Union, European Commission, 21 December 2017.

<sup>83</sup> [Directive](#) of 20 June 2019 on transparent and predictable working conditions in the European Union.

<sup>84</sup> [Recommendation R198](#) on Employment Relationship, 2006, International Labour organization.

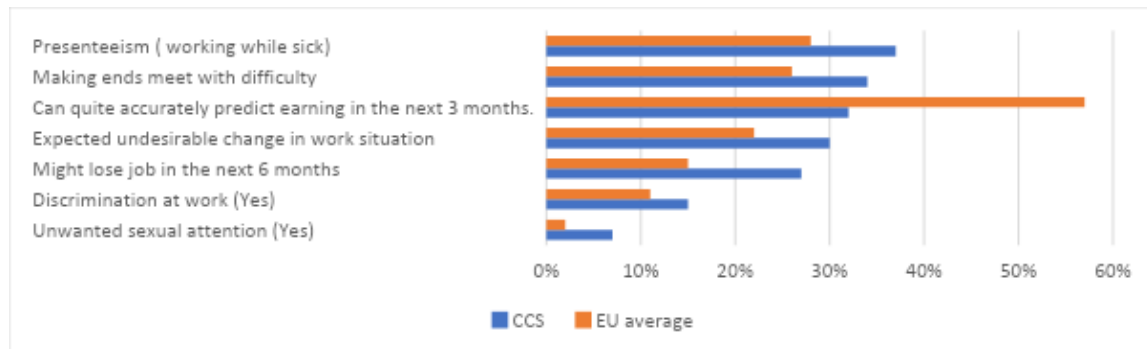
<sup>85</sup> [Economically dependent workers, employment law and industrial relations](#), Eurofound, June 2007, updated 2018.

<sup>86</sup> M. Risak and T. Dullinger, [Report 140](#) on the concept of 'worker' in EU law – status quo and potential for change, ETUI.

<sup>87</sup> [Ibid.](#)

The **strict distinction between employees and self-employed** individuals has been softened in two policy areas, namely in anti-discrimination law, following by a judgment of the European Union Court of Justice,<sup>88</sup> and in the application of EU competition law to collective agreements (Commission guidelines).<sup>89</sup> These laws cannot be directly applied to other policy fields; this is demonstrated in the study in the Annex. The guidelines on the application of competition law provide an interpretation of Article 101 TFEU, according to which the collective agreements of solo self-employed should be interpreted as not forbidden under EU competition rules in specific circumstances. To date, collective agreements between freelancers and their principals have been understood as violating anti-trust regulations. Now, the guidelines treat solo self-employed as a special group of workers or companies who can engage in collective bargaining with their principals, clients or employers, which is not understood as a form of cartel.

Figure 6– Creative and cultural workers: Selected dimensions of structural vulnerability



Source: Eurofound, 2021. See study in Annex.

As argued earlier in the study, the definition and methods for estimation used for **bogus self-employment** and improved enforcement of existing legislation are pressing issues in the CCS, and need to be discussed and streamlined at EU level to reduce fragmentation. Moreover, misclassification and gaps in enforcement of legislation favour bogus self-employment.<sup>90</sup> If common criteria were established and applied EU wide, they could help labour inspections distinguish it from self-employment.

The **vulnerability** of CCS professionals relates not only to working conditions but also to the work environment (Table 7). A survey<sup>91</sup> conducted by the ILO shows that 86 % of unions in the entertainment industry express concern about sexual harassment occurring at work or in work-related environments. Live entertainment and film or television production are sectors that are particularly affected. The workplace culture and workers' anxiety about losing their jobs do not encourage the reporting of abuse. The majority of victims experience sexual harassment from people in positions of power and co-workers, in particular in employment relationships that are less regulated or in sectors with high levels of precarious contracts, with working conditions, job security and type of work risk factors for being exposed to sexual harassment at work<sup>92</sup> according to Parliament. While not directly related to the EU, a ILO survey<sup>93</sup> conducted in 2017 among 843 women employed in Hollywood's film and television industry revealed that 94% reported having

<sup>88</sup> Judgment in [Case C-356/21 – JK v TP SA](#), Court of Justice of the European Union, 2021.

<sup>89</sup> [Guidelines](#) on applying EU competition law to collective agreements regarding the working conditions of solo self-employed persons, European Commission, 2022.

<sup>90</sup> [Resolution](#) of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe, European Parliament.

<sup>91</sup> [Policy brief](#) on sexual harassment in the entertainment industry, International Labour organization, 2020.

<sup>92</sup> [Resolution](#) of 1 June 2023 on sexual harassment in the EU and MeToo evaluation, European Parliament.

<sup>93</sup> [Policy Brief](#) on sexual harassment in the entertainment industry, International Labour organization, 2020.

experienced some form of assault or harassment, with 21 % subjected to forced sexual acts at least once.

Table 1 – List of EU labour law acquis for employed, self-employed and other categories of workers

Status of CCS professional	Existing legislative/non-legislative instrument	Gaps and impact
Employed	EU labour law acquis, e.g. directives on working time, part-time work, fixed-term work, minimum wages, transparent and predictable working conditions, equal treatment self-employed, temporary agency, etc. Proposal for a directive on platform work.	Differing, inconsistent legislation between Member States despite existing EU framework (specific national legislation, including collective agreements).  Impact: proliferation of temporary contracts, chain labour contracts, <sup>94</sup> high level of unpaid work, long working hours, less equal pay; relatively higher prevalence of harassment.
Self-employed	Guidelines on collective bargaining for solo self-employed (in competition law).  Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity  Copyright Directive (EU) 2019/790 (e.g. collective bargaining for self-employed authors and performers)	Differing, inconsistent legislation between Member States: Member States' laws differ in mandatory, voluntary or non-existent access to social protection. Self-employed covered in specific fields only.  Impact: short, project-based intermittent employment; precarious conditions; need for additional or parallel jobs to support incomes; low rates of coverage by social protection schemes.
Other categories of workers (non-standard), e.g. part-time, short-term or fixed-term contracts, project/task based intermittent work, agency work, platform work.	EU labour acquis applies if these workers are recognised as employees in national laws.	Differing legislation and collective agreements between Member States (including collective agreements)  Impact: Non-standard workers often not or only partly covered by social protection on account of unmet qualifying periods; precarious conditions, need for additional or parallel jobs.

Source: EPRS EAVA Unit.

Non-regulated forms of employment and weak protection of workers, in particular for other categories of non-standard workers, give discretion to human resources practices. Workers do not profit from the right to transparency and predictability,<sup>95</sup> not knowing whether an employment contract or another atypical employment relationship is applied or whether they have to work as freelancer or solo self-employed. In some cases, for example when many CCS professionals apply for one job, it can lead to a situation that art workers also work for free.

This study focuses mainly on the situation of non-standard workers and solo self-employed persons in the CCS, with a detailed analysis in the Annex of this study. Research indicates that solo self-

<sup>94</sup> Chain labour contracts means the succession of several temporary fixed-term employment contracts.

<sup>95</sup> [Directive](#) (EU) 2019/1152 of 20 June 2019 on transparent and predictable working conditions in the European Union.



employed workers, in particular **economically dependent solo self-employed people**, are often in the same situations as standard employees and require the same protection; this is especially true of CCS professionals because of their insecure employment situation and increased mobility compared with other sectors.

The Commission has recognised the special requirements of solo self-employed persons in relation to competition law and has published the guidelines on the application of Union competition law to collective agreements regarding working conditions of solo self-employed persons.<sup>96</sup> These state that competition law should not be applicable for collective agreements by solo self-employed persons who are in a situation comparable to that of workers and who experience an imbalance in bargaining power. The guidelines further identify<sup>97</sup> the context of working conditions of solo self-employed persons. It can be expected that collective bargaining for economically dependent solo self-employed will improve their working conditions and income situation and contribute to reducing poverty.<sup>98</sup> It should be noted that the guidelines are limited to competition law only.

The **absence of a coherent legislative framework** at EU and Member State level constitutes a regulatory gap. A more coordinated approach and streamlined understanding of the necessity to protect this group of workers with labour and social protection rules could lead to more social cohesion, economic welfare, reduced inequalities, and smaller gender pay and pension gaps, and alleviate the vulnerability of non-standard workers.

### 3.3. Social right benefits

This section focuses on access to social protection (in particular unemployment benefits, occupational accident and sickness insurance and old age pensions) for self-employed people and workers with non-standard contracts.

Solo self-employed people and people with non-standard employment contracts may enjoy flexible working arrangements allowing for a good work-life balance, however, unstable forms of employment and precarious working conditions can lead to a generally less stable income and partial or no access to social protection.<sup>99</sup>

The coverage of social protection legislation applies to workers with a standard employment contract. As the CCS show a high number of non-standard forms of work, representatives<sup>100</sup> of these sectors are seeking to overcome the legal diversity in the Member States regarding **social protection for self-employment** and **non-standard employment relationships**; they are calling for guaranteed decent social protection across the CCS sectors by taking into account the multifaceted nature of cultural work. In particular, access to unemployment benefits, occupational accident and sickness or pension rights are of major concern in these sectors. The use of intermittent project-based employment creates additional challenges for CCS professionals trying to acquire these social protection entitlements; requirements for entitlement (such as a long qualifying period) and costly contribution payments are a challenge for people with intermittent project-based employment contracts and unpredictable income. Another risk when it comes to access to social

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<sup>96</sup> [Communication](#) on Guidelines on the application of Union competition law to collective agreements regarding working conditions of solo self-employed persons, European Commission, 2022.

<sup>97</sup> Ibid. Recital 15: The comprehensive list refers, among others, to 'remuneration, working time and working patterns, holiday, leave, physical spaces where work takes place, health and safety, insurance and social security, and conditions under which solo self-employed persons are entitled to cease providing their services or under which the counterparty is entitled to cease using their services'.

<sup>98</sup> [Impact assessment report](#) on guidelines on the application of EU competition law to collective agreements regarding working conditions of solo self-employed persons, European Commission, 2022.

<sup>99</sup> [Study supporting the impact assessment of a possible EU initiative to the application of competition rules to collective bargaining by self-employed](#), European Commission, October 2021.

<sup>100</sup> [Status and working conditions for artists, cultural and creative professionals](#), Report of Voices of culture, 2021.

security rights is caused by the lack of an EU wide common definition of 'artist' or 'CCS professional' and by the fact that CCS professionals might have fragmented career patterns (see study in the Annex).

The current distribution of powers means that the EU cannot harmonise national **social security systems**. Each Member State lays down its social protection provisions that are applied to all workers, self-employed workers and their families in the same way. The Coordination of Social Security Systems Regulation (EC) 883/2004<sup>101</sup> and its implementing regulation (EC) 987/2009<sup>102</sup> coordinate the national systems for the main types of statutory scheme (i.e. sickness, unemployment, maternity, invalidity, old age, survivors, family, and death benefits). The Social Security Coordination Regulation stipulates that a worker can be subject to only one country's social security laws at a time; this is particularly important for mobile workers. The European Parliament has emphasised the need to implement the European Social Security Card<sup>103</sup> to overcome problems with social security coverage in cases of mobility. This instrument should facilitate the exchange of information on the social security status and rights with digital means. Upon the request of Parliament, the European Commission recently set up the European Social Security Pass (ESSPASS) pilot project.<sup>104</sup> Moreover, the European Labour Authority<sup>105</sup> is mandated to help Member States disseminate information on social security coordination and posting of workers.

Encouraged by Parliament,<sup>106</sup> the European Commission took into account the trend that a growing number of people are without sufficient access to social security<sup>107</sup> owing to their employment status (i.e. increasing numbers of self-employed people) and proposed a **Council recommendation on access to social protection for workers and self-employed** in 2018. However, the implementation report<sup>108</sup> on this Council Recommendation of 2023 found significant divergence in the level of ambition of Member States to implement the recommendation. Member States acknowledge the situation of the self-employed and non-standard workers in the CCS, according to the report, by 'taking measures to improve the status and working conditions'. Nevertheless, most of the Member States do not intend to close all existing gaps in access to social protection.

As the EU does not regulate this issue, Member States do not provide uniform protection and coverage for people in non-standard employment or for self-employed persons. According to the implementation report,<sup>109</sup> it is estimated that '**at least 5.6 million non-standard workers and 15.3 million self-employed people do not have access to unemployment benefits**', based on data from reporting Member States. Some Member States do not grant access to social protection for self-employed, while others have mandatory coverage; a third group of Member States enable voluntary access to insurance. Member States with voluntary participation in social protection schemes for the self-employed face a low interest in participation in these schemes.<sup>110</sup> The diversity between Member States is demonstrated not only by differences in existing, voluntary or mandatory coverage, but also by the scope of coverage obtainable for the self-employed. Member States

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<sup>101</sup> [Regulation](#) (EC) No 883/2004 of 29 April 2004 on the coordination of social security systems.

<sup>102</sup> [Regulation](#) (EC) N° 987/2009 laying down the procedure of implementing Regulation (EC) N° 883/2004 on the coordination of social security systems.

<sup>103</sup> [Resolution](#) of 25 November 2021 on the introduction of a European social security pass for improving the digital enforcement of social security rights and fair mobility, European Parliament.

<sup>104</sup> [European Social Security Pass](#) (ESSPASS), European Commission.

<sup>105</sup> [European Labour Authority](#) website.

<sup>106</sup> [Resolution](#) of 14 January 2014 on social protection for all, including self-employed workers, European Parliament.

<sup>107</sup> [Measuring the adequacy of social protection by looking at those above the poverty line](#), Joint Research Centre, European Commission, 2022.

<sup>108</sup> [Report](#) on the implementation of the recommendation on access to social protection, European Commission, 2023.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

mainly offer access to unemployment benefits, sickness insurance and pensions and these vary enormously. Five Member States do not cover self-employed individuals in unemployment schemes, 13 Member States cover them within the general system, which could have a negative effect in the case of intermittent project-based employment (see table in the study in the Annex).

This shows that, overall, employment status is a precondition for access to social security schemes and to benefits that are the foundation for decent living conditions, in particular after retirement. Many CCS professionals suffer from low pay and high social risks (unemployment, sickness) owing to weak access to social security schemes<sup>111</sup> and fragmentation of measures<sup>112</sup> during working life affecting old-age insurance. The fragmented situation leaves a high number of dependent solo self-employed and non-standard workers without social protection, causing a higher risk of poverty.<sup>113</sup> Schemes providing an adequate level of protection and appropriate income replacement aiming to prevent poverty would contribute to sustainable social cohesion.

One report<sup>114</sup> demonstrates that 'extending unemployment insurance coverage to the self-employed would have positive effects in terms of benefit coverage and poverty risk reduction, at a relatively low potential cost in most EU countries'. The related costs vary significantly between Member States, from 4 % in Ireland to 80 % in Bulgaria owing to differing unemployment schemes. In addition, access to social protection is vital not only for the social and economic safety of working people, but also for the sustainability of social protection systems. The growing number of self-employed people and non-standard workers have inadequate or no access to social security; this affects the sustainability of social security systems as social security benefits are usually based on a standard full-time employment relationship. With the shrinking number of contributors, social systems could be eroded. An increasing number of people not covered and subsequently deprived from access to safety net,<sup>115</sup> has a cost for society as a whole.

#### Estimated cost scenarios for CCS professionals' self-employed unemployment coverage

The scenarios developed for the 18 Member States that do not envisage unemployment benefit coverage for self-employed CCS professionals show that such a system could be beneficial to over 1.5 million CCS professionals. Depending on the level of the public contribution to the system, the costs might be significant. In case of countries that include self-employed CCS professionals within the general system, costs will apply on account of the differing access entitlements, but would be effectively lower.

EU-wide measures to expand access to social security rights, in particular to unemployment benefits for self-employed CCS professionals, would improve the protection of this group in Member States where they are not entitled to access social security schemes or where they fall under the general system. In the latter case, the eligibility criteria are often high, leaving the self-employed in a more vulnerable situation compared with other workers.

Source: see study in Annex.

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<sup>111</sup> [Social protection in the cultural and creative sector](#), Working paper 28, International Labour organization, April 2021.

<sup>112</sup> Semenza R. and Pichault F., "[The challenges of self-employment in Europe](#) - Status, social protection and collective representation", edited by 2019.

<sup>113</sup> [Income protection of atypical workers in the event of unemployment in Europe](#), Technical reports of Joint Research Centre, European Commission, October 2018, pages 21 ff.

<sup>114</sup> Ibid, page 28.

<sup>115</sup> [Impact assessment](#) for the recommendation on access to social protection for workers and self-employed, European Commission, 2018.

Three different policy scenarios simulating the cost of expanding unemployment benefits to self-employed CCS professionals in the Member States have been developed (see study in Annex). The scenarios represent generosity in terms of qualifying periods, eligibility and amount of unemployment benefit; each scenario was calculated for three levels of public subsidies.

- Scenario 1 assumes that the benefit of a monthly minimum wage would be claimed for an average of 6 months in a year by one third of self-employed CCS professionals.
- Scenario 2 assumes the same parameters but for an average duration of 4 months per year.
- Scenario 3 assumes that 20% of self-employed workers would claim the benefit for an average maximum duration of 4 months per year but paid at 80% of the minimum wage (accepted as a benchmark because in 14 EU Member States replacement rates of unemployment benefits hover between 70% and 90% of the previous income).

For each of these three scenarios, it has been estimated that the central budget covers either 80%, 50% or 20% of public contributions. Below, only the scenario of three countries with differing underlying national situations are show-cased.

Germany represents an example of a country where self-employed CCS professionals are covered in the general system and where the monthly minimum wage is around €1 997. Assuming that the benefit of a monthly minimum wage is claimed for the average of 6 months in a year by one third of self-employed CCS professionals (about 147 000 people), the cost of expanding the benefit would be about €14 billion for Germany. If the public subsidy covered 20% of the resulting costs, the disbursement for Germany would be €3.5 billion. In another hypothetical scenario, where 20% of self-employed CCS professionals (88 000 people) claim the benefit for an average maximum duration of 4 months per year but paid at 80% of minimum wage, Germany would face costs between €4.5 billion in the case of an 80% public contribution, and €1.1 billion in the 20% scenario.

In Romania, CSS professionals are not covered in the general unemployment system, the country has a statutory minimum wage with a monthly minimum of €604. If one third of the Romanians self-employed in the CCS (5 000 people) had access to the benefit of a monthly minimum wage, the cost for the country would be between €145 million (with the 80% public contribution scenario) and €36 million (with the 20% public contribution scenario). In a scenario where 20% of self-employed (3 000 people) would claim the benefit for an average maximum duration of 4 months per year but paid at 80% of minimum wage, the outlay for Romania would be between €46 million in the case of 80%, and €12 million in the case of 20% public contribution.

Italy is an example of a country in which the minimum wage is not regulated at national level. In this case, the authors estimated a monthly minimum wage of €1 368 based on recent proposals for an hourly minimum wage. If a third of self-employed CCS professionals (about 118 000 people) were to demand this benefit for an average of 6 months a year, Italy's cost would be approximately €9.6 billion. If the public subsidy covered 20% of the resulting costs, the disbursement for Italy would be €1.9 billion. In the hypothetical scenario where 20% of self-employed CCS professionals (71 000 people) required the benefit for an average maximum duration of 4 months per year but paid at 80% of the minimum wage, Italy would face costs between €3.1 billion in the case of an 80% public contribution, and €622 million in the 20% scenario.

Table 2 – Overview of EU social protection legislation

Status of CCS professionals	Existing legislative/non-legislative instrument	Gaps and impact
Access to social protection for employed workers (covering unemployment benefits, sickness and healthcare benefits, invalidity benefits, pension rights, maternity/paternity rights, occupational accident)	National social protection legislation and schemes Coordination of social security systems regulations at EU level (EC)883/04 and its implementing Regulation (EC) No 987/2009 Electronic exchange of social security information (EESSI)	Differing, inconsistent legislation between Member States Requires an existing employment relationship/employment contract It depends on the Member States' systems, whether non-standard workers are covered. Leads to fragmentation in access to social rights
Access to social security for self-employed  Access for other categories of workers (non-standard workers)	Council recommendation on access to social security rights for self-employed  EU social acquis applies if these workers are recognised as employees in national laws (e.g. part-time work, fixed-term work, etc.).  Intermittent project-based employment	For both self-employed and other categories of workers (non-standard workers): Differing, inconsistent legislation between Member States Barriers to access social security systems: whether self-employed people are covered depends on Member States' systems; eligibility criteria to meet the requirements are high; contributions are unaffordable. Old age pensions are a particular problem. Impact: no uniform protection; fragmentation in access to social rights; lack of access to decent standard of living; risk of poverty (old age). Fewer contributors, undermining sustainability of social security systems. Loss of economic opportunities. Intermittency contracts: qualifying period for social security systems too long to claim benefits.
Minimum income	Council recommendation on an adequate minimum income	Member States competences: differing adequacy and coverage of benefits <sup>116</sup>

Source: EPRS EAVA Unit.

<sup>116</sup> [Minimum income](#), European Commission website.

### 3.4. Cross-border mobility

The mobility of CCS professionals is a central aspect of the professions in these sectors: it contributes to the exchange of opportunities and culture; it stimulates inspiration and creativity; and boosts CCS professionals' income. Cross-border mobility is based on the freedom of movement of workers as one of the four freedoms laid down in the Treaties. It constitutes a fundamental right of workers and their families, guaranteeing workers the possibility to improve their living and working conditions (Articles 45 to 49 TFEU).<sup>117</sup> The EU has a duty to support and complement the activities of the Member States by establishing minimum requirements for instance on working conditions or social security rights (Articles 151 to 153 TFEU).

Challenges in the CCS, as described in the previous sections, are often multiplied in a cross-border context, such as multiple employment statuses in different countries, multiple contracts, taxation or portability of social rights.<sup>118</sup> The cross-border portability of social security entitlements has been identified as one of the barriers to cross-border mobility of workers, owing to the complexity of coordinating 27 differing national social security systems,<sup>119</sup> the related administrative procedures, difficult access to relevant information, or fragmented career patterns and short-time cross-border services (see study in Annex).

#### Example: Artists working in several European countries

Artists' can have engagements in several EU and EEA countries. The legislation of only one country can apply for social security protection according to Regulation (EC) 883/04. It is therefore necessary to define the legislation applicable for all employment relationships.

If at least 25 % of working hours and remuneration relate to a given employment contract in the country of residence, the legal provision of this country is applicable. If less than 25 % of working hours and remuneration are attributed in the country of residence, then the rules of the country where the work is carried out apply.

Source: [Touring Artists](#) website.

#### 3.4.1. Posting of workers and social security coverage in cross-border mobility situations

Posting of workers is an important pillar of cross-border mobility, although the relevant directives on posting cover employees only and not self-employed workers, in contrast to the scope of the social security coordination regulation, which also applies to self-employed workers. Directive 96/71/EC on posting of workers<sup>120</sup> (the Posting of Workers Directive) ensures the equal treatment of posted workers with local workers of the hosting Member States. Access to social security rights is not harmonised at EU level and therefore only coordinated between Member States through Regulation (EC) 993/2004 and Regulation (EC) 987/2009; the administrative requirements are difficult to understand and to apply. To overcome cross-border challenges, Parliament suggested introducing a European social security card and called for implementation of the

<sup>117</sup> [Regulation](#) (EU) No 492/2011 of 5 April 2011 on freedom of movement for workers within the Union (codification).

<sup>118</sup> [The Situation of Artists and Cultural Workers and the post-COVID-19 Cultural Recovery in the European Union](#), Policy Department for Structural and Cohesion Policies, European Parliament, March 2021.

<sup>119</sup> [Disability assessment, mutual recognition and the EU Disability Card](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2022.

<sup>120</sup> [Directive](#) 96/71/EC concerning posting of workers in the framework of the provision of services (Posting of Workers Directive) and its [amending Directive](#) (EU) 2018/957 concerning the posting of workers in the framework of the provision of services.

ESSPASS<sup>121</sup> to simplify the exchange of forms electronically (see chapter on social security). There is insufficient data available to allow an overall assessment of the situation of cross-border mobility in the CCS.

Posting to another Member State requires proof that the posted worker is covered by the social security system of the sending country through the issuing of 'Portable Document PD A1'.<sup>122</sup> According to data based on the number of PDA1 documents issued, the literature assumes (based on a conservative estimate) that 3.5% of postings relate to artists and musicians. In reality the number could be much higher (see study in Annex).

Since many CCS professionals are self-employed, as illustrated earlier, this means that the Posting of Workers Directive does not apply to a large share of potentially mobile CCS professionals. Moreover, this directive applies to all postings, irrespective of their duration,<sup>123</sup> if no exception is provided (Article 3(4) of Posting Workers Directive). This means that the Posting of Workers Directive also has to be applied for extremely short commitments, which often applies for CCS professionals. The short posting was taken into account in the road transport sector by the EU legislator and a sector-specific directive<sup>124</sup> was established. In this respect, a sector-specific directive for the CCS sectors, amending the Posting of Workers Directive, could be mirrored; however, it would be an ambitious and complex approach, as it requires an EU-wide definition of who is an artist. In addition, it might be assessed against the EU competences laid down in the EU Treaties (see study in Annex).

The administrative requirements of the Posting of Workers Directive are considered to be a barrier for touring CCS professionals, in particular for artists and smaller CCS organisations, as touring artists sometimes provide services in another Member States for one day only.

Another shortcoming is access to information<sup>125</sup> on the applicable law, which is a precondition for labour mobility. Therefore, the European Labour Authority<sup>126</sup> has been tasked with supporting Member States by facilitating access to information for individuals and companies (see study in Annex).

The study in the Annex identifies some shortcomings in access to social security rights in cross-border situations, in particular the complexity of the procedures and differing administrative requirements. Another shortcoming is that a uniform definition of artists does not exist. This leads to situations where CCS professionals are considered as employed in one Member State and as self-employed in another. Hence access to social security rights is fragmented.

### 3.4.2. Recognition of professional qualifications and mutual recognition of higher education

The recognition of professional qualifications for regulated professions is based on Article 53 TFEU. Directive 2005/36/EC on the recognition of professional qualifications provides the framework for the systems of recognition of qualifications. Most of the CCS professions are not regulated. Some of the regulated professions could be assumed to be CCS professions, such as art teachers, dance teachers, graphic designers, museum workers, museum directors, music teachers, musical instrument manufacturers-repairers, photographers, potters, sculptors, etc.). These regulated

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<sup>121</sup> [Resolution](#) on the introduction of the European social security pass for improving the digital enforcement of social security rights and fair mobility, European Parliament, 2021.

<sup>122</sup> [Standard forms](#) for social security rights, website.

<sup>123</sup> Judgement in [Case C-65/98](#) - Mazzoleni, European Court of Justice, 2000.

<sup>124</sup> [Directive](#) (EU) 2020/1057 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) 1024/2012.

<sup>125</sup> [Directive](#) 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) 1024/2012.

<sup>126</sup> [European Labour Authority](#), website.

professions can fall either within the general system of recognition of qualifications or within automatic recognition.

The EU plays a supporting role in the recognition of education (Article 166 TFEU), for example by adopting the Council recommendation on automatic mutual recognition of higher education and upper secondary education periods abroad,<sup>127</sup> which is addressed to Member States to facilitate mutual recognition. Gaps and barriers in the recognition of qualifications and education in cross-border situations could not be assessed because of a lack of data. It was found that CCS professionals could profit in their careers if they had better access to information on employment opportunities (e.g. EURES) (see study in Annex).

### 3.4.3. Taxation in cross-border performance

The divergent definition of artists in Member States, their status and the high mobility of CCS professionals implies challenges regarding the taxation particularly of performing artists<sup>128</sup>. The Union does not have competence to intervene in the taxation policy of Member States or to legislate in this policy area. Article 115 TFEU is used as a legal basis for directives for the approximation of national laws if they affect the functioning of the internal market. The Council Directive on administrative cross-border cooperation in the field of taxation (consolidated version of 1 January 2023)<sup>129</sup> for example introduces procedures for the exchange of information on taxes. Rulings of the European Court of Justice are another important source.

Generally, the OECD Model Tax Convention<sup>130</sup> is used to coordinate the most common problems of double taxation aiming at preventing tax evasion. OECD member countries are recommended to conclude international bilateral agreements in conformity with this model, which is applied to artists performing across borders and facing double taxation under the provisions of Article 17 of the 1963 OECD tax convention.<sup>131</sup> This situation can potentially reduce creators' revenue by 10% to 30% owing to double taxation or taxation of untaxable revenues. Some Member States provide for unilateral exemption of taxation for non-resident performers (e.g. DK, IE,<sup>132</sup> NL) or a minimum threshold for smaller performers (e.g. UK, USA).<sup>133</sup> As Member States apply different criteria to determine tax residence status, Parliament has stressed the need for a directive to simplify and harmonise tax residence criteria with a view to establishing consistency of tax residence rules for individuals, to avoid double (non)-taxation as indicated in the Commission's action plan for fair and simple taxation.<sup>134</sup>

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<sup>127</sup> Council [recommendation](#) of 26 November 2018 on promoting automatic mutual recognition of higher education and upper secondary education periods abroad.

<sup>128</sup> D. Molenaer, [The ultimate Cookbook for cultural managers](#), Artist taxation in an international context, 2021, European Festival Association.

<sup>129</sup> Council [Directive](#) 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation (consolidated version of 1 January 2023).

<sup>130</sup> [Model Tax Convention](#) on Income and on Capital: Condensed Version 2017, OECD Publishing, Paris.

<sup>131</sup> [Briefing](#) on Employment in the cultural and creative sector, European Parliament, 2019.

<sup>132</sup> [Tax exemption](#) in Ireland, website.

<sup>133</sup> [The status and working conditions of artists and cultural and creative professionals](#), European Expert Network on Culture and Audiovisual (EENA), European Commission, 2019.

<sup>134</sup> Action plan for fairer and simpler taxation supporting the recovery strategy, [COM\(2020\) 312 final annex](#), European Commission, July 2020.



Table 3 – Overview of status quo relating to cross-border workers

Existing legislative/non-legislative instrument	Gaps/barriers/impact
Coordination of Social Security Systems Regulation (EC)883/04	Social security: access to social protection based on national law; entitlements in terms of social protection difficult to determine; uncertainty regarding status owing to the different national systems; building up rights is linked to employment status.
Posting of Workers Directive	Qualifying period of social security systems too long for touring artists (in self-employment, or with intermittency contracts).
Recognition of qualification	Posting of workers: Self-employed do not fall under the scope; lack of access to information of national rules, short-term mobility (e.g. one day) not foreseen in directive.
Council recommendation on automatic mutual recognition of higher education and upper secondary education periods abroad	Lack of data on the real extent of the cross-border mobility. Recognition of qualification: improvement would be possible through inclusion of heterogeneous experiences in the European Digital Credentials initiative.
Taxation covered by national legislation, OECD Tax Convention.	Double taxation: different categorisation of artists by Member States; place of residence to be determined. Intra-EU mobility: CCS professionals of UK now third country nationals.

Source: EPRSEAVA Unit

### 3.5. Social dialogue and collective bargaining

Overall, EU sectoral social dialogue<sup>135</sup> covers more than 80% of the EU workforce.<sup>136</sup> The CCS employed an estimated 7.4 million people or about 3.7% of the EU workforce in 2021, with a high proportion of self-employed or freelance workers. The Live Performance sectoral social dialogue committee<sup>137</sup> (representing the EAEA – European Arts and Entertainment Alliance, and Pearle – the Performing Arts Employers' Associations League Europe) has adopted work programmes in recent years. Key topics in the work programme for 2022 to 2024 relate to the mobility of CCS professionals in the performing sectors, the economic situation of the sectors and the issues addressed in the 2021 resolution of the European Parliament on the social situation of artists and the cultural recovery.

The sectoral social partners are aware of their limitations; they state in the 2020-2021 work programme<sup>138</sup> that live performance is a sector 'that tends in general to have a less developed social dialogue'. The high number of self-employed people and the enormous diversity of economic activities of the sectors is a challenge for sectoral social dialogue. Unionisation is difficult on account of the fragmentation of the workforce and the increasing number of self-employed people who are not represented by employee representatives. The social partners have not concluded any new agreements in recent past years.<sup>139</sup> Rapid changes in the world of work and the complexity of the CCS, with inconsistent application of EU labour law and a lack of uniform definitions, can hamper

<sup>135</sup> [EU Monitor on social protocol](#), website.

<sup>136</sup> [Communication](#) of 25 January 2023 on strengthening social dialogue in the European Union: harnessing its full potential for managing fair transitions, European Commission.

<sup>137</sup> [Sectoral dialogue](#) of live performance, European Commission's website.

<sup>138</sup> [Work programme](#) 2020-2021, European sectoral social dialogue committee, 'Live Performance'.

<sup>139</sup> [Communication](#) of 25 January 2023 on strengthening social dialogue in the European Union: harnessing its full potential for managing fair transitions, European Commission.

agreements at EU level. EU social dialogue exists in the live performance<sup>140</sup> and audiovisual sectors, which seem to have the necessary capacity and representativeness.<sup>141</sup> According to the study in the Annex an active social dialogue (measured by trade union and employer density and collective bargaining) has a positive effect on the application of rules and laws and affects the misclassification of bogus self-employment.

It could be beneficial for the sectors to intensify the social dialogue by going further and elaborating guidelines or the framework of actions for the CCS, e.g. a framework of actions on gender equality.<sup>142</sup> Exploring the possible negotiation and conclusion of a sectoral agreement covering working conditions, working hours, social security coverage, training, mobility, and reducing inequalities between the different groups of workers, could be another way to support CCS professionals (see study in Annex). In this case, a framework agreement concluded by the CCS social partners could be translated into a directive whose scope and purpose would be applicable and binding throughout the EU.

Table 4 – Overview of status quo relating to social dialogue

Social dialogue	Gaps/barriers/impact
Sectoral social dialogue on live performance and audiovisual sector Collective bargaining/agreements Structured dialogue: Voices of culture	Highly multifaceted sectors High number of self-employed and project-based intermittent work Low unionisation

Source: EPRS EAVA Unit.

### 3.6. Skills, training, re-training

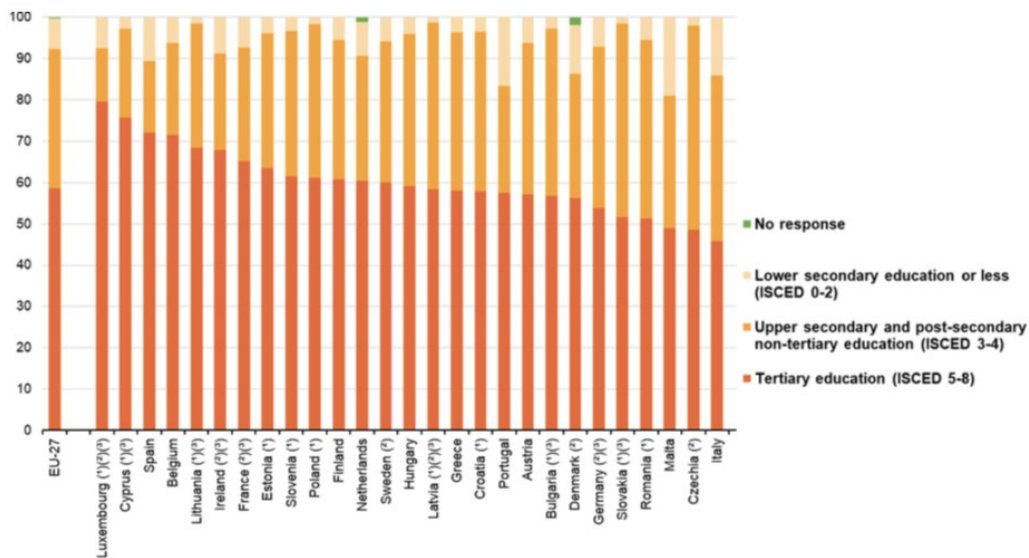
CCS professionals are highly skilled, as demonstrated in the Annex, however, CCS professionals are often multiple jobholders and work in professions that are below their qualification level. This is the case because CCS professionals depend on this source of income, or because they are preserving mental energy for their artistic work. The survival rate of artists in the CCS profession is low; most artists leave the sector after 5 years; many leave the sector when they have children. The study in the Annex identified another phenomenon: holding more than one diploma does not increase their career opportunities. CCS professionals are over-educated (Figure 7), but not in skills that are required beyond their artistic skills, such as marketing, communication and managerial skills. Gaps relate to education and training systems and investment in training of self-employed CCS professionals.

<sup>140</sup> [Representativeness of the European social partner organisations: Live performance sector](#), Eurofound, 2021.

<sup>141</sup> [Representativeness of the European social partner organisations: Audiovisual sector](#), Eurofound, 2021 (update 2022).

<sup>142</sup> [Framework of actions on gender equality in the audiovisual sector in Europe](#), EU Audiovisual Sectoral Social Dialogue Committee.

Figure 7 – Cultural employment by level of educational attainment (2019)



Source: see study in Annex. Eurostat [cultural employment by educational attainment](#), 2019.

### 3.7. Wages and income

The income of CCS professionals can be composed of different financial means, such as salary (if employed), revenues (if self-employed) or royalties,<sup>143</sup> and buy-out contracts (for example in the European music streaming market).<sup>144</sup> and differ between the different CCS sectors. The EU does not have the competence to regulate salaries<sup>145</sup> or income,<sup>146</sup> as this is Member State competence.

Many CCS professionals were already facing difficult working and living conditions before the COVID-19 pandemic. The pandemic impacted their income,<sup>147</sup> often reducing it to zero with little or no support from social systems.<sup>148</sup> The COVID-19 pandemic reduced royalties collected by collective management organisations for authors and performers by 35%.<sup>149</sup> Artists typically receive a fixed payment for a specific project; their representatives advocate for increased transparency by requesting a breakdown of compensation on an hourly basis (see study in Annex).

<sup>143</sup> [Directive](#) of 27 September 2001 on the resale right for the benefit of the author of an original work of art.

<sup>144</sup> [Briefing](#) on Cultural diversity and the conditions for authors in the European music streaming market: a bibliographical review, European Parliament, June 2023.

<sup>145</sup> [Directive](#) (EU) 2022/2041 on adequate minimum wages in the European Union.

<sup>146</sup> [Recommendation](#) on adequate minimum income insuring active inclusion 2023/C 41/01, Council of the European Union.

<sup>147</sup> [Resolution](#) of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences, European Parliament.

<sup>148</sup> [Resolution](#) of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences, European Parliament.

<sup>149</sup> [Rebuilding Europe: The cultural and creative economy before and after the COVID-19 crisis](#), Ernst & Young, 2021.

Compared with other professions requiring higher education, artists derive the second lowest share of their income from the market and the highest from donations, right after the clergy (Abbing, 2002). Donations include those from the state, art exchanges, gifts and everyday support from family and friends (see study in Annex).

The cultural and creative sectors are characterised by high numbers of self-employed workers. For instance, 92 % of composers are self-employed or work freelance and they often work for production companies, which themselves are tasked by streaming platforms.<sup>150</sup> There is a current trend whereby streaming platforms and production companies force the artists to transfer all rights for the full duration of copyright by accepting buy-out contracts,<sup>151</sup> which are usually work-for-hire agreements or one-time payments (in particular for authors and composers). The purchase of the full copyright takes place as one-off payment; the CCS professional waives further claims to fees, royalties or other compensation. The increased use of buy-out contracts is a global

#### Examples from the UK, Poland and the Netherlands

In the UK, artists earn an average of £16 150 each year – less than half the UK's average salary of £38.600. However, only a third of artists' income (£6 020) comes from their art practice. One in five respondents do three or more jobs, and of those taking additional jobs, a third work in fields that have nothing to do with the arts (TBR's Creative & Cultural Team /2018 Livelihood of Visual Artists – Summary report).

In Poland, only 14 % of artists' incomes came from art sales, less than the proportion of income they received as gifts from partners and families (Kozłowski et al., 2014).

In the Netherlands, 73 % of income in the visual arts is derived from the market (Abbing, 2002). In this way, the arts are also exceptional because they are exceptionally far from the market exchange (K. Muszyński and A. Gromada, study in annex).

phenomenon and originates from the 'work for hire' principle under US legislation, where artists' contributions are often considered 'work made for hire'. Authors and performers do not benefit from the success of their work, but they often cannot afford to refuse the contract offered. As the nature of buy-out contracts differs from the legal system in the EU, it is important to insist on EU jurisdiction being applied in contracts.

#### Example from Poland

These economic difficulties found their political expression in Poland during a major strike for art workers' rights on 24 May 2012. In 2013, the new trade union of art workers aimed to introduce standards of cooperation with artists, including coverage of social security. In 2014, only a few institutions signed off on an agreement on minimum wages for artists. It was the first initiative to indicate the need to pay artist fees for exhibitions.

Source: see study in Annex.

Representatives of the CCS urge Member States to transpose Articles 18 to 23 of the Copyright Directive appropriately: the principle of appropriate and proportionate remuneration in Article 18 should be mandatory and applied to all copyright contracts (including buy-out contracts). Authors should receive transparent information regarding exploitation and revenues generated by works (Article 19). The use of the contract adjustment mechanism, stipulated in Article 20 if a remuneration was disproportionately low (after several years), serves to improve the protection of the artists.

Collective bargaining is an important instrument when it comes to securing fair remuneration and greater transparency to combat this development. It contributes to fairer salaries and working conditions, and to preventing the circumvention of royalty payments, which represent an essential revenue for music composers and a fair economic right enabling authors to live from their art.

<sup>150</sup> [ECSA's Vision on how Europe can prevent buyout contracts](#), European composer & songwriter alliance, 2021.

<sup>151</sup> Ibid.

Table 5 – Overview of status quo relating to income

Category	Existing legislative/non-legislative instrument	Gaps/barriers/impact
Income/salary	Minimum Wage Directive Equal Treatment in Employment Directive	Competence of Member States' (legislation) or social partners' (collective bargaining) Requires an existing employment relationship or employment contract.
Revenues/royalties	Copyright Directive	Royalties, buy-out contracts: oppression of CCS professional to accept the contract conditions. Concept of buy-out contracts originates from the US 'work for hire' principle and does not correspond to the EU legal system. Fair, transparent, proportionate remuneration not always guaranteed.

Source: EPRS EAVA Unit.

### 3.8. Relevance of the design of funds for CCS professionals' working conditions

Some of the CCS depend predominantly on subsidies from public sources, including programmes financed by the Union. The financial crisis led to significant cuts to many Member States' budgets for culture and the COVID-19 pandemic led to further dependency on short-term funding despite the EU emergency funding measures. The sectors' incoherent financing structure meanwhile does not simplify the situation. The existing EU programmes in the cultural field, such as the Creative Europe programme, seem to have limited impact on the social and professional situation of CCS professionals. Accessing loans or guarantee schemes is often very challenging, with the requirements often not suiting all types of cultural activities. In September 2020, the European Parliament called for 2% of the Recovery and Resilience Facility to be earmarked for the cultural and creative sectors.

Although EU financed programmes promote the development of the CCS, this study finds that the design and temporary nature of the programmes and related financing contribute to highly flexible employment relationships (temporary work, project-based intermittent work, (bogus) self-employment); this increases the current unstable project-based employment situation and favours precariousness. For instance, EU funds, such as the Culture Moves Europe, promoting mobility in the CCS, do not require social criteria, such as social security coverage (social clause), and leave it to the individual. The Erasmus+ programme could be interpreted in such a way that other forms of employment, such as self-employment, are an equivalent alternative to standard employment; the programme does not strengthen regular employment contracts (see example in the study in the Annex).

In addition, CCS funding is spread across a variety of programmes. Access to external financial sources is therefore a challenge that CCS professionals face, in particular small CCS organisations that depend on the subsidies.

Table 6 – Overview of status quo relating to funding

Existing instruments	Gaps/barriers/impact
Funds at EU and Member State level	<p>Difficult access; money is spread among many funds; completion of funding applications is time consuming, and often unpaid.</p> <p>Temporary nature of funds 'promotes' temporary project-based contracts.</p>

Source: EPRS EAVA Unit.

### 3.9. EU right to act: Principles of subsidiarity and proportionality

When a policy measure does not fall under the exclusive competences of the EU, it has to be assessed against the principles of subsidiarity and proportionality. To demonstrate subsidiarity, it is necessary to explain what the Union dimension of the problem is and demonstrate that the goal could not be achieved satisfactorily at Member State level, meaning that EU action would be more effective. In the case of having an EU framework for the social and professional situation of artists and workers in the cultural and creative sectors, the fact of having differing legislation between Member States, leading to fragmentation and regulatory gaps, demonstrates the EU dimension of the problem. The need for EU-level action is also justified by the high level of cross-border mobility within the CCS. To avoid the fragmentation and regulatory gaps, a clear set of rules should be provided at EU level.

The principle of proportionality aims to ensure that any proposed measure does not go beyond what is necessary to achieve the policy objective. The aim of the proposed action in this study is to ensure better transparency as well as setting out a common framework for working conditions and minimum standards common to all EU countries. In this respect, the proposed policy measures would help everyone working as CCS professionals. Moreover, as many CCS professionals also work in several EU countries, there is a need to go beyond Member State level. Collecting data via established EU agencies, committees and the open method of coordination would further contribute to attaining the above mentioned objectives. When it comes to setting up a platform on the social and professional situation of artists and CCS professionals, a precedent already exists with the 'EU platform tackling undeclared work' which also seeks to foster cooperation and exchange between the Member States on a complex matter. In many instances, the policy measures proposed in this study assume soft-law solutions leaving decisions on specific policies to the discretion of the Member States, which can consider the local context and particularities of the institutional framework.

## 4. Policy options and related impacts

This section presents the assessment of four policy options, which aim to take into account the specific characteristics and the broad heterogeneity of the sectors' differing legislative and national circumstances (including collective bargaining) across the Member States, with a focus on working conditions and social protection. Differing national regulations and rules lead to diverse employment situations, related working conditions and social coverage of CCS professionals.

EU legislation as well as guiding frameworks, such as the European Pillar of Social Rights, contribute to fair working conditions, social cohesion, convergence and a high level playing field. They lay down rights and offer principles, which address the needs identified by CCS, such as the improvement of working conditions and social protection. However, gaps have been identified in relation to certain groups of CCS professionals and inconsistent or non-existent access to protective schemes, which exist mainly because of the fragmentation of the CCS across Member States. It also depends on the status of workers (employed, temporary work, part-time work, dependent self-employed) and the type of employment (such as intermittent project-based employment).

The vulnerable working conditions of project-based intermittent employment relationships are primarily a result of how Member States organise the cultural and creative sectors. As illustrated in the study's annex, short-term, project-based financing in the CCS is a fact that is often reflected in the nature of project-based work contracts too; this impacts the working conditions and social protection of CCS professionals.

Regarding the cost impacts of EU actions, limitations have been encountered; the study in the Annex operates with estimations and assumptions owing to the lack of data. The example in the study in the Annex shows that project-based intermittent employment could be regulated and artists could be protected, but it could result in high public investment (costs), it might not be efficient and not fair compared with workers in other sectors.

The policy options suggested in this study address the gaps and problems that are considered relevant to the CCS sectors. Nevertheless, it needs to be taken into account that a one-size-fits-all is neither possible nor necessary to cover all sub-sectors of the CCS given the size and heterogeneity of the sector itself. Some sectors might benefit more than others from the suggested policy options.

The baseline of the study is that the existing legislative and non-legislative framework remains without any changes. In this scenario, coordination efforts at EU level will address the challenges identified in this study on a random and voluntary basis. Fragmentation and regulatory gaps will endure.

Four policy options have been developed and assessed: policy option 1 – enhancing the existing non-legal framework; policy option 2 – amending the existing legal framework; policy option 3 – setting up the platform to tackle the social and professional situation of CCS professionals; policy option 4 – issuing a new (framework) directive.

The policy options focus on the following shortcomings: a non-existent or inconsistent definition of what constitutes an artist across Member States; the status of CCS professionals; the high proportion of bogus self-employed and dependent solo self-employed workers; the use of intermittent project-based employment; gaps in access to social protection for solo self-employed people; irregularities in the income of CCS professionals; challenges in cross-border mobility for highly mobile CCS professionals; and the role of EU funds.

## 4.1. Policy option 1 - Quasi status quo, but further actions within the existing non-legislative framework

Policy option 1 proposes to further develop already existing soft-law instruments. Soft-law solutions (such as recommendations) leave the decision on implementing them to the discretion of Member States based on their national context and the particularities of the national institutional framework. The professional and social situation of CCS professionals would be subject to discussions at EU level, which could result in some positive effects for CCS professionals.

### **These soft-law measures encompass several key initiatives:**

- streamlining EU-level definitions of CCS professionals' status and of who is an artist through continued work within the OMC expert group on CCS professionals, fostering a more consistent understanding across Member States;
- combating bogus self-employment; to do this, the ELA's Platform on Undeclared Work could develop an action plan specifically targeting the issue of bogus self-employment with the CCS, enforcement and information, a streamlined definition of bogus self-employment under the EU-LFS, EWCS, and EU statistics on income and living conditions (EU-SILC);
- addressing intermittent project-based contracts and solo-self-employment, the Employment Committee (EMCO) and the Social Protection Committee (SPC) could, within the EU Semester framework, offer guidance and expertise covering aspects such as working conditions, social protection, occupational safety and health;
- improving cross-border mobility in the CCS, the Administrative Commission for the Coordination of Social Security Systems<sup>152</sup> could focus on developing improvements for CCS professionals;
- improving access to information, the ELA, Eurofound and EU-OSHA could collaborate to streamline relevant activities. ELA/EURES could provide transparent information on employment opportunities to reduce barriers in cross-border mobility;
- stepping up the monitoring of the recommendation on access of workers and self-employed people to social protection, to reflect the situation within the CCS.
- bringing in the social partners: by developing a comprehensive action plan to combat bogus self-employment and misclassification as well as collaborating with labour inspectors, the social partners could promote stable employment models for intermittent work contracts, address the needs of economically dependent solo self-employed individuals, and promote worker with occupational safety and social protection. They could develop framework agreements for these challenges, for example a framework agreement on skills alignment tailored specifically for CCS professionals, or provide manuals to prevent misclassification;
- continuing the work of the open method of coordination (OMC) group of Member States' experts to progress further.

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<sup>152</sup> Regulation (EC) 883/04 and implementing Regulation (EC) 987/2009.



Table 7 – Qualitative assessment<sup>153</sup> of policy option 1

Actions at EU level	How	Cost/drawback	Effectiveness/impact
EU-wide streamlined definitions of artist and status	OMC, CSRs	+ (not binding)	+++
EU-wide streamlined approach on bogus self-employment (definition, information, inspections)	ELA, CSRs	0	++
	Social partner framework agreement	+	+ / ++
EU-wide streamlined approach for the self-employed	Working conditions = intermediary form: OMC, CSRs, SPC, EMCO	+ (not binding)	+++
	Social protection/pensions: CSRs, SPC, EMCO	++	+++
	Unemployment benefits: CSRs, SPC, EMCO	+++ (not binding, high costs)	+++
EU-wide streamlined approach on atypical work (intermittent project-based employment)	CSRs, SPC, EMCO	++	+++
	Social partner (guide)	+ / ++	++
Cross-border mobility: working conditions	ELA, Social partners, CSRs	+	++
Social protection	ELA, Administrative Commission <sup>154</sup>	0/+	++
Occupational safety and health	SLIC <sup>155</sup> , ACSH <sup>156</sup> , CSRs, Eurofound, EU-OSHA Social Partner Framework agreement	+	++
		+	+ / ++
Transparency of employment opportunities, recognition of qualifications		+ (difficult to quantify)	+ / ++
Training, upskilling, reskilling	CSRs, EPSCO <sup>157</sup> , etc. Social partners' framework agreement	0/+	++
		+	+
Legal basis	Within EU Treaties		

Source: EPRS EAVA Unit, based on study in Annex.

<sup>153</sup> Qualitative assessment scale explanation: see Table 4 of study in the Annex.

<sup>154</sup> [Administrative Commission](#) for the Coordination of Social Security Systems, EUR-LEX website.

<sup>155</sup> Senior Labour Inspectors Committee (SLIC).

<sup>156</sup> Advisory Committee on Safety and Health at Work (ACSH).

<sup>157</sup> Employment, Social Policy, Health and Consumer Affairs Council (EPSCO).

**The impact of policy option 1** is that the proposed actions partly contribute to improving the situation of CCS professionals. These proposed actions have the potential to bring about positive changes in the cultural and creative sectors, however it is expected that they would contribute to improving the situation only relatively speaking because of the voluntary manner and rather selective approach of actions. The mandates of the committees and agencies are focused on specific tasks and do not allow the holistic approach that is required given the heterogeneity of the challenges. The soft-law measures are legally not binding, which is an obstacle to overcoming the fragmentation in definitions, status and social rights.

The definition and legal status of artists are currently determined by individual Member States' laws and practices, directly influencing the working conditions and access to social security rights of CCS professionals. Committees such as the EMCO, the SPC, and the Administrative Commission for the Coordination of Social Security Systems are tasked with specific policy areas within their responsibilities. Consequently, they may struggle to provide a comprehensive approach that accommodates the diversity within the cultural and creative sectors and the varying approaches of Member States. A more holistic approach is essential to address these differences, bridge existing gaps, and prevent fragmentation.

The open method of coordination operates on a voluntary basis for Member States. This voluntary nature can both facilitate and potentially limit coordination efforts. The report<sup>158</sup> contains valuable recommendations to improve the working conditions of artists and cultural and creative professionals. These recommendations collectively aim to elevate the status and well-being of CCS professionals within the European Union.

By leveraging the support of the European Labour Authority (ELA), there is an opportunity to enhance awareness and information dissemination regarding national rules on cross-border mobility. ELA can collaborate with national authorities, social partners, relevant EU agencies, ultimately contributing to greater understanding and compliance.

Social partners play a vital role in this endeavour. Strengthening the role and activities of social partners at EU and national level holds significant potential for improving the circumstances of CCS professionals. Their involvement and initiatives (such as framework agreements) can lead to tangible enhancements in the working conditions, social protection, and overall well-being of these professionals. It is crucial to acknowledge that the effectiveness of sectoral social dialogue will depend on the representativeness of social partners within each Member State. Overall, the social dialogue differs among Member States substantially.

## 4.2. Policy option 2 – Actions within the existing legislative framework

Policy option 1 demonstrates the limitations of existing non-legislative instruments prompting the need for complementary measures. Policy option 2 represents the current quasi status quo, and calls for action within the existing legal framework to improve the situation of CCS professionals, though it is considered that this is only in a fragmented way.

- To improve cross-border mobility, the exemption provided in Article 3(4) of the Posting of Workers Directive could be used more intensively in the case of highly mobile CCS professionals with short-term postings; it reduces the administrative burden for artists touring through multiple countries). The rules governing the coordination of social security systems in Regulation (EU) 987/2009 to simplify the PD A1 certificate for a posted worker for the application of postings would be amended, as they are not suitable for highly mobile CCS workers. The European Social

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<sup>158</sup> [Report](#) of Open Method of Coordination (OMC) group of Member States' experts on the status of working conditions of artists and cultural and creative professionals contains recommendations to improve working conditions of CCS professionals.

Security Pass (ESSPASS) could be fully implemented to facilitate the access of workers to social security rights EU wide. Better use of digitalised processes for requesting and receiving documents would economise procedures and costs.

- To regularise employment (in particular intermittent project-based employment), change could be made to the EU funding structure to allow access to social protection and also lower the risk of poverty. This entails revisiting regulations for currently existing and planned EU programmes for the CCS. The revisions could be introduced to the new programmes financed within the Creative Europe framework. Employment-oriented social clauses could ensure, where possible, that funding would be preferentially given to beneficiaries who provide employment contracts (either open-ended or fixed term) and limit the use of self-employment. This could be monitored via the EU Semester.
- Quality criteria, such as social, environmental and innovation considerations could be established as a requirement in public procurement to be fulfilled by tenderers.<sup>159</sup>
- Solo self-employed people could be covered by some of the occupational safety and health (OSH) directives. Employees are covered by the EU OSH legislative framework, but self-employed individuals are not: they are responsible for taking appropriate OSH measures on their own.

How many self-employed could profit from being covered by the OSH Directive?

A directive for the CCS addressing the safety and health of self-employed people could improve the situation of over 2.3 million self-employed CCS professionals.

Source: see study in Annex.

There is also the possibility not to change the OSH Directives and to continue incentivising Member States to expand OSH protection to self-employed professionals either in general or within the CCS. This could be done through further cooperation by the Senior Labour Inspectors' Committee (SLIC) and the Advisory Committee on Safety and Health at Work (ACSH), coordinating and sharing best practice and information tools regarding CCS professionals.

The proposed set of EU actions in **policy option 2** could have the potential to improve the situation of CCS professionals partially; better enforcement of existing legislation could help to tackle bogus self-employment. It implies reviewing some pieces of legislation, but would not take into account the needs of the workers in the CCS in a holistic manner; fragmentation would continue and the reviewing of existing legislation is a lengthy process.

Although including self-employed in the OSH Directive would help to improve the level playing field in the CCS, it would nevertheless be a very ambitious proposal, given that creative work is not associated with the exceptional sector-specific OSH risks and the fact that tackling self-employment is a competence of the Member States.

<sup>159</sup> [The social impact of public procurement](#), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament October 2023.

Table 8 – Qualitative assessment of policy option 2

Policy option 2	How	Cost/drawback	Efficiency/Impact
Policy option/ Qualitative criteria	How	Cost/drawback	Efficiency/impact
EU-wide streamlined approach on bogus self-employment	Social partners	n.a.	n.a.
EU-wide streamlined approach for self-employed	Working conditions Social rights	n.a.	n.a.
EU-wide streamlined approach on atypical work (intermittent project-based employment)	EU funds= Changes in design of EU and Member State funding, social clauses Public procurement	++	++/+++
Cross-border mobility: – on working conditions  – on social protection	Sector-specific directive amending PWD for CCS Article 3(4) PWD.  Amending Regulation (EU) 987/2009 Amending decision A2 Implementing ESSPASS	++ (binding but long process)  + (circumventing)  ++ (long process)  + (risk abuse)  +	++  ++  ++  ++  ++
EU sector-specific OSH legislation		++ (long process)	+++ (2.3 million self-employed)
Transparency employment opportunities, recognition of qualifications	EURES	+ (impact difficult to quantify)	+ / ++
Training, upskilling, reskilling	n.a.	n.a.	
Legal basis	Within EU Treaties		

Source: EPRS EAVA Unit, based on study in Annex.

### 4.3. Policy option 3 – Setting up a European platform for the CCS sectors through an EU decision

In addition to the proposed actions outlined in policy options 1 and 2, the establishment of a European platform to tackle the social and professional situation of workers in the CCS sectors could be a valuable way to translate the framework into tangible actions.

Much like the 'European platform tackling undeclared work',<sup>160</sup> the European platform on the social and professional situation of artists and CCS professionals would be proposed by the Commission, and adopted through a decision of the European Parliament and the Council (referred to as 'the decision' in this study). The decision should recognise the significant impact that employment status has on determining working conditions, access to social protection and cross-border mobility. The platform will report on its progress to the European Parliament.

#### **The tasks of this platform could include:**

- coordinating efforts to gradually develop a common definition of artists: this would involve addressing disparities between Member States in the definition of artists, aligning the status for a heterogeneous group, working conditions, and social security rights of CCS professionals, through cooperation between Member States at EU level. A common definition of artists and CCS workers would promote comparability between Member States and enhance the rights of CCS professionals;
- collaborating to combat bogus self-employment, which includes facilitating Member States' cooperation to establish uniform criteria for a common definition; coordinating work and sharing information; collecting data; supporting the Commission in developing relevant policies in this area. Enhancing coordinated enforcement of existing rules across Member States would involve cooperation with ELA, Eurofound and EU-OSHA: Reducing the extent of bogus self-employed within the CCS would create a level playing field, support the sustainability of social security schemes, ensure appropriate tax compliance and bridge the gaps in social protection.
- addressing (economically dependent) solo self-employment with respect to working conditions, access to social protection and occupational safety and health protection. This entails coordination among Member States, to develop relevant policies, develop intermediary forms of protection for solo self-employed CCS professionals, and enhance their access to social protection. Implementation of the recommendation on access to social security for self-employed workers would be monitored;
- coordinating actions to tackle issues relating to intermittent project-based employment: structuring cultural policies in a way that limits the use of intermittent project-based employment, including coordinating information exchange and data collection, and coordinating the open method of coordination process;
- promoting coordination and exchange of information to address skills mismatch and upskilling, including access to training, re-skilling and up-skilling programmes for CCS professionals.

The ultimate goal is to create a more equitable and supportive environment for CCS professionals across Member States. The platform could serve as catalyst for change; by coordinating Member States, social partner and other relevant stakeholders, a holistic approach would be ensured by coordinating common understanding of the different approaches in Member States and by helping to reduce fragmentation. Member States would retain the authority to determine their level of involvement in the activities.

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<sup>160</sup> European [Platform](#) tackling undeclared work, European Labour Authority website.

How many workers could profit from EU action?

Overall, it is estimated that 1.2 million artists and workers in the cultural and creative sectors without permanent employment would be positively affected by these policy measures.

Source: see study in Annex.

Overall, it can be assumed that improving working conditions, access to social protection and training opportunities for solo self-employed individuals, along with reducing intermittent project-based contracts, would enhance social cohesion, contribute to the sustainability of social security schemes and mitigate the risk of poverty. Better coordination and an improved data situation would have a positive impact on cross-border mobility and employment prospects. Addressing skills mismatches and promoting upskilling, particularly in digital and marketable skills, could reduce the high turnover within the CCS and limit 'sunk' investments in human capital.

Table 9 – Qualitative assessment of policy option 3

Policy option/ Qualitative criteria	How	Cost/drawback	Efficiency/impact
Decision on CCS platform	Decision	+	+++
EU-wide streamlined definitions and status for artists		+ (not binding)	+++
EU-wide streamlined approach on bogus self-employment (definition, information, inspections)		+	+++
EU-wide streamlined approach to self-employment	Working conditions = intermediate form Social protection pensions: CSRs, SPC, EMCO Unemployment benefits: CSRs, SPC, EMCO	+ ++ +++ (not binding, high costs)	+++ +++ +++
EU-wide streamlined approach to atypical work (intermittent project-based employment)	Changes in design of EU and Member State funding, social clauses (public procurement)	+	++
Cross-border mobility: – on working conditions	With ELA, social partners	+	++
– on social protection	With ELA, Administrative Commission	0/+	++
EU OSH sector-specific legislation		0	0
Transparency employment opportunities, recognition of qualifications		+	++
Training, upskilling, reskilling		+	+++
Legal basis	Within EU Treaties		

Source: EPRS EAVA Unit, based on study in Annex.

**Policy option 3** suggesting setting up a platform by means of a decision offers a more centralised and structured approach to addressing the challenges faced by CCS professionals, as compared with the open method of coordination, which is based on voluntary participation, or the other soft-law measures of policy option 1. The most pressing needs, such as definitions, the status of CCS professionals, social protection, working conditions and cross-border mobility would be addressed in a comprehensive way at EU level. The platform could help ensure a coherent and coordinated effort across Member States. By pooling resources from multiple sources, the sectors' needs would be addressed more effectively. Gathering comprehensive data at EU level allows policy makers to make a better analysis of the gaps and better policy recommendations.

#### 4.4. Policy option 4 – A new (framework) directive addressing the employment and social conditions of CCS professionals

The study<sup>161</sup> on the situation of artists and cultural workers post-COVID-19, conducted by Parliament's Policy Department for Structural and Cohesion Policies, reviewed the situation of artists and cultural workers in the post-pandemic recovery. It outlined justifications for specific policy solutions and mapped the key challenges in building an EU framework in the cultural and creative sectors and industries. Such a framework would require 'articulation with EU policies on competition, the internal market, social policy, fundamental rights and equality, among others'.<sup>162</sup>

EU directives are legal instruments that establish specific objectives for Member States to achieve by implementing the directive's provision into their national legislation. If an EU (framework) directive is expressly designed to improve and safeguard social rights and working conditions of CCS professionals, it has the potential to enhance their legal protection in these areas and reduce fragmentation across Member States. The impact of such a directive on artists and professionals in the cultural and creative sectors would depend on the directive's specific scope and provisions and how individual Member States choose to implement it. Such a framework would require 'articulation with EU policies on competition, the internal market, social policy, fundamental rights and equality, among others'.<sup>163</sup>

The feasibility of specific legislation requires a well-defined scope and purpose, which is also essential for a comprehensive legal assessment of its potential impact on CCS professionals. Article 153 TFEU empowers the EU to take actions in the field of working conditions, social protection and labour law. Consequently, if Article 153 TFEU serves as the legal basis, the directive's objective and scope must align with this provision.

The directive's objective and scope would play a pivotal role in determining whether it adheres to the principle of subsidiarity and falls within the EU's legal competence. In cases where the directive targets the social and professional situation of the specific CCS, it must be assessed whether Article 153 TFEU suffices as the legal basis or if additional legal bases, such as Article 167 TFEU, should be considered. It is important to note that the EU has only a coordinating function according to Article 167 TFEU and that Article 153 TFEU is primarily directed at workers with formal employment contracts.

The EU lacks legislative competence when it comes to self-employment and the classification of CCS professionals (including their access to social protection). Consequently, the gaps identified in this study, particularly concerning the precarious status of bogus self-employment and (economically dependent) solo self-employment, cannot be addressed through EU legislation. One possible way to address employment status would be to consider the legal presumption that CCS professionals

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<sup>161</sup> [The Situation of Artists and Cultural Workers and the post-COVID-19 Cultural Recovery in the European Union](#), European Parliament Policy Department for Structural and Cohesion Policies, March 2021.

<sup>162</sup> Ibid, Chapter 4.

<sup>163</sup> Ibid, Chapter 4.

working as self-employed are considered as being employed in certain circumstances; this is being discussed at moment in the context of the draft directive on platform work.<sup>164</sup> It could be further assessed whether this approach could have the potential to narrow the gap.

Table 10 – Qualitative assessment of policy option 4

Policy option/ Qualitative criteria	Legal basis	Cost/drawback	Efficiency/impact
EU-wide streamlined definitions and status	Article 153 TFEU	Political decision. Long process. To be assessed in detail.	Binding legal instrument. Reducing fragmentation. To be assessed in detail.
EU-wide streamlined approach to bogus self-employment	European Labour Authority (working group on tackling undeclared work <sup>165</sup> )		
EU-wide streamlined approach to working conditions and social rights for self-employment	No legal basis		
EU-wide streamlined approach to atypical work (intermittent project-based employment)	Legal basis: EU funds and Articles 153 ff. TFEU		
Cross-border mobility, regarding working conditions and social protection	Articles 48ff, 153 ff. TFEU		
EU OSH sector-specific legislation	Article 153 TFEU		
Transparency of employment opportunities	Article 46 TFEU (EURES)		
Recognition of qualifications	Article 53 TFEU		
Training, upskilling, reskilling	Article 167 TFEU		

Source: EPRS EAVA Unit, based on study in Annex.

#### 4.4.1. Overall quantitative assessment

The EU actions suggested contribute to greater employment stability, predictability of income and would bridge the gaps of social security rights for intermittent project-based employment in the CCS. The quantitative assessment demonstrated in the study in the Annex is based on estimations and assumptions, as the full range of data were lacking.

- The monetary multiplier effect is estimated at 2.1: each euro that was invested by the CCS sectors in 2019 contributed to generate an **additional added value of 1.2 euro** in the entire economy (estimation is based on the example of Poland in the study in the Annex).

<sup>164</sup> [Proposal](#) of 9 December 2021 for a directive on improving working conditions in platform work, European Commission.

<sup>165</sup> [Regulation](#) of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) 883/2004, (EU) 2016/589 and repealing Decision (EU) 2016/344.



- In 2019, over **2.3 % of gross added value** has been generated by the CCS sectors in the EU countries. A total of 5.4 million CCS professionals produced added value of almost €330 billion, i.e. average added value of €60 500 per worker, compared with €60 000 for the whole economy. Exports of cultural goods from the EU are higher than imports (in 2020, €44 billion versus €34 billion).
- It has been calculated that out of a total of 7.7 million people employed in the CCS, **1.2 million CCS professionals** without permanent employment would benefit from the policy measures described in the previous chapter.
- The impact of a sectoral OSH Directive for the CCS on the safety and health of self-employed people could impact the situation of over **2.3 million self-employed professionals** in the CCS.
- EU-wide measures to expand access to social security rights **for self-employed CCS professionals**, in particular to **unemployment benefits**, would improve the protection of this group in Member States, where they are not entitled to access social security schemes or where they fall under the general system. In the latter case, the entitlement criteria are often high, leaving the self-employed<sup>166</sup> in a more vulnerable situation compared with other workers. The scenarios were developed for 18 Member States that do not provide unemployment benefits coverage for self-employed CCS professionals, including assumptions relating to different levels of contribution from the public budget (i.e. 20 %, 50 %, and 80 %). It shows that an unemployment system could be beneficial for over **1.5 million CCS professionals**. However, depending on the level of public contribution to the unemployment scheme, the costs might be significant, in particular for Member States that do not provide unemployment benefit coverage for the self-employed. In the case of countries that include self-employed CCS professionals within the general system, the costs would be effectively lower, as self-employed CCS professionals are already included to a certain extent.

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<sup>166</sup> [Identifying 'vulnerable' self-employed](#): Ad hoc request to Eurofound from the Directorate-General for Competition, Eurofound, 2021.

## 5. Conclusions

The analysis in this study and its annex show that maintaining the status quo would see the working conditions and social security rights of certain groups of workers in the CCS sectors further deteriorate; it would increase their vulnerability, the risk of poverty, and the constraints on the sustainability of social security systems if certain aspects are not tackled.

The study points out possibilities within the existing EU legal framework. At EU level, the Treaties clarify the division of competences between the EU and the Member States. Cultural policy is a competence of Member States, and the Union has a supporting and coordinating role. In the field of social policy, the Union has developed a wealth of legal instruments and can act based on shared competence. Article 153 TFEU empowers the EU to take actions in the field of working conditions, social protection and labour law for workers with an employment relationship. In the case of an EU framework for the social and professional situation of artists and workers in the cultural and creative sectors, the fact of having differences in legislation between Member States, leading to fragmentation and regulatory gaps, demonstrates the EU dimension of the problem. Moreover, EU-level action is justified by the high level of cross-border mobility within the CCS. To avoid fragmentation and regulatory gaps, a clear set of rules should be set out at EU level. However, the limitations set by the EU Treaties need to be further assessed, in particular regarding EU competences for self-employment (including access to social protection) and the classification of CCS professionals.

Regarding proportionality, the aim of the proposed action in this study is to ensure better transparency as well as setting out a common framework for working conditions and minimum standards common to all EU countries. In this respect, the proposed policy measures would to a certain extent help to address the needs of CCS professionals working in multiple EU countries. When it comes to setting up a 'platform on the social and professional situation of artists and CCS professionals', there is already a precedent in the form of the 'EU platform tackling undeclared work', which similarly seeks to foster cooperation and exchange between the Member States on a complex matter.

The study argues that a 'one size fits all' approach would not be sufficient to address the variety of challenges and needs in the CCS sectors. In many instances, the policy measures proposed in this study assume soft-law solutions leaving decisions on specific policies to the discretion of Member States, which can consider the local context and particularities of the institutional framework.

Addressing the gaps identified in the study, the proposed policy options consider enhancing the current non-legislative framework in policy option 1 (including a number of soft-law solutions addressed to the relevant stakeholders), amending existing legislation in policy option 2, setting up a platform to address the challenges of the professional and social situation of CCS professionals by a decision of the Council and Parliament in policy option 3 and assessing the feasibility of a sector-specific (framework) directive in policy option 4.

The policy options 1 to 3 reflect the current distribution of competences as outlined by the Treaties. Policy option 3 complements option 1 and option 2, suggesting setting up a platform by means of EU legislation, i.e. a decision of the Council and Parliament. As the situation of CCS professionals differs widely between Member States, a decision to set up an EU platform would provide a comprehensive coordination instrument to address the diversity of challenges faced by the CCS in a holistic way. Consistent definitions and common concepts regarding the status of artist could be reflected in a structured manner, while Member States would remain competent to decide on their level of involvement in the activities.

The feasibility of a new (framework) directive for the CCS sectors depends on a well-defined scope and purpose. It is important to recognise that the EU's role in accordance with Article 167 is primarily that of coordination. Article 153 TFEU empowers the EU to take actions in the field of working conditions, social protection and labour law. However, it applies exclusively to individuals with

formal employment contracts, thereby excluding self-employed individuals. Inconsistent definitions of bogus self-employment across Member States complicate efforts to address the issue effectively. Solutions for handling intermittent project-based employment may not be confined solely to Article 153 but should be seen in the broader structural framework of Member States, in particular how projects in the CCS sectors are financed (project-based, limited in time). The potential impact of policy option 4 is difficult to analyse as it would depend on the scope and purpose of the directive.

The EU actions suggested in policy options 1 to 3 contribute to greater employment stability and predictability of income, and bridge the gaps in social security rights for intermittent project-based employment in the CCS.

It is estimated that 1.2 million CCS professionals, i.e. 17 % of total CCS employment, without permanent employment would be affected by these policy measures. As many as 1.5 million self-employed CCS professionals would benefit from access to unemployment benefits. Costs relating to access to unemployment schemes for self-employed persons are demonstrated in three scenarios including assumptions relating to different levels of contribution from the public budget. Depending on the percentage of public contribution to the unemployment benefit scheme and on whether a Member State already offers access to unemployment benefits or not, additional costs might arise. Costs vary significantly between Member States depending on the national schemes.

Overall, the establishment of the platform combined with policy option 1 (enhancing the existing non-legislative framework) and policy option 2 (amending existing relevant legislative acts) would have the highest potential to cover the wide range of challenges and narrow the gaps. Although the EU actions outlined in the four policy options may mitigate some of these issues and have the potential to narrow the gaps, it is considered that fragmentation will persist, particularly concerning the working conditions and social security benefits of intermittent project-based employees and solo self-employed individuals.

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# EU framework for the social and professional situation of artists and workers in the cultural and creative sectors

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The creative and cultural sector (CCS) is characterised by the prevalence of short-term, intermittent contracts and self-employment which stems from the use of project-based financing within the sector. This translates into unstable income and working time, as well as gaps in working conditions and social security protection of CCS professionals. This report puts forward a number of proposals on how to improve their protection.

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## Executive summary

The creative and cultural sector (CCS) brings a significant added value – both economic and cultural – to the societies of the European Union (EU). At the same time, the sector is characterised by the prevalence of short-term, intermittent contracts and self-employment which stems from the use of project-based financing within the sector. This translates into unstable income and working time, as well as gaps in social security protection of CCS professionals.

Our report found numerous gaps within the frameworks regulating protection of CCS professionals. There are inconsistent definitions, as well as data gaps that hinder the capacity to implement public policies at the EU level. Further, there are enforcement gaps in prevention of bogus self-employment, as well as underregulation pertaining to the use of intermittent project-based employment. The working conditions, social security protection, and occupational health and safety of self-employed professionals are largely unregulated or left to the Member State level, translating into the CCS professionals' precarious position. Finally, CCS professionals experience difficulties in accessing employment opportunities, in particular cross-border opportunities, proper skills formation and training, EU wide recognition of qualification and experience, as well as struggle with regulatory ambiguities and gaps in the case of cross-border mobility.

In our paper, we focus extensively on policy options to address these challenges. Taking as a reference only the current limited competences that the EU has in the area of cultural policy, we propose a combination of measures built upon the competences in the area of cultural, education and social policy. The proposed measures meet the criteria required by the principles of proportionality and subsidiarity as in most cases they only consist of improvements in cooperation between the social partners, Member States, EU institutions, and/or are soft law mechanisms. In sum, we suggest:

1. A creation of a European Platform on social and professional situation of artists and workers in creative and cultural sector (set up by a European Parliament and Council decision upon a Commission proposal) tasked with:
  - a) coordination to gradually develop a common definition of artists used to describe and regulate CCS (such as definition of an artist, creative professional, bogus self-employment, etc) at the EU and Member-State level;
  - b) coordination of a common understanding of the classifications of the CCS professionals;
  - c) serving as a hub for practice sharing, peer reviewing, and mutual learning between the Member States to collectively improve the working conditions and access to social security rights, and to develop strategies on how to limit the project-based employment, regulate employment in the sector, and bridge gaps in social security protection of self-employed CCS professionals;
  - d) facilitating cross-border cooperation between Member States to address challenges related to cross-border mobility of CCS professionals (posting of workers, portability of social security rights, taxation, recognition of qualifications, etc.);
  - e) facilitating data collection and analysis of data related to social security rights, identifying trends, high-risk groups;
  - f) coordination of awareness campaigns;
  - g) supporting the European Commission in developing policies to enhance the social and professional situation of CCS professionals;
  - h) regular reporting to the European Parliament on the development of the social and professional situation of CCS professionals;

- i) development of a European a strategy for education and training programmes that considers the specificity of the sector, which is overeducation and the prevalence of self-employment.
2. Develop policies by considering to:
  - a) incentivise the Member States to regulate and stabilise funding for the cultural and creative organisations;
  - b) tackle gaps in social security protection of self-employed CCS professionals considering the intermittent character of their work by structuring eligibility criteria in a way that allow to build social security rights;
  - c) continue bridging gaps in the occupational safety and health (OSH) protection at the Member State level;
  - d) improve upskilling policies within the sector.
  - e) consider changes in the EU programmes to make sure they promote stable employment;
  - f) consider extending the occupational safety and health protection to the self-employed, which could involve a sectoral OSH directive;
  - g) ensure that gaps and administrative burdens in cross-border mobility regulations are bridged (in particular in the Posting of Workers Directive and Social Security Coordination Regulation), which could involve proposing a directive regulating CCS professionals' mobility similar to the ones regulating road transportation sector;
  - h) set up a one-stop portal for CCS professionals similar to EURAXESS.
3. Agencies, such as the European Labour Authority, should support enforcement of regulations within the sector and access to information on the applicable regulations.
4. Sectoral social dialogue in audiovisual and live performance sector should:
  - a) work towards signing framework agreements to support labour inspections in preventing misclassification, extend the OSH protection to self-employed, improve skills matching in the sector;
  - b) engage in information campaigns to improve access to information on posting;
  - c) promote stable forms of employment in public tendering procedures in the CCS.

The EU framework for the social and professional situation of artists and workers in the cultural and creative sectors aims to regulate the employment situation of CCS professionals, in particular limit bogus self-employment and project-based intermittent employment, as well as improve working conditions, occupational safety and health, and social security protection of CCS professionals, and their cross-border mobility, employability, and skills. The EU framework is necessary to protect sector's intrinsic value in the context of the existing regulatory gaps, the size, the social, and the economic contribution of the sector, as well as high cross-border mobility of the CCS professionals. The coordination through the EU framework is also substantiated by the advanced measures that some Member States have already implemented to regulate position of CCS professionals. A qualitative and – where possible – quantitative assessment of these proposals is provided.

## Table of contents

<b>1. Gaps in protection of the CCS professionals in the EU</b>	<b>1</b>
1.1. Unregulated employment status of CCS professionals	1
1.1.1. Inconsistent definitions	1
1.1.2. Bogus self-employment and misclassification in the CCS	2
1.1.3. Unregulated use of project-based employment and self-employment	3
1.2. Gaps in the protection of solo self-employed CCS professionals	9
1.2.1. Gaps in the protection of the working conditions of solo self-employed in the CCS sector	9
1.2.2. Gaps in the social security protection of self-employed	10
1.2.3. Gaps in the occupational safety and health protection of self-employed	13
1.3. Gaps in employability, skills, and cross-border mobility framework	15
1.3.1. Gaps in the protection of working conditions in case of cross-border mobility	15
1.3.2. Gaps in the access to social security protection in case of cross-border mobility	16
1.3.3. Gaps in transparency of employment opportunities	18
1.3.4. Gaps in training, upskilling, reskilling, skills mismatches	18
1.3.5. Gaps in recognition of qualification and education in case of cross-border mobility for CCS professionals	24
<b>2. Policy options</b>	<b>26</b>
2.1. Policy options tackling a lack of regulation of employment status of CCS professionals	26
2.1.1. Tackling inconsistent definitions	26
2.1.2. Improving enforcement and preventing bogus self-employment in the sector	28
2.1.3. Regulating intermittent project-based organisation of work	37
2.2. Improving protection of solo self-employed CCS professionals	42
2.2.1. Improving working conditions protection of solo self-employed in the CCS	42
2.2.2. Improving access to social protection of solo self-employed in the CCS	43
2.2.3. Improving occupational safety and health protection for self-employed in the CCS	52
2.3. Improving cross-border mobility, employability, and skills	54

2.3.1. Improving working conditions protection in case of cross-border mobility	54
2.3.2. Improving access to social security in case of cross-border mobility	57
2.3.3. Improving transparency in employment opportunities	59
2.3.4. Improving recognition of qualification and education in case of cross-border mobility for CCS professionals	60
2.3.5. Improving skills, skills mismatches, trainings and reskilling programmes	61
<b>3. Annex: additional data and information</b>	<b>64</b>
3.1. Note about principles of subsidiarity and proportionality	64
3.2. Added value of the CCS	64
3.3. Employment in the CCS	72
3.3.1. Self-employed in the CCS	72
3.3.2. Employment trends during COVID-19	73
3.3.3. Employment by level of education	73
3.3.4. Employment by subsector	74
3.4. Evidence of structural vulnerabilities of artists and workers in the CCS	75
3.4.1. Job quality	75
3.4.2. Income	76
<b>4. References</b>	<b>77</b>

## Table of figures

Figure 1. Share of self-employed in cultural employment and total employment (2021)	5
Figure 2. Share of employees without a permanent job in the cultural sector (2021)	6
Figure 3. Local, state and central government spending on cultural services (2021)	8
Figure 4. Survival rate of artists	19
Figure 5. People's skills gap identified by employers in arts and entertainment (2018)	22
Figure 7. Gaps in skills specific to cultural and creative sector identified by employers in arts and entertainment (2018)	23
Figure 6. General skills gap identified by employers in arts and entertainment (2018)	23
Figure 9. Employers' organization density in terms of organised workforce in audiovisual sector (%) (2017)	32
Figure 8. Trade union density in audiovisual sector (%) (2017)	32
Figure 10. Collective bargaining (multi- and single-employer) coverage in audiovisual sector (%) (2017)	33
Figure 11. Trade union density in live performance sector (%) (2019)	34
Figure 12. Employers' organization density in terms of organised workforce in live performance sector (%) (2019)	34
Figure 13. Collective bargaining (multi and single employer) coverage in live performance sector (%) (2019)	35
Figure 14. Gross value added by the cost of production factors of CCS (%)	65
Figure 16. Employment in the creative, arts and entertainment subsector by employment status in 2019	72
Figure 15. Self-employed persons in cultural employment and in total employment	72
Figure 17. Cultural employment changes by country in 2020 and in 2021 compared with 2019 (%)	73
Figure 18. Cultural employment by level of educational attainment (2019)	73
Figure 19. Cultural employment by subsector (2019)	74
Figure 20. Employment by type of contract and subsector (2019)	74
Figure 21. CCS professionals declaring non-standard working time	75
Figure 22. CCS professionals – selected dimensions of structural vulnerability	76

## Table of tables

Table 1. Social security policies to support self-employed artists in the Member States (2020)	11
Table 2. Exposure to safety and health risks among CCS professionals	14
Table 3. Labour situation of art alumni compared to all alumni in Poland (2020)	21
Table 4. Qualitative impact assessment scale explanation	26
Table 5. Overview of policy measures aimed to tackle inconsistent definitions	27
Table 6. Number of self-employed in the CCS (2021)	29
Table 7. Estimation of the number of bogus self-employed in CCS	30
Table 8. Overview of policy measures aimed to improve enforcement and prevent bogus self-employment in the CCS	35
Table 9. Number of cultural employees without permanent employment in the CCS (2021)	38
Table 10. Overview of policy measures aimed to regulate intermittent project-based employment	41
Table 11. Overview of policy measures aimed to improve working conditions protection of solo self-employed in the CCS	43
Table 12. Simulated cost of expanding unemployment benefit to self-employed CCS professionals in the EU countries – three scenarios versus a baseline of limited protection	48
Table 13. Overview of policy measures aimed to improve access to social protection of solo self-employed in the CCS	51
Table 14. Overview of policy measures aimed to improve occupational safety and health protection for self-employed in the CCS	53
Table 15. Overview of policy measures aimed to improve working conditions protection in case of cross-border mobility	56
Table 16. Overview of policy measures aimed to improve access to social security in case of cross-border mobility	58
Table 17. Overview of policy measures aimed to improve transparency in employment opportunities	60
Table 18. Overview of policy measures aimed to improve recognition of qualification and education in case of cross-border mobility for CCS professionals	61
Table 19. Overview of policy measures aimed to improve skills, skills mismatches, trainings and reskilling programmes	63
Table 20. Added value of the CCS in the EU-27 (2019)	66
Table 21. Added value of CCS in a case country (Poland), arranged by the magnitude of indirect impact [in thousand EUR].	70
Table 22. Multiplier effect of CCS workplaces in Poland [in thousand EUR]	71



# 1. Gaps in protection of the CCS professionals in the EU

## 1.1. Unregulated employment status of CCS professionals

### 1.1.1. Inconsistent definitions

The fundamental gap at the EU and Member State level is the inconsistency in the definitions of creative and cultural sectors and their professionals (artists, art technicians, creative workers). These inconsistencies hinder the capacity to generate policy responses due to potential misdirection of policies and targeting with one policy a heterogeneous group with different problems. They also impede cross-national comparisons, capacities for mutual learning, as well as coordination of policy measures across the Member States.

At the EU level, the existing policy measures and databases include three different groups of workers into a broad CCS professionals' group:

1. Common-sense definition of an artist (performing creative work in the art sector, e.g. actors, painters, dancers, musicians). For example, the *European Parliament 2021 Resolution on the situation of artists and the cultural recovery in the EU* and the *2007 Resolution on the social status of artists* seems to be directed at this group;
2. Broader category of workers hired in the sector, including museum technicians, persons involved in publishing etc. is used by for example ESSnet-CULTURE European Statistical System Network on Culture<sup>1</sup>;
3. Other creative professions (performing creative work beyond the art sector, e.g. designers at marketing agencies, architects). For example, Eurostat's aggregation of "culture, recreation and religion" or the use of ISCO-8 in EU-SILC where "Creative and performing artists" merge "Visual artists" with "Announcers on radio", while "Artistic, cultural and culinary associate professionals", includes "Interior designers and decorators" as well as "Chefs".

The three groups differ from the point of view of: a) their autonomy and work organisation (artists having high autonomy, art support workers having lower); b) necessity and rationale behind the use of highly flexible working patterns (artists requiring highly flexible working patterns, art support workers not necessarily); c) vulnerability stemming from the level, distribution and regularity of income in markets that to a different extent succumb to the "winner-takes-all" logic (with other creative professions less affected).

This issue is even more complex at the Member State level, where countries utilise very different definitions. This problem is best exemplified through definitions of an "artist" profession. Five different approaches to defining an artist have been identified in the literature among the Member States (Slovak Coalition for Cultural Diversity, 2013), with some jurisdictions having a mix of those approaches adopted:

1. Definition through membership: a person is defined as an artist through membership in a recognised artist association (such as an association of professional artists). In some cases (e.g. Poland's Association of Polish Artists and Designers - ZPAP<sup>2</sup>), it indirectly also implies a criterion of formal education as some associations accept only alumni of professional art schools.
2. Definition by committee: status of an artist is determined by a committee, such as a committee of 'experts' or of artistic peers. For example, in the Netherlands there was

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<sup>1</sup> [Final Report](#) by ESSnet-CULTURE European Statistical System Network on Culture.

<sup>2</sup> Association of Polish Artists and Designers, [About Us Section](#), Accessed on 14 June 2023.

- an ‘independent advisory body’ that determined the professional status of artists applying for eligibility under the Income Provision for Artists Act, or ‘WIK’.
3. Definition by authority: the eligibility is defined by the taxing authority. For instance, under Ireland’s artists’ exemption scheme<sup>3</sup>, artists submit a claim to the Revenue Commissioners’ Office which makes the final decision.
  4. Definition by association with artistic output: the definition of an artist derives from the definition of artistic output, i.e. an artist is someone who produces art (artworks, copyrighted materials, etc.). This type of definition exists e.g. in France.
  5. Definition by the nature of paid arts activity: an artist is deemed professional if their arts work is undertaken in a ‘business-like’ manner - to be distinguished from art hobbyists who also have “artistic output”. This type of definition is particularly utilised in the area of taxation for the purpose of Value Added Tax (VAT) and Goods and Services Tax (GST), and for tax averaging schemes.

The discrepancies between the approaches reflect different trajectories of cultural policies and attempts to regulate the situation of the CCS professionals, e.g. through social protection policies or preferential taxation. For an overview of the legislation within the Member States, please consult a table produced by Panteia (2020: 46–48).

The lack of a consistent definition is a major policy impediment. For example, Poland has struggled with legislating upon a consistent definition for over a decade – and subsequent projects failed typically following the controversies regarding the criteria of inclusion. By contrast, Germany has a statutory definition of artists going back to Artists’ Social Insurance Act of 1981. In emergencies, such as COVID-19 pandemic, a clear definition of an artist/cultural professional allows for a quick policy targeting of this group (Pulignano et al., 2021).

It is noteworthy that creating points of reference to regulate the legal status for artists and creative professionals in the Member States has been a long-standing goal of the *Open Method of Coordination (“OMC”) expert group on status and working conditions of artists and cultural and creative professionals* (see: DG EAC, 2023).

### 1.1.2. Bogus self-employment and misclassification in the CCS

In some cases, the use of solo self-employment<sup>4</sup> in the CCS seems to be genuine and stems from the autonomy and entrepreneurial orientation of the professionals (e.g. interior designers). Yet, self-employment often results from circumvention of regulations pertaining to employment relationship. Such “bogus” self-employment status means that workers are formally self-employed, but in fact are subordinated in the performance of their work under the disguise of autonomous work to reduce taxes, social security contributions and avoid stringencies of employment protection. In particular, it seems that bogus self-employment stems from project-based management within the sector (DeFillippi, 2015). Within the CCS, many organisations operate continuously with the influx of public and private funds to finance their operations while requiring constant availability from professionals to effectively receive such financing. The widespread use of project-based employment might be driven by the strategies of CCS organisations to reduce costs and shift some of the costs onto CCS professionals. This in particular pertains to the impact of digitalisation and the labour platforms (ILO, 2023) that contribute to the rising incidence of bogus self-employment (Williams et al., 2020), also within the CCS.

<sup>3</sup> Citizens Information, [Artists' exemption from income tax](#), Accessed on 14 June 2023.

<sup>4</sup> Please note that we utilise the definition of solo self-employment from the *Commission Guidelines on the application of Union competition law to collective agreements* regarding the working conditions of solo self-employed persons as “a person who does not have an employment contract or who is not in an employment relationship, and who relies primarily on his or her own personal labour for the provision of the services concerned”.

The bogus self-employment among all self-employed in arts, entertainment and recreation ranges between 1,6% to 10,8% in the EU, depending on the definition and the method of estimation (Williams et al., 2020). As a result, the sector is among those with the highest share of bogus self-employment in the EU, albeit with important cross-country differences (Williams et al., 2020). The problem in the CCS seems to be more pressing in comparison to other sectors due to widespread use of self-employment in the sector in general, which translates into a higher absolute number of bogus self-employed.

Further, there is an important ambiguity regarding the definitions of bogus self-employment. As of today, EU Labour Force Survey ("EU-LFS") uses a narrow definition of bogus-self employed as those in self-employment without employees working for one client or for a dominant client and whose one or main client decides their working hours. European Working Conditions Survey ("EWCS") defines bogus self-employment based on not meeting two or three criteria of: (a) having more than one client; (b) having the authority to hire staff, and/or; (c) having the authority to make important strategic decisions. Member States can use their own definitions of bogus or false self-employment depending on the available documents. This creates challenges from the point of view of EU-level action and mutual learning processes.

The problem of bogus self-employment also brings an issue of the enforcement of the existing regulations which is not regulated at the EU level. The determination of employment status is dependent upon classification at the national level. The criteria for classification at the national level largely differ and depend i.a. upon statutory legislation, collective agreements, administrative practices, and case law. The same applies to misclassification in case of bogus self-employment. However, given that access to EU-level protection through Directives and labour *acquis* is contingent upon determination of employment status, this remains a regulatory gap.

It is noteworthy that the issue of the enforcement of the regulations has been a subject of a number of EU-level policy measures. The *European Parliament resolution of 14 January 2014 on social protection for all, including self-employed workers* called "on the Commission to promote exchanges between Member States in order to provide guidance on the different forms of atypical employment and self-employment, so as to assist Member States to properly apply the relevant labour laws and social protection measures to workers so employed; considers it necessary also for Member States to clearly identify false self-employment and sanction employers if such cases are identified and proven". Further, the issue of the enforcement of regulations in the context of misclassification and bogus self-employment has been a subject of the *European Parliament resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe* which called on the Commission in cooperation with the social partners and relevant national authorities, to develop EU-wide further-training programmes for inspectorates that address challenges i.a. such as bogus self-employment. Preventing bogus self-employment is a part of the *European Platform on Undeclared Work* initiative that in 2021 was set up as a permanent working group at the European Labour Authority ("ELA"). The operations within the Platform have not yet been focused on the CCS, although the current proposal for the work plan provides that that the Platform should analyse the undeclared work in the cultural industries in 2024 or 2025<sup>5</sup>. Moreover, prevention of bogus self-employment belongs to the founding principles of the ELA, as provided by the *Regulation 2019/1149 establishing a European Labour Authority*, rec. 8 and 21.

### 1.1.3. Unregulated use of project-based employment and self-employment

European labour regulations operate with a binary divide between employment status and the status of (self-employed) contractor. While persons in employment relationship benefit from the labour law and collective agreements protection, as well as access to the social protection system,

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<sup>5</sup> [Work Plan 2023 and proposals for 2024-2025](#) of the European Platform Tackling Undeclared Work.

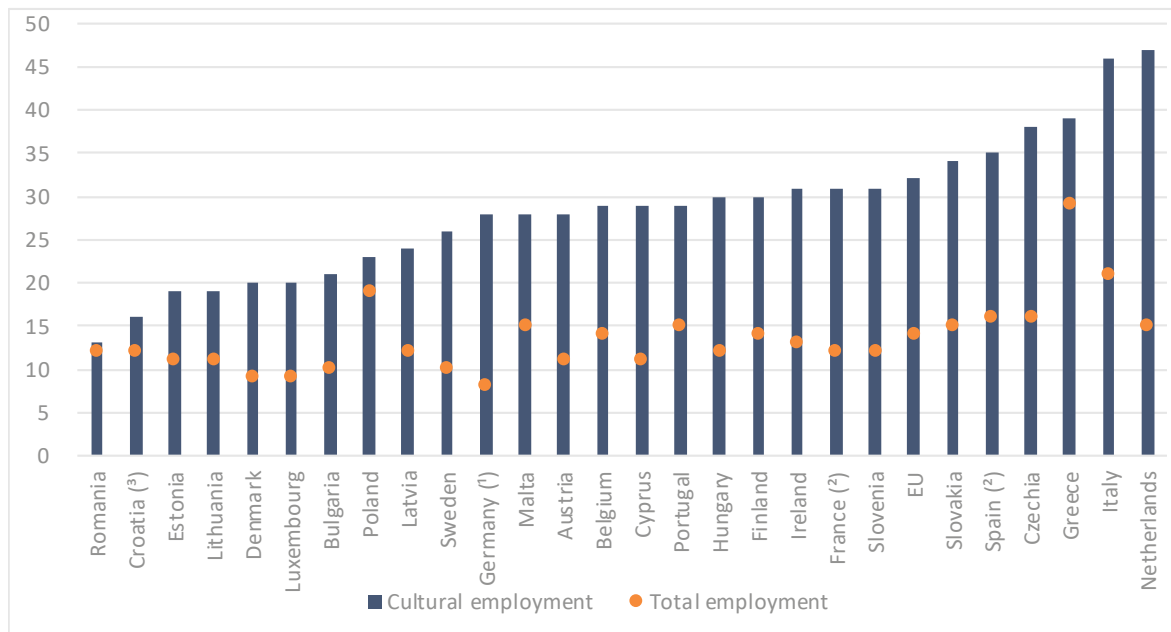
self-employed contractors are in principle responsible for their working conditions on their own. As a result, while conditions of work of artists and creative employees are subject to EU-level regulations through various directives and EU labour acquis, the regulation of working conditions of self-employed is practically non-existent and left to Member States where regulatory solutions largely differ. Moreover, employees are also better protected at the Member State level. While EU labour acquis protects employees within the sector, it does not target the issue of the use of project-based (self-) employment, leaving these professionals much less protected in comparison to the regular employees.

The CCS within the EU are predominantly organised through highly specific, temporary projects (Bettiol and Sedita, 2011). The shift towards project-based organisation was largely policy-driven: project-based funding, instead of stable institutional funding, fuelled accountability and competition within the sector (Greer et al., 2019; Pulignano et al., 2023). Project-based organisation necessitates highly variegated skills and mobility to foster creativity (Bridgstock, 2011; Lampel and Germain, 2016). Project financing incentivises the CCS organisations to rely on precarious freelance contracts to deliver on the projects, while not worrying about labour cost after their expiration (Bridges, 2018).

Within this model, CCS professionals are given money for preparation of specific and time-bound projects, such as a theatre show, artistic residency, a photography exhibition, or a monument renovation. As a substantial part of the financing of CCS organisations is directly tied to an outcome and largely short-term, CCS professionals are given casual contracts that provide employment opportunities only within the timeframe of their tasks (project-based employment). The use of contractual forms is largely unregulated and thus depends on institutional practices that vastly differ but involve options allowing for multiple job holding, such as self-employment. This shapes the fragmented nature of careers of artists and creative professionals (Alacovska et al., 2021). Combining different projects allows CCS professionals to cope and increase their stability by “bridging” solutions, which usually involves intensive networking (Hesmondhalgh and Baker, 2010; Hotho and Champion, 2011). Project-based employment also contributes to the geographical and social clustering of the sector due to the necessity of networks to cope with the precarious nature of employment (Lorenzen and Frederiksen, 2008), which drives its inequality (Oakley et al., 2017).

While the rotating nature of a project necessitates inviting new collaborators (e.g. a museum inviting curators and artists for one exhibition), it can also be used as an excuse to throw other staff (e.g. art technicians) on freelance contracts tied to a specific project. The project mode of operations explains the extreme share of self-employment within the sector (Figure 1).

Figure 1. Share of self-employed in cultural employment and total employment (2021)  
Cultural employees are over twice more likely to be self-employed than the remaining workforce



Note: <sup>(1)</sup> Provisional data. <sup>(2)</sup> Definition differs (see LFS metadata). <sup>(3)</sup> Cultural employment - self employed persons: low reliability.

Source: compiled by the authors using Eurostat indicator: cult\_emp\_wsta

However, intermittent CCS professionals can also be hired on fixed-term employment contracts within the projects. This remains unregulated at the EU and (many) Member States level – which translates into high share of employees without a permanent job in the cultural sector (Figure 2).

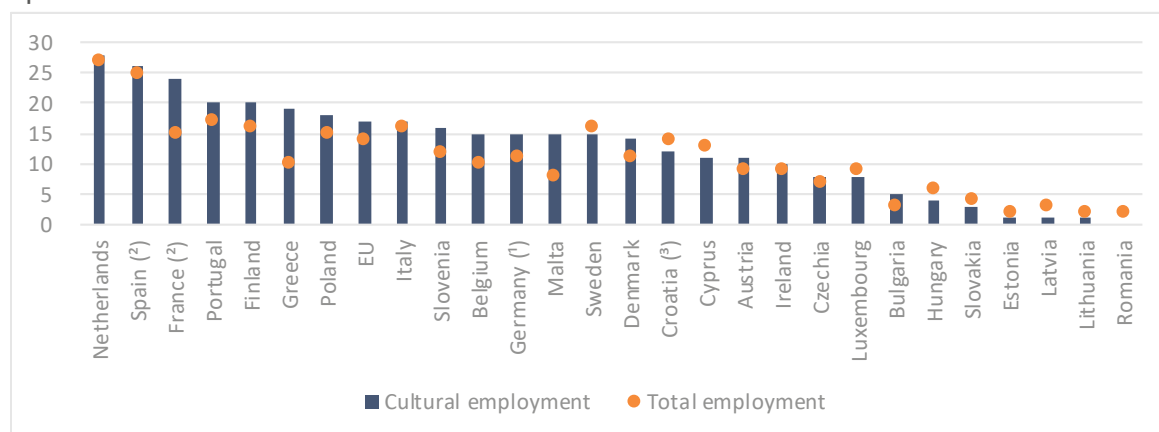
This leads to various problems: erratic access to social security (issue of accumulating rights), instability of working time, and earnings. For instance, in the EU, only 32% of CCS professionals say they can quite accurately predict their earnings in the next 3 months, when compared to 57% of all EU employees (Eurofound 2021, *Job quality in creative sector*). Further, 27% of CCS professionals say

they might lose their job in the next 6 months against an average of 15% (Eurofound 2021) and 30% expect undesirable changes in work situation against EU average of 22%.

The root cause of project-based employment relates to the financial and funding structures prevalent within the sector that link financing of CCS organisations to projects.

Figure 2. Share of employees without a permanent job in the cultural sector (2021)

Short-term employment ranges from none in Romania to over a quarter in the Netherlands and Spain



Note: (1) Provisional data. (2) Definition differs (see LFS metadata). (3) Cultural employment - self employed persons: low reliability.

Sources: compiled by the authors using Eurostat indicator: cult\_emp\_wsta

At the EU level, the EU provides funding programmes supporting the CCS. Some are designed specifically for the CCS, such as the flagship Creative Europe programme of €2,44 billion<sup>6</sup>. The support for creative endeavours also spreads across other programmes. For instance, Erasmus+ programme supports artistic and cultural mobility and residencies, European Solidarity Corps supports cultural institutions to promote inclusion, while Horizon Europe offers programmes to support culture and creativity (European Commission, 2021). However, some programmes leave a substantial amount of ambiguity or flexibility regarding the employment forms.

As shown in Case study 1, the programmes financed by the EU do not always promote stable employment. They leave their beneficiaries and/or cultural organisations a choice on how to structure employment within the projects.

<sup>6</sup> [Creative Europe](#) programme of the European Commission.

### Case study 1. Unregulated forms of employment in Culture Moves Europe Programme

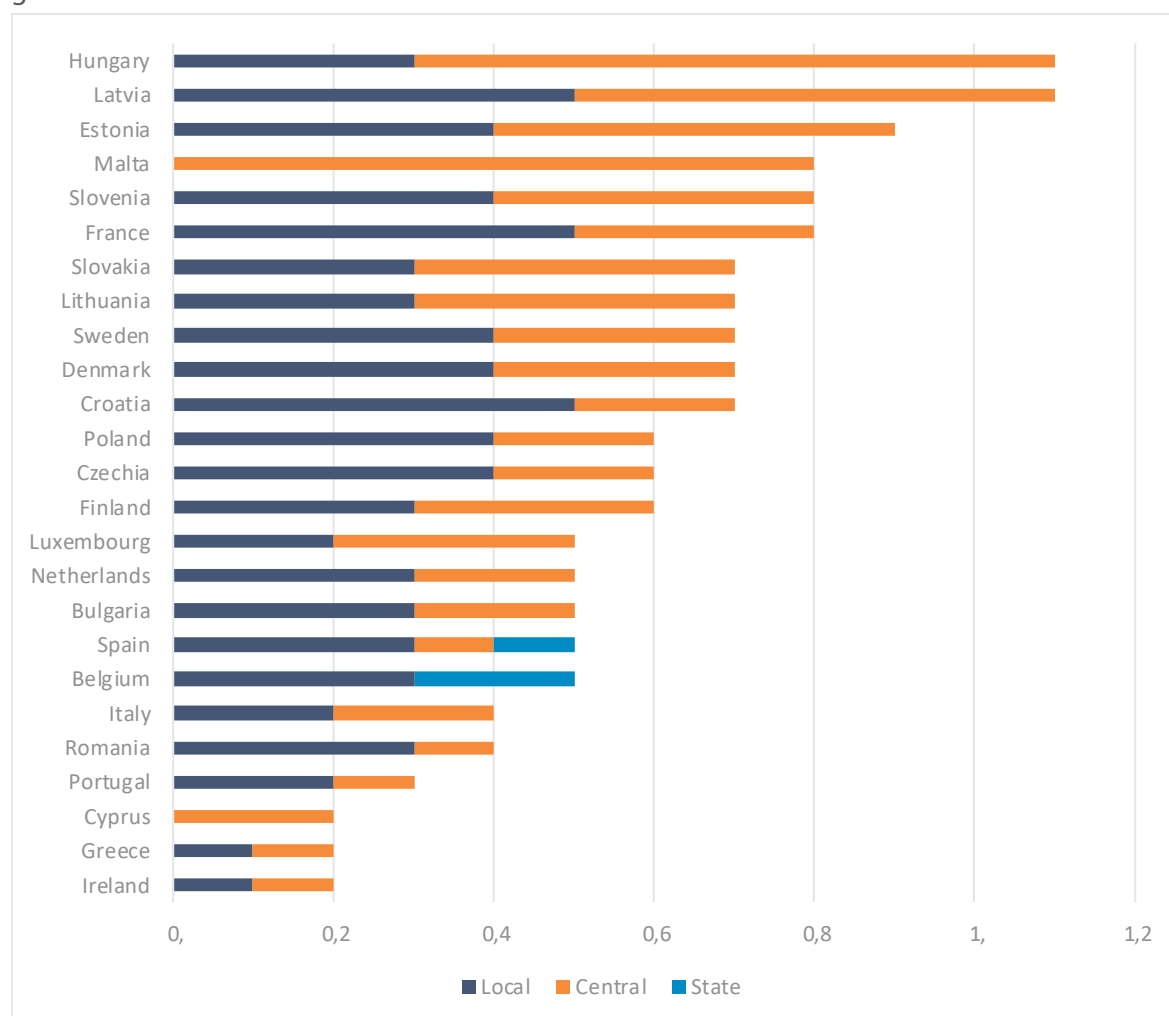
With a budget of €21 million, Culture Moves Europe (2023) is the largest European mobility scheme for the cultural sector to date. The programme supports mobility grants for a period between 7 and 60 days for individuals and between 7 and 21 days for groups, as well as residencies up to a maximum of 300 days. The programme provides lump-sums for institutions, as well as daily allowances and travel allowances for CCS professionals. However, it does not regulate the contractual status of CCS professionals, leaving that to the hosting institutions and individual arrangements. The disclaimer of the programme specifically sets out selected artists and cultural professionals (A&CPs) “remain fully responsible for their own security and safety during their travel and residency stay. Culture Moves Europe recommends the hosts to advise their participating A&CPs to notify and register with their embassy before starting the residency project, as well as to buy travel insurance. Culture Moves Europe does not offer additional support to cover this cost.” (Culture Moves Europe, 2023: 22).

At the Member State level, there is no coherent financing structure for the CCS. The financial frameworks of the cultural programmes are predominantly structured at the Member States level in the context of the supporting competence of the EU in this area (article 6 and article 167 of Treaty on the Functioning of the European Union, hereinafter: “TFEU”).

The funding for the CCS remains predominantly public with substantial inputs from local governments. In 25 Member States with available data, on average 0,6% of GDP is spent on cultural services – masking huge discrepancies that range from 0,2% of GDP in Cyprus, Greece and Ireland to over 1% in Latvia and Hungary. The national and

subnational governments contribute comparable shares – except for Cyprus and Malta where all funding comes from the central government (Figure 3).

Figure 3. Local, state and central government spending on cultural services (2021)  
Cultural funding ranges from 0,2 to 1,2% of GDP with roughly a half contributed by local governments.



Notes: "State level" applicable only to Belgium and Spain.

Sources: compiled by the authors using Eurostat GOV\_10A\_EXP indicator.

Some subsectors of the CCS, such as classical music, rely largely on public funding (Mariani, 2009). Other subsectors however, such as architecture, might be predominantly funded privately. Yet others, such as the film industry, traditionally rely upon a combination of public and private sources (Jäckel, 2019; Kanzler and Talavera, 2018). Where private funds are present, Member States usually provide tax incentives to promote such spending through tax deductions, preferential VAT regimes, or preferential forms of taxation of CCS professionals (Del Federico, 2021). This mode of financing translates into hybrid status of the public and private organisations within the CCS (OECD, 2022): many private organisations receive a substantial amount of funds coming from the central and local governments, while some public organisations may be supported by sponsors who might additionally benefit from preferential taxation while donating funds. This means that the unstable and precarious, project-based funding structures that contribute to the spread of precarious working arrangements within the CCS are largely contingent upon institutional frameworks.



## 1.2. Gaps in the protection of solo self-employed CCS professionals

### 1.2.1. Gaps in the protection of the working conditions of solo self-employed in the CCS sector

Self-employed artists and creative professionals might experience unstable working conditions stemming from dependency intertwined with a lack of regulation of their contractual status. As a result, self-employed CCS professionals have a higher risk of unpaid labour, unstable wages and unregular workingtime.

The share of dependent self-employed in arts, recreation and other service activities was estimated to be around 42% of all self-employed in the sector in 2015, and was the third highest in sectoral distribution after agriculture, forestry and fishing, and transportation and storage (Williams and Horodnic, 2018). Overall, dependent self-employed in arts, recreation and other service activities constituted 14% of all dependent self-employed in Europe.

Since the 1990s, there has been a growing concern within the Member States that some self-employed professionals are not fully autonomous and are in a need for some level of protection. These discussions translated into various policy initiatives at the Member State level.

In principle, EU law has operated with a strict binary distinction between employment and self-employment status, providing protection of working conditions only to the first group (Risak and Dullinger, 2018). Recently, two initiatives have weakened a strict association between working conditions protection and employment status at the EU level. They created a potential room for the emergence of an intermediate category of self-employed at the EU level<sup>7</sup>.

First, *Directive on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity* sets out some provisions pertaining to prevention of discrimination, social protection, and maternity leave. The recent Court of Justice of the European Union (“CJEU”) ruling C-356/21, *JK v TP SA* found that EU anti-discrimination legislation should be extended to “*the activity pursued by the applicant constitutes a genuine and effective occupational activity, pursued on a personal and regular basis for the same recipient, enabling the applicant to earn his livelihood, in whole or in part*”<sup>8</sup>.

Second contribution to this direction was made by the *European Commission Guidelines on the application of EU competition law to collective agreements* (so called “*Guidelines on collective agreements by solo self-employed*”). The *Guidelines* provided that solo self-employed (meaning a person who does not have an employment contract or who is not in an employment relationship, and who relies primarily on his or her own personal labour for the provision of the services concerned) should have the right to enter into collective bargaining process if they are in situation of economic dependence towards their contractors, understood as a situation “*where that person earns, on average, at least 50 % of total work-related income from a single counterparty, over a period of either one or two years*”. Moreover, solo self-employed persons who perform the same or similar tasks “*side-by-side*” with workers for the same counterparty can enter into collective agreements regardless of their economic dependency. As a result, such collective agreements fall outside the scope of Article 101 TFEU preventing agreements which have as their object or effect the prevention, restriction or distortion of competition within the internal market.

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<sup>7</sup> Please note that some authors see this as a development towards protection based upon personal performance of work rather than upon employment status or an “intermediate” type of protection, see: Countouris and De Stefano, 2023.

<sup>8</sup> [Judgement C-356/21, JK v TP SA](#), European Court of Justice.

These initiatives provided two key contributions to the EU-based protection of the self-employed. First, they manifest a movement towards disentangling the concept of working conditions protection from the employment status, effectively allowing to extend working conditions protection to persons not being in an employment relationship. Secondly, they adopt economic dependency/personal provision of work angle to the attribution of this form of protection. In case of CJEU ruling C-356/21, the link is made through pursuing activity on a “*personal and regular basis for the same recipient, enabling [the applicant] to earn his livelihood*”. In case of the *Guidelines*, the criteria for granting the right to engage in collective bargaining are contingent upon a situation of economic dependence towards one’s contractor (via clearly defined threshold of 50% of work-related income earned from a single platform in a specific timeframe) or working ‘side by side’ with workers for the same party. It must be noted however that these two initiatives are limited in their nature, as CJEU ruling C-356/21 is applicable to anti-discrimination legislation while the *Guidelines* only to competition law.

As indicated previously, while the employees are protected through the labour directives and EU labour acquis, the solo self-employed are protected only in the limited manner at the EU level, and mostly protected in an inconsistent way at the Member State level, which constitutes a major gap in the EU protection.

Many Member States have developed intermediate categories of self-employed professionals provided with some forms of protection characteristic for employment protection, including protection of working conditions and access to social security protection. For instance, Spanish law provides basic labour and social security protection to dependent self-employed (Torres, 2009). Polish civil law contractors on “contracts for mandate”<sup>9</sup> are covered by both social security and healthcare protection, as well as hourly minimum wage (Muszyński, 2019). German law has an intermediate category in the Collective Agreements Act (Tarifvertragsgesetz), with self-employed persons belonging to this category may conclude collective agreements. Outside of the EU, the UK provides a “worker” status protected by minimum wage, holiday pay, working time regulations, and a number of social benefits (Freedland and Dhorajiwala, 2019).

### 1.2.2. Gaps in the social security protection of self-employed

Artists and creative professionals might suffer from inadequate or limited access to social security protection<sup>10</sup>.

In the view of the limited access of self-employed to social security protection, the *European Parliament resolution of 14 January 2014 on social protection for all, including self-employed workers*, stresses that “*self-employment needs to be recognised as a form of work which helps to create jobs and reduce unemployment, and that the expansion of self-employment should go hand-in-hand with appropriate social protection for the self-employed as defined in the Member States’ national legislation*”. *Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed* intended to bridge this gap in social protection, by recommending access to adequate social protection to all workers and self-employed persons in Member States and to establish minimum standards in the field of social protection for them.

After the adoption of the *Council Recommendation*, the situation has improved in a number of the Member States. However, as indicated by the Report from the Commission to the Council on the implementation of the Council Recommendation on access to social protection for workers and the

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<sup>9</sup> Under Polish law, contract for mandate is a type of due-diligence civil law contract where contractor undertakes to perform a specific service or legal action for the mandator.

<sup>10</sup> Please note that the problems related to access to social security in a cross-border context are tackled in section 1.3.2.

self-employed<sup>11</sup>, the systems of social protection of self-employed still vastly differ across the Member States. In 5 Member States, self-employed CCS professionals are not covered by unemployment schemes at all, and in 13 Member States they fall within the general system of protection for self-employed that might expose them to gaps in protection in the context of highly intermittent character of their work that hinders meeting eligibility criteria (Table 1). The remaining 9 Member States provide unemployment schemes specifically dedicated for self-employed CCS professionals.

While falling in the general systems of protection, CCS professionals struggle with meeting conditions of eligibility, in particular related to social insurance contribution time and amount which might prove difficult as their work is irregular. This issue is particularly pronounced as the sector is organised around intermittent projects (see: Section 1.1.3). These conditions differ across the countries, but might involve a minimum period of work before unemployment (e.g. 12 months during the past 2 years in Germany<sup>12</sup> under *Arbeitslosengeld I*, 12 months in Italy, 12 months in Sweden) or sufficient amount of contributions paid during a certain period of time. Moreover, allowances might be prorated according to contributions (Germany, Italy, Sweden) or their duration might vary according to the age of the unemployed (Germany, Italy, Sweden). Next to general unemployment schemes, some countries offer reduced schemes for short-term contracts employees. They typically have less strict previous employment conditions, e.g. at least 6 months of affiliation during the last 2 years (Germany) or 13 weeks during the last 12 months (Italy). Another option is signing up for optional individual insurance (e.g. Sweden). CCS professionals who do not meet these conditions might qualify for social assistance.

Table 1. Social security policies to support self-employed artists in the Member States (2020)

Country	Social security		Tax	
	Unemployment schemes for self-employed artists/creative professionals	Pension supplements for self-employed artists/creative professionals	Specific income tax provisions for artists/creative professionals	Specific VAT provisions for artists/creative professionals
Austria	Yes	Yes	Yes	No
Belgium	Yes	Yes	No	Yes
Bulgaria	Yes	Yes	Yes	No
Croatia	No – but general measures for self-employed	Yes	Yes	No

<sup>11</sup> [Report](#) from the Commission to the Council on the implementation of the Council Recommendation on access to social protection for workers and the self-employed.

<sup>12</sup> This does not refer to the self-employed artists whose health and pension insurance is covered under Artists' Social Security introduced in 1983. In this scheme, the artists contribute 50%, employers – 30% while the remaining 20% comes from a federal subsidy. The users of artists and publicists work must register with the Artists' Social Security Fund (Künstlersozialkasse – KSK).

Country	Social security		Tax	
	Unemployment schemes for self-employed artists/creative professionals	Pension supplements for self-employed artists/creative professionals	Specific income tax provisions for artists/creative professionals	Specific VAT provisions for artists/creative professionals
Cyprus	No	No – but general measures for self-employed	-*	-*
Czechia	No – but general measures for self-employed	No – but general measures for self-employed	-*	-*
Denmark	No – but general measures for self-employed	No – but general measures for self-employed	No	Yes
Estonia	Yes	No – but general measures for self-employed	Yes	No
Finland	Yes	Yes	Yes	Yes
France	Yes	Yes	Yes	Yes
Germany	No – but general measures for self-employed	Yes	Yes	Yes
Greece	No – but specific scheme for self-employed	Yes	Yes	Yes
Hungary	No – but general measures for self-employed	Yes	Yes	Yes
Ireland	Yes	No – but general measures for self-employed	Yes	Yes
Italy	No	No - pension is covered under the self-employed special scheme of the General Compulsory Insurance (AGO)	No	Yes
Latvia	No	No – but general measures for self-employed	Yes	Yes
Lithuania	No	Yes	No	Yes
Luxembourg	Yes	No – but general measures for self-employed	-*	-*

Country	Social security		Tax	
	Unemployment schemes for self-employed artists/creative professionals	Pension supplements for self-employed artists/creative professionals	Specific income tax provisions for artists/creative professionals	Specific VAT provisions for artists/creative professionals
Malta	No – but general measures for self-employed	No – but general measures for self-employed	No	Yes
Netherlands	Yes	No – Self-employed are covered by the general scheme (first-pillar pension)	No	Yes
Poland	No – but general measures for self-employed	Yes	Yes	Yes
Portugal	No – but are covered by the social security scheme of the self-employed (protection in case of unemployment only for a few categories)	No – but general measures for self-employed	No	Yes
Romania	No	No – but general measures for self-employed	No	No
Slovakia	No – but general measures for self-employed	No – but general measures for self-employed	Yes	No
Slovenia	No – but general measures for self-employed	Yes	Yes	Yes
Spain	No – but general measures for self-employed	No – but general measures for self-employed	Yes	Yes
Sweden	No – but general measures for self-employed	Yes	Yes	Yes

Notes: \* - information not available

Source: Panteia 2020.

### 1.2.3. Gaps in the occupational safety and health protection of self-employed

CCS professionals struggle with some occupational safety and health risks. In particular, they are more exposed to loud noise (44% vs 34% of EU average), carrying or moving heavy loads (42% vs 35% of EU average), tiring or painful positions (54% vs 50% of EU average), and repetitive hand or arm movements (73% vs 71% EU average) (Table 2).

Table 2. Exposure to safety and health risks among CCS professionals

Indicator	CCS professionals	EU average
Handling or having skin contact with chemicals	20%	26%
Handling or being in contact with infectious materials	8%	18%
Exposure to loud noise	44%	34%
Carrying or moving heavy loads	42%	35%
Lifting or moving people	8%	12%
Tiring or painful positions	54%	50%
Repetitive hand or arm movements	73%	71%

Source: Eurofound data received from EPRS. All percentages group respondents answering "sometimes, often, always" to a given question.

The exposure might vary drastically across the different subsectors of the CCS – visual artists might be more exposed to toxic chemicals; sculptors to mechanical injuries and lung cancer due to exposure to dust (Zuskin et al., 2007); dancers to various musculoskeletal disorders and injuries (Bronner et al., 2003); musicians to noise and hearing loss (Raymond III et al., 2012).

EU framework for the protection of the safety and health is vast and involves sectoral directives and directives on particular types of risks<sup>13</sup>. With some exceptions<sup>14</sup>, the framework applies only to employees – excluding the self-employed, as the latter are assumed to be responsible for their own safety and health. The safety and health of CCS professionals falls under the general rules within the *Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work* ("OSH Framework Directive"), which only applies to employees and excludes the self-employed.

In the last 20 years, some EU initiatives sought to improve the situation of the self-employed. For instance, *2003 Council recommendation concerning the improvement of the protection of the health and safety at work of self-employed workers* recommended Member States to promote health and safety among self-employed in their policies through legislation, incentives, information campaigns; promote access to training to acquire safety and health skills; prevent occupational accidents and diseases. In January 2022, European Economic and Social Committee adopted an opinion on the Social dialogue as a tool to promote health and safety at work<sup>15</sup>. However, the coverage of self-employed by the OSH protection still largely relies upon Member States' decisions where self-employed are in most cases responsible for their own health and safety protection<sup>16</sup>. OSH protection

<sup>13</sup> List of the Directives at <https://osha.europa.eu/en/safety-and-health-legislation/european-directives>

<sup>14</sup> The exceptions include e.g. *Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation* applies to "exposed workers", including "self-employed or working under an employer"; *Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites* contains multiple provisions applicable to self-employed.

<sup>15</sup> EESC [Opinion](#), Social dialogue as a tool to promote health and safety at work.

<sup>16</sup> The notable exceptions being the Bulgarian Act of 16 December 1997 on OSH, which includes self-employed within the scope of OSH protection (article 1), defining "self-employed" as "workers" for the purpose of the OSH protection within the Act (Article §1.2a of the supplementary provisions). Article 304 of the Polish Labour Code provides that the employer is obliged to ensure the conditions of safety and health at work to individuals performing work on a basis other than an employment relationship in a work establishment or in a place designated by the employer, as well as to anyone conducting business activity on their own account in the work establishment or in a place designated by

of self-employed is unregulated at the EU level, and there are no plans to change this situation as the *EU strategic framework on health and safety at work 2021-2027*<sup>17</sup> explicitly excludes self-employed from the plans to expand the protection.

Consequently, many among the self-employed in the CCS are without efficient protection at the EU level, as the level of protection relies upon patchwork solutions at the Member State level, which constitutes a gap.

## 1.3. Gaps in employability, skills, and cross-border mobility framework

### 1.3.1. Gaps in the protection of working conditions in case of cross-border mobility

The cross-border mobility data gaps impede the measurement of its scope. The data on posting is based upon the number of issued A1 Portable Documents (hereinafter: "PD A1"). These documents cluster sectors without a detailed sectoral breakdown. In 2021, 13.3% of PD A1 were issued to education, health and social work, arts and other services sector (NACE P, Q, R, and S) (Wispelaere and De Smedt, 2022). Some disaggregated figures are available at the national level. For instance, in Belgium around 10% of all PD A1 have been issued to employees providing creative, arts and entertainment activities in 2018 (De Wispelaere and Rocca, 2020). This might suggest that a significant percentage of the PD A1 at the EU level are issued to artists and creative professionals. Based on the data from 12 reporting countries, De Wispelaere and Rocca (2020) estimate that 3,5% of all posted workers in Europe are artists and musicians.

As posting is bureaucratically demanding while its duration is short (e.g. live performance artists touring within Europe might stay in one country for just one or two days), a substantial number of mobile workers and employers in the CCS might simply do not comply with these regulations, i.e. not ask for issuing PD A1s, thus falling out of the radar. This means that the real extent of cross-border mobility within the sector is probably higher than what is officially reported.

The current model of protection of working standards in case of cross-border mobility is regulated by the *Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services* ("Posting of Workers Directive") and *Directive 2018/957 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services*. Article 3(1) of the *Posting of Workers Directive* provides that posted workers must enjoy the same level of protection as local workers in the hosting Member State, as laid down by the law, regulation, administrative provisions, and collective agreements insofar as they concern: maximum work periods and minimum rest periods, minimum paid annual holidays, the minimum rates of pay, OSH, equality of treatment and conditions of hiring-out workers.

Article 3(4) of the *Posting of Workers Directive* sets out that Member States can provide exemptions concerning one or more sectors of activity for short-term posting where the length of the posting does not exceed one month.

To facilitate the access to information on posted workers' rights, article 5 of the *Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC*

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the employer. Article 4.3.e of the Spanish Act of 11 July 2007 on self-employment provides that self-employed have a right to protection of their safety and health in their work. Article 4 of the Italian Legislative Decree of 9 April 2008 on safety and security in the workplace also covers self-employed.

<sup>17</sup> [Communication](#) from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU strategic framework on health and safety at work 2021-2027 Occupational safety and health in a changing world of work*.

concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ("the IMI Regulation") sets out that Member States should provide information in a "clear, transparent, comprehensive and easily accessible way at a distance and by electronic means". Further, article 5 of the Regulation establishing European Labour Authority provides that the ELA should improve availability, quality and accessibility of information regarding labour mobility within the Union irrespective of their employment status.

Three gaps pertain to protection of working conditions of posted CCS professionals. First, the *Posting of Workers Directive* protects only employees and not the self-employed. The capacity to intervene in working conditions of the self-employed is limited due to the principle of the freedom to provide services.

Second, the ongoing challenge is the access to information about the rules of posting. While Member States are required to make information on the rules that are important for the process of posting available (such as binding statutory laws and collective agreements regulating remuneration, working time, OSH, etc.), workers might struggle with accessing up-to-date information in the context of complex regulatory landscape. This might also create challenges for the employers to understand which regulations they have to comply with, particularly if collective agreements are in place.

The third issue is the applicability of rules to short-term mobility. Even very short postings entail the application of the provisions from Article 3(1) of the *Posting of Workers Directive* if there is no exception based on Article 3(4) in a Member State, as a result, the necessity to apply the working conditions of the host Member State. As confirmed by CJEU ruling C-65/98 *Mazzoleni*, as well as the *European Commission Practical Guide on Posting*<sup>18</sup>, point 2(3) stating that "Directive 96/71/EC applies to all postings, irrespective of their duration", the posting for even the shortest time requires application of the *Posting of Workers Directive* if no exception is provided. This might create challenges particularly for smaller organisations in the CCS that might not have legal/HR departments capable of finding and applying the rules.

### 1.3.2. Gaps in the access to social security protection in case of cross-border mobility

The EU does not have a competence to harmonise national social security systems. The current EU regulatory framework relies upon the attempts to coordinate social security systems' solutions on a general level, as provided by the *Regulations 883/2004* and *987/2009*. *European Commission Proposal a revision of the EU legislation on social security coordination* has been on hold since 2016. The Proposal aimed to broaden the access to social benefits by the EU mobile citizens, which would have an impact on the situation of the CCS professionals in the context of high mobility within the sector.

The regulations pertaining to social security protection in case of cross-border mobility for both employees and self-employed are set out in the *Regulation 883/2004* and *987/2009*. An employee in the CCS can be posted to another Member State if s/he is subject to the legislation of the employer's country for at least one month before the posting (Article 12.1 of the *Regulation 883/2004*; Article 14.1 of the *Regulation 987/2009* and Article 1 of the *Decision A2 of the Administrative Commission for the Coordination of Social Security Systems of 12 June 2009 concerning the interpretation of Article 12 of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State*). A self-employed in the CCS can post her/himself in another Member State as long as s/he pursued those activities for at least 2 months prior to posting and that s/he acts so as to carry on those activities at the end of the posting (Article 12.2 of the *Regulation 883/2004*; Article 14.3 of the *Regulation*

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<sup>18</sup> European Commission, [Practical guide on posting](#).



987/2009; Article 2 of the *Decision A2*). PD A1 is issued for the posted worker or self-employed to attest that they are covered by the social security scheme in the sending country. Moreover, special rules apply in case a worker performs activities simultaneously in different Member States, performs activities in alternation, is employed in two or more states, is self-employed in two or more states, or is employed or self-employed in two or more states.

In the view of the cross-border problems with social security coverage, *European Parliament's resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe*, *European Parliament resolution of 19 January 2017 on a European Pillar of Social Rights*, as well as *European Parliament resolution of 25 November 2021 on the introduction of a European social security pass for improving the digital enforcement of social security rights and fair mobility* highlighted the need to implement European Social Security Card to facilitate exchange of information on the social security status and rights. The pilot programme for European Social Security Pass (ESSPASS) started in 2023<sup>19</sup>. The ESSPASS aims to speed up administrative procedures through digitalisation and real time-verification of PD A1s for the social security institutions, labour inspections, and health care providers etc.

Article 71 and 72 of the *Regulation 883/2004* establishes Administrative Commission for the Coordination of Social Security Systems that fosters and develops cooperation between Member States, also by exchanging information and adapting the information flow between the social security institutions.

Article 2 of the *Regulation 2019/1149 establishing a European Labour Authority* provides that that ELA shall assist Member States and the Commission in the coordination of social security systems within the Union, while Article 4 of the said Regulation provides that ELA shall support Member States in complying with the obligations on the access to and dissemination of information to social security coordination and to the posting of workers, including by means of reference to national information sources such as the single official national websites.

At least five gaps in social security protection make posted CCS employees and self-employed vulnerable. First, mobile workers in the CCS, both employees and self-employed, might find it hard to understand or determine what they are entitled to in terms of social protection. Timewise, accessing information can last longer than the posting duration.

Second, CCS might find it difficult to deal with different administrative and bureaucratic practices hindering effective access to the social security system. For instance, social security institutions responsible for issuing PD A1s might be slow and require weeks to process the applications.

Third, cross-border mobility might be linked to fragmented career patterns which might translate into workers having different status in different countries. A lack of common definitions regarding artists and creative professionals might create uncertainty regarding the status of the worker in one or more countries, contributing to fragmented or hindered access to social security, or difficulty in establishing social security rights. For instance, an artist can be employed in one country but treated as self-employed in another. This also leads to career fragmentation.

Fourth, the duration of posting within the sector can pose challenges. Artists like musicians or other performers might spend just a day or a few in one country while touring through multiple countries. It is not uncommon for the visual artists to spend just a few weeks on residency stays.

Fifth, hiring practices within the sector might pose challenges for building up rights within the local social security system prior to posting. For instance, bands might hire musicians to perform on a European tour. In such a case, requirements regarding staying within the local security system for a

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<sup>19</sup> European Commission, Employment, Social Affairs & Inclusion, [ESSPASS Pilot Project - exploring a new digital tool to help mobile citizens exercise their social security rights across borders](#).

certain period to build up entitlement before posting is allowed (one month in case of employees and two months in case of self-employed) might hinder effective access to social protection.

Finally, the gaps in the data on the real extent of the cross-border mobility (due to clustering of the data without a detailed sectoral breakdown; see previous point) make undertaking policy action difficult.

### 1.3.3. Gaps in transparency of employment opportunities

While there are no studies suggesting that access to information about employment opportunities constitutes a major challenge for artists, the existing research on careers of artists shows the extreme importance of social networks for coping with the instability and prevalence of short-term contracts in the sector (Bettioli and Sedita, 2011; Menger, 2006; Sedita, 2008). Concurrently, 84% of employers in the creative and cultural sector in the UK claim that young people are unaware of the breadth of career paths in the field (Bowes et al, 2018). This suggests that improvement of the access to information about employment opportunities might help CCS professionals. At the same time, the existing solutions at the EU level do not seem to respond to the needs of the sector and the heterogeneous nature of its jobs.

At the EU level, EURES platform (re-established by *Regulation 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), professionals' access to mobility services and the further integration of labour markets*) provides a tool for coordination of public employment services, while the *Regulation* sets out various obligations on the Member States' public employment services to provide support for job-seekers and employers in terms of information about the living and working standards, information about the job offers, offer career guidance, etc. EURES website contains information about all the sectors, making it difficult to find employment opportunities within the CCS. Since EURES is employment-focused and contains mostly job offers from the employers, it also lacks information about other funding opportunities that are common within the CCS, such as projects, grants, residencies, etc.

The art circles have also called for breaking down artists' honorarium into hourly rates. The current tendency to pay artists in lump sums masks an inadequate median hourly rate of £2.60 in 2022 (when the U.K. minimum wage stood at £9.50) and interferes with state support payments so that artists miss out on benefits they are entitled to.

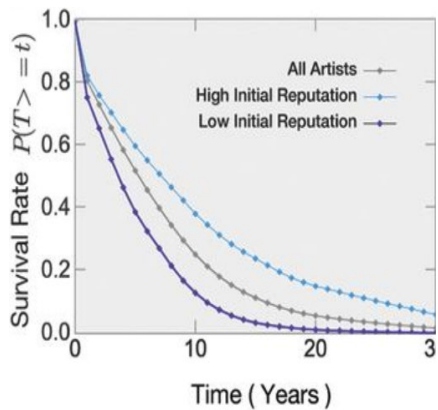
This situation is underpinned by a general lack of transparency in the sector. For example, Tate, albeit a major public institution, refused to respond to Freedom of Information request sent by Artist Leaks, quoting that it is not "*in their commercial interest*" to publish the artist fees. Such examples of the sector's opacity impede collective negotiations of better pay and conditions (Industria, 2023).

### 1.3.4. Gaps in training, upskilling, reskilling, skills mismatches

In most Member states, the number of artists per 100.000 inhabitants is increasing but few maintain a career in the arts (Menger, 2014). Most entrants leave the industry within five years (Fraiberger et al., 2018), typically following a "fighting mode", which includes serious overtime, multiple job holding, temporary jobs, work-life imbalance and postponement of life landmarks, such as home ownership or starting a family well into participants' 30s and even 40s (Hesmondhalgh and Baker, 2010; Mrozowicki and Trappmann, 2021; Skaggs, 2018; Umney and Kretsos, 2015). SNAAP data, examining 50.000 US arts graduates, found that nearly 40% of them work more than one job (Frenette and Tepper, 2016). Yet in Europe, where public art funding is more pronounced, multiple job holding is no less of an issue (Alper and Wassall, 2000).

Figure 4. Survival rate of artists

Most entrants are out of the art industry in five years



Notes: based on reconstructed careers of 496,354 artists from 143 countries over 36 years (1980 to 2016).

Sources: Fraiberger et al., 2018

The CCS professionals are generally highly skilled. In 2021, across the EU, tertiary education was accomplished by 60% of CCS employees, when compared to 37% of all employees (Eurostat, 2021). Much of multiple job holding includes work decidedly below CCS professionals' qualifications, e.g. waiting tables or driving taxis either because they have no choice given the oversupply of artists or because they want to preserve mental energy for self-expressive art pursued after hours (Adler, 2021). Steffy (2017) found that most of the recent college graduates in his qualitative sample were overqualified for their jobs by choice. Despite low pay and no benefits, short-term contracts, unreliable schedules, and few opportunities for advancement, CCS professionals still want to pursue careers especially in fashion and media (Neff et al., 2005), music (Frenette, 2013), and artisanal crafts (Ocejo, 2017).

Despite these efforts, within the Member States and internationally, most artists do not survive even one decade in the industry, as shown on a sample of 496,354 artists from 143 countries followed over 36 years (Figure 4). After five years, most of the entrants had left the field. One of the predictors for staying or leaving is their initial reputation. Half of those with a low initial reputation 20 left

the industry within 3.3 years, while a half of those with a high initial reputation did so within 7 years. Fifteen years after entry into the market, only 3% of those with a low initial reputation and 23% with a high initial reputation remained in the industry (Fraiberger et al., 2018). A typical moment of leaving the market is starting a family, especially having children for whom art workers must provide (Frenette and Tepper, 2016, Wing-Fai et al, 2015)

<sup>20</sup> Fraiberger et al. (2018) assigned a high initial reputation if an artist's work was on average exhibited in the top 20% of institutions and a low initial reputation if an artist's work was shown on average in the bottom 40%.

## Case study 2. Institutional incompatibility of education and labour: Poland's art students graduate into a market that "doesn't exist"

Art schools are arguably the last institutions in Poland's higher education where pedagogy is based on a master-apprentice formula, which is considered their great strength (Hausner et al., 2013). This results in the highest faculty-to-student ratio and the single highest per-student spending in Poland. In 2021, the annual cost of educating one art student was 53.457 PLN (11.586 EUR) – over two times higher than the country's average of 24.782 PLN (5.371 EUR) and a third higher than the stereotypically expensive teaching at medical schools (GUS 2022). Polish visual arts academies have only 4,7 students per academic teacher – an exceptional ratio compared to the country's average of 16 students or to the schools of economics, with 27 students per teacher.

This elitist status quickly evaporates as students graduate to the difficult labour market. Three years after graduation, 41% of alumni do not have any paid work, 41% have an employment contract, 14% - a non-employment contract, and 8% are self-employed (Table 3).

This was the picture in 2020, when Poland quoted the lowest unemployment in its post-communist history (3%) - showing that the oversupply of artists is largely unrelated to macroeconomic trends.

After controlling for previous experience, size of town and additional study, art alumni have the single lowest probability of employment when compared to the alumni of all other majors in Poland (Jasiński et al., 2017). Those art graduates who do find jobs earn 2.949 PLN, or 67% of the country's mean salary for all employees three years after graduation. This translates into 53% of the mean salary in places where these alumni live, as the art world is concentrated in big cities with a higher than average income and a higher cost of living.

Apart from multiple job holding, another prevalent strategy is "diploma hoarding", prevalent in Member States with free tertiary education with few limits on the years spent studying and the number of degrees one can earn free-of-charge. For example, in a representative survey of Poland's visual art students and recent alumni (with respondents aged 20-25), 38% studied for more than one degree. In the longitudinal qualitative sample (with informants aged 26-40), most interviewees had double or even triple diplomas – usually a mix of fine arts (painting, sculpture, traditional graphics) and more marketable arts (graphic design, industrial design) – and at some point were enrolled in PhD programs to get scholarships, as if the educational system provided a safety cushion to fall back on (Gromada, 2021). Some had graduated with highest honours at their faculties but still found themselves in a precarious and low-paid equilibrium (See: Case study 2).

Table 3. Labour situation of art alumni compared to all alumni in Poland (2020)

	Number of alumni	Average gross salary, 3 years after graduation	% of the average salary in the place of residence	% of alumni with any work 3 years after graduation	% of alumni on an employment contract	% of alumni on non-employment contract	Self-employed
All alumni	114 046	4432 PLN	82%	76%	65%	14%	6%
All art alumni	1 939	2949 PLN	53%	59%	41%	20%	7%

Notes: sample limited to graduate students (pl. "studia drugiego stopnia") in 2020. Categories are not mutually exclusive, as alumni can hold multiple contracts.

Source: compiled by the authors using data from the Graduate Tracking System (ELA) [ela.nauka.gov.pl](http://ela.nauka.gov.pl) (accessed on 2 June 2023).

Those who survive the first few years in this market primarily do so because they do not live off of art. As Kozłowski et al. (Kozłowski et al., 2013) showed, two in three art professionals derive below 10% of their income from art. Only ca. 10% live off of selling art, while only 2% get over 90% of the overall income from art sales. Around 80% are childless. Most tend to be supported by those closest to them. Those who have survived in the profession navigate multiple jobs and commissions, both art and non-art related. These phenomena suggest difficult market conditions, fierce competition and a strong non-financial motivation in a field that actors are unlikely to leave due to noneconomic factors, such as ambition, vocation or self-actualisation.

The top concerns of Poland's art institutions include: project-based logic that disables long-term planning and continuity; low wages; insufficient staffing and the public's lack of receptivity to contemporary art (Krajewski and Schmidt, 2017). The institutional problems are reflected in the misgivings of individuals. As one of Poland's influential artists said in the research interview: *"When I was a student, there was no such thing as an art market. Today, it still doesn't exist. But everybody believes that it does. That's why they are so pressured to make it."* (Gromada, 2021).

The incompatibility of education and labour market shows at least two paradoxes. First, what looks rational from the perspective of an individual who wants to increase her market chances, is counterproductive from the system level: CCS professionals are already overqualified so getting more diplomas is not going to increase their career chances as a group.

Second, the creative workforce is overeducated in arts but it lacks the non-creative skills.

In the UK, for instance, most businesses report skill gaps (Figure 5-7). Gaps in people's skills and generic, transferable business skills are more often reported than gaps in specialist creative skills – as 86% of creative businesses agree that professionals in their sector would need to specialise in more than one role in the future. Hence, the six most sought-after skills are not directly associated with culture: time management (61%), business marketing and communications skills (53%), problem solving skills (48%), managing and motivating others (48%), general oral and written communication (47%), team working (45%), and finances (40%). Next come sector-specific skills unrelated to creative output, such as fundraising (44%) and partnerships (36%). Later come skill gaps linked to technological changes: social media skills (40%), creative digital skills for marketing art

(31%) or using IT (23%). 86% of business leaders recognise that technological change is key in the industry, with 70% agreeing that higher-level computing skills will become increasingly important. In the future, the businesses expect the main gaps to be in fundraising, marketing and communication, digital, and business support skills.

Despite all those reported gaps, six in ten creative businesses do not expect young people to leave education with the right skills. Many students agree that they did not leave the art schools with the right skill set. For example, SNAAP data, examining 50.000 US arts graduates, found that respondents wish that their universities had taught them about the practical aspects, including handling debts and budgets, and promoting their work (Frenette and Dowd, 2020). 58% of businesses think that apprenticeships are crucial in addressing these skills shortages.

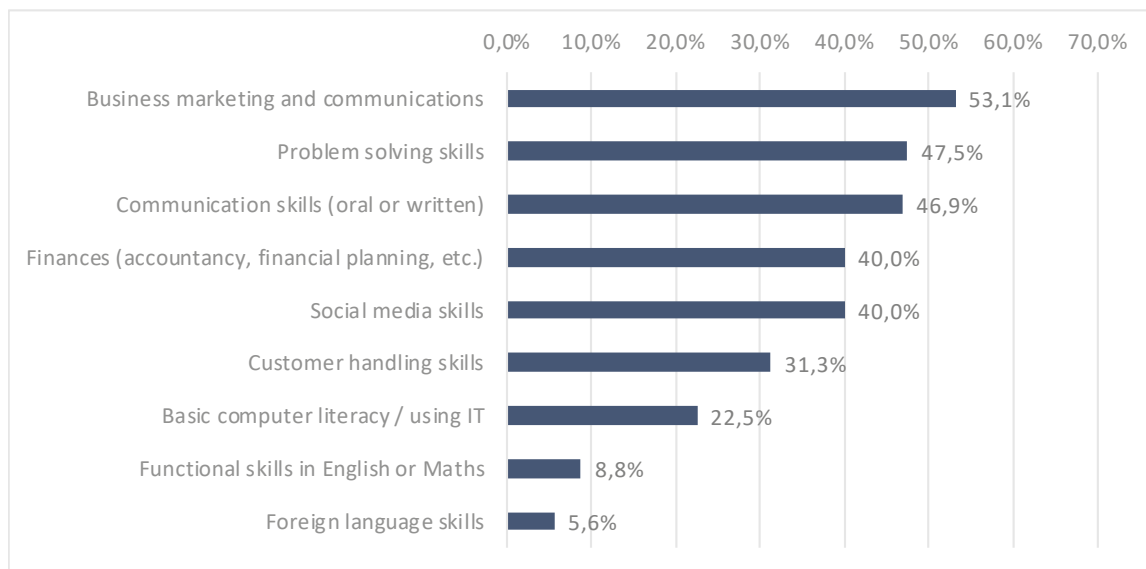
Figure 5. People’s skills gap identified by employers in arts and entertainment (2018)



Notes: based on a sample of 160 employers in creative and cultural sector in the UK

Sources: Bowes et al., 2018

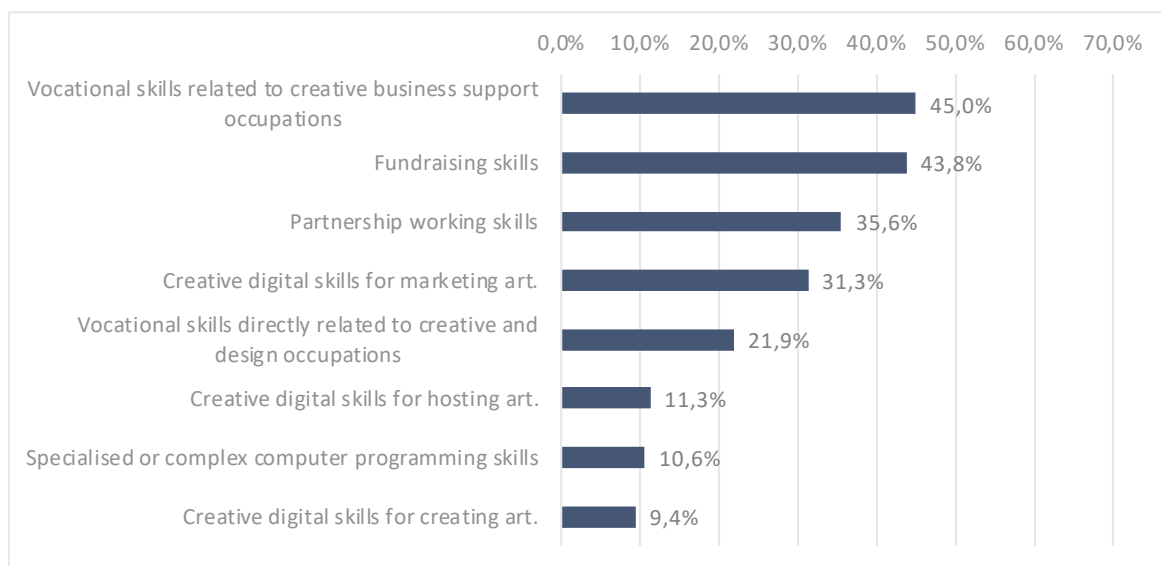
Figure 6. General skills gap identified by employers in arts and entertainment (2018)



Notes: based on a sample of 160 employers in creative and cultural sector in the UK

Sources: Bowes et al., 2018

Figure 7. Gaps in skills specific to cultural and creative sector identified by employers in arts and entertainment (2018)



Notes: based on a sample of 160 employers in creative and cultural sector in the UK

Sources: Bowes et al., 2018

The EU has been supporting and supplementing competences in the area of education and training (Articles 165 and 166 TFEU). Within the realm of Article 165 (education), the European Parliament can adopt incentive measures excluding any harmonisation of the laws and regulations, and Council can adopt recommendations. Within the realm of Article 166 (training) the European Parliament and the Council can adopt measures to contribute to the achievement of the objectives excluding any harmonisation of the laws and regulations of the Member States, and the Council, on a proposal from the Commission, can adopt recommendations. There are numerous general initiatives supporting education and training in the recent years, including *Council Recommendation of 22 May 2018 on key competences for lifelong learning* and *Council Resolution on a strategic framework for European cooperation in education and training towards the European Education Area and beyond (2021-2030)*.

However, no particular measures were introduced for the CCS in the context of its features, which are: general overeducation of professionals in the sector and the prevalence of self-employment. Here, two gaps emerge.

First, training and education systems are mostly tailored to address specific knowledge/skills gaps rather than to operate in the context of already high investments in training and education, as in the case of CCS professionals. The case above points into a potential policy intervention: a) establishing or funding transition support systems to enable a better skill matching or skill adaptation of this already highly educated group, b) upskilling understood as adaptation of their existing skills to the digital revolution, c) bridging gaps in generic skills such as fundraising, budgeting and communication.

Secondly, in the context of the heavy presence of self-employed professionals in the Member States, it is important to note that there is a lack of information concerning what the access to training of these professionals looks like in the Member States, and what policies can be provided to improve their skills. The existing data suggests that the average investment in training for freelancers was lower than investment in employees' training in 10 Member States (Broughton et al., 2016).

### 1.3.5. Gaps in recognition of qualification and education in case of cross-border mobility for CCS professionals

EU level regulatory framework provides separate rules for recognition of qualification and education in case of cross border mobility.

Recognition of qualification in case of regulated professions is rooted in Article 53 of TFEU that provides that European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. *Directive 2005/36/EC on the recognition of professional qualifications* provides a framework for systems of recognition of qualifications.

Most professions within the CCS do not belong to the regulated professions within the Member States. Among the 562 professions within the Regulated Professions Database<sup>21</sup>, several professions might be classified as belonging to the CCS. These professions include: art teachers, conservators, engravers, dance teachers, jewellers, graphic designers, workers in jewellery making and cutting of precious stones, museum workers, museum directors, music teachers, musical instrument manufacturer-repairer, photographers, potters, sculptors, wood tuners. These regulated CCS

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<sup>21</sup> European Commission, [Regulated Professions Database](#).



professions fall either within the general system of recognition of qualifications or automatic recognition on the basis of professional experience.

Recognition of education is rooted in Article 165(2) of TFEU that provides that Union action shall be aimed at i.a. encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study. In order to speed up the process of recognition of qualifications and diploma, in 2018 the Council issued *Recommendation automatic mutual recognition of higher education and upper secondary education periods abroad*. The *Recommendation* sets out that Member States should put in place steps necessary to achieve automatic mutual recognition of higher education qualification and outcomes from a learning period abroad at higher education level. Further, within the higher education area, Member States must foster transparency by assuring that national qualifications frameworks or systems are referenced to the European Qualifications Framework and self-certified to the Qualifications Framework of the European Higher Education Area; must assure that higher education systems are organised in line with Bologna Process and principles; must assure external quality assurance. There are additional and similar requirements for the Upper Secondary Education and Training.

There is no data allowing to speculate to what extent the difficulties with recognition of qualification and/or education hinder cross-border mobility of professionals.

## 2. Policy options

### 2.1. Policy options tackling a lack of regulation of employment status of CCS professionals

#### 2.1.1. Tackling inconsistent definitions

The existing inconsistencies of the **definitions between the existing databases** (EU-LFS, EU-SILC) **and sources of information** (ESSnet-CULTURE European Statistical System Network on Culture; Measuring CCS) **at the EU level should be coordinated**. This task should be undertaken by the proposed **European Platform on social and professional situation of artists and workers in CCS**. Similarly to *European Platform tackling undeclared work* that contributed greatly to clarifying concepts around undeclared work and bogus self-employment, a platform working around the issues related to working conditions of CCS professionals could be established. Apart from working on the definitions and terminology used in policy measures, **the Platform would deal with various problems related to the nature of artistic and creative work to provide input at the EU level while respecting national competences by enhancing cooperation between Member States authorities, eliminating the gaps in cross-border working conditions and social security coverage at the Member State level, and gathering information necessary for drafting future policy propositions**. The platform could be embedded within ELA, Eurofound, or European Agency for Safety and Health at Work (“EU-OSHA”), or function independently in cooperation with ELA, Eurofound, EU-OSHA, and European Intellectual Property Office (“EUIPO”).

The inconsistencies in the **definitions used to describe the CCS at the Member State level should also be coordinated**. The operations of the **OMC expert group on status and working conditions of artists and cultural and creative professionals should be continued within the proposed European Platform on social and professional situation of artists and workers in CCS**.

It is noteworthy that the Czech and Spanish recovery and resilience plan provide for an introduction of the status of an artist within the country's national framework, bridging some of the gaps related to definitions, with impact upon the regulation of artists' working conditions<sup>22</sup>. Coordination across other **Member States can be further incentivised through the European Semester CSR and Recovery and Resilience (hereinafter: “RRF”) toolbox**.

While the impact of this action is difficult to quantify, creating consistent definitions can improve the capacity to implement future policy measures at the EU and at the Member State level, as well as strengthen the potential for mutual learning between the Member States.

The Table 5 contains an overview of policy measures and includes a qualitative assessment of the costs and efficiency of a suggested policy measure using a scale explained in the Table 4. All following overviews of policy measures use this scale.

Table 4. Qualitative impact assessment scale explanation

Grade	Costs	Positive impact
0	Negligible or amounting to zero e.g. costs incurred within already conducted operational activities of institutions	Negligible positive impact expected e.g. small changes of a situation of a narrow group of CCS professionals

<sup>22</sup> Cultural Action Europe, [Culture in the EU's National Recovery and Resilience Plans](#), 2021

Grade	Costs	Positive impact
+	Low cost expected e.g. minor changes to functioning of institutions; small administrative burden; redirection of operational activities	Low positive impact expected e.g. small improvements to the situation of CCS professionals or impact targeted at a narrow group of CCS professionals
++	Average cost expected e.g. noticeable costs for the functioning of institutions, noticeable administrative burden; noticeable budgetary changes, major reforms required	Average positive impact expected e.g. significant improvements to a situation of CCS professionals or impact targeted at a wide group of CCS professionals
+++	High cost expected e.g. significant budgetary changes or major overhauls of institutional system required	High positive impact expected e.g. fundamental improvements to a situation of a wide group of CCS professionals

Source: own elaboration

Table 5. Overview of policy measures aimed to tackle inconsistent definitions

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
Consistent definitions used to describe the CCS at the EU level (artists, creative professionals, creative sector, etc.)	European Platform on social and professional situation of artists and workers in CCS / European Parliament, Council, European Commission (to establish Platform)	Coordination between the institutions / Decision of the European Parliament and the Council (to establish Platform)	+ Costs related to the functioning of the European Platform (depending on the budget)	+++ Improved capacity to implement future policy measures, improved capacity for mutual learning	European Platform tackling undeclared work efforts to define informal work.
Consistent definitions used to describe the CCS at the Member State level (artists, creative professionals, creative sector, etc.)	OMC / European Platform on social and professional situation of artists and workers in CCS	Coordination between the institutions	+ Costs related to functioning of the OMC / European Platform (depending on the budget)	+++ Improved capacity to implement future policy measures, improved capacity for mutual learning	European Platform tackling undeclared work efforts to define informal work.
Consistent definitions used to describe the CCS at the Member State level (artists, creative professionals, creative sector, etc.)	European Commission, Council	CSR/RRF toolbox	+ Non-binding mechanisms	+++ Clarifying status of an artist with a potential impact on regulation of working conditions of artists	Czech and Spanish recovery and resilience plans

## 2.1.2. Improving enforcement and preventing bogus self-employment in the sector

The enforcement of the existing regulations to prevent bogus self-employment can be improved through EU level action.

In order to identify the extent of bogus self-employment in the CCS, **more coordination on the definitions of bogus self-employment is needed**. The European Commission could begin cooperations with Eurostat, Eurofound, and the ELA to improve existing databases on employment – EU-LFS, EWCS, and EU Statistics on Income and Living Conditions (“EU-SILC”) – to create more consistent definitions allowing to properly identify the extent of bogus self-employment in Europe. Such data can then be used in the follow-up actions at other levels (at the EU, Member States’, and social dialogue level). This requires i.a. creation of the common (or alternative and complementing) understandings of the bogus self-employment. These actions could be conducted/continued within the *European Platform tackling undeclared work* which is tasked i.a. with the prevention of bogus self-employment, in collaboration with the proposed *European Platform on social and professional situation of artists and workers in CCS*.

Further, European level actions supporting the enforcement are possible. **ELA should put a particular sectoral focus on the issue of enforcement of regulations within the CCS**, similarly to what it does with regards to its sectoral actions in road transportation and agriculture. European Parliament can influence ELA’s operations through the expert appointed by the European Parliament sitting on the Management Board.

As suggested in the previous section, these **operations could also be supported or conducted within the *European Platform on social and professional situation of artists and workers in CCS***.

Further, the **European Semester framework can be considered as means of incentivising Member States to improve enforcement in the CCS**. Based on proper data gathered through updated EU-LFS, EWCS, EU-SILC surveys, as well as information by ELA, indicators related to increased number of labour inspections and target goals to engage in overseeing the CCS could be proposed through the EU Semester legal infrastructure. Country-specific recommendations can:

-target legal changes in the grey area of employment (e.g. distinguishing between bogus and dependent self-employment). In the past, Country Specific Recommendations (“CSR”) have been

### Case study 3. Slovenia’s labour inspectorate causing change in HR policies of public companies

More activity by labour inspectorates can tackle compliance-related problems at the Member State level in the CCS. Slovenian Labour Inspection was found to improve enforcement of existing regulations on bogus self-employment within the CCS, and more specifically in the media companies (Lužar and Skledar, 2016). In many cases, changes in the enforcement can be stimulated by the changes of the HR policies of public companies, as also evidenced by the Slovenian example where a state broadcaster changed its policies, resulting in reclassification of over 250 workers (Charhon and Murphy, 2016:57).

used to tackle non-standard forms of employment, labour market segmentation, with varying efficiency within the Member States (Rainone, 2020).

-target improvements in the functioning of labour inspections. In the past, CSRs have been used to tackle problems related to the employment regulations compliance (more specifically occupational safety and health and activities of labour inspections), which have translated into regulatory changes in Cyprus, France, and Spain (Clauwaert, 2013; Rainone, 2020).

-target HR policies of government and public organisations at the Member State level (see Case study 3).

These actions will impact the bogus self-employed within the sector. In order to calculate the number of bogus self-employed in the CCS potentially affected by the policy measures, we first need to calculate the number of all self-employed in the CCS (Table 6).

Table 6. Number of self-employed in the CCS (2021)

	Cultural employment [thousands in 2021]	Self-employed persons as % of cultural employment	Number of self-employed in the CCS [thousands in 2021]
Austria	171	28	48
Belgium	210	29	61
Bulgaria	91	21	19
Croatia	56	16	9
Cyprus	15	29	4
Czechia	210	38	80
Denmark	132	20	26
Estonia	32	19	6
Finland	119	30	36
France	1 086	31	337
Germany	1 579	28	442
Greece	144	39	56
Hungary	166	30	50
Ireland	73	31	23
Italy	771	46	355
Latvia	36	24	9
Lithuania	54	19	10
Luxembourg	13	20	3
Malta	12	28	3
Netherlands	471	47	222
Poland	542	23	125
Portugal	188	29	54
Romania	111	13	14
Slovakia	75	34	25

	Cultural employment [thousands in 2021]	Self-employed persons as % of cultural employment	Number of self-employed in the CCS [thousands in 2021]
Slovenia	46	31	14
Spain	729	35	255
Sweden	231	26	60
EU 27	7 363	32	2 356

Source: Authors' calculations based on Eurostat cultural statistics: [CULT\_EMP\_SEX]

We can then proceed to estimate the number of bogus self-employed. As mentioned in section 1.1.2., there are two estimation methods of calculating the extent of bogus self-employment in the EU. The first method, which might underestimate the number of bogus self-employed, uses Eurostat 2017 ad hoc module and classifies self-employed without employees as bogus self-employed if they meet two criteria simultaneously: (i) economic dependency on a client or a dominant client who provides at least 75% of their self-employed income (Eurostat, 2017), and (ii) personal dependency measured by their lack of organisational autonomy in deciding their working hours (European Commission/Eurostat, 2017; Eurostat, 2017). The second method uses data from 2015 EWCS survey and applies three criteria assessing the self-employed without employees: a) having more than one client; b) having the authority to hire staff; c) having the authority to make important strategic decisions. Self-employed who comply with fewer than two out of the three criteria are classified as pure bogus self-employed, and those who comply with two out of the three as grey self-employed.

Depending on the estimation method, the number of bogus self-employed in the CCS in the EU-27 ranged from ca. 38.000 (conservative estimate of pure bogus self-employment based on Eurostat data) to ca. 254.000 (accounting for both pure and grey bogus self-employment based on EWCS method) (Table 7). This shows the potential number of CCS professionals who might be affected by policy measures aiming to limit bogus self-employment in the sector.

Table 7. Estimation of the number of bogus self-employed in CCS

	Method 1 (Eurostat, 2017)	Method 2 (Pure, EWCS method)	Method 2 (Grey, EWCS method)	Method 2 (Pure and grey, EWCS method)
Arts, entertainment and recreation	1,60%	2,60%	8,30%	10,80%
Number of bogus self-employed in CCS in EU-27 (c.a.)	38.000	61.000	195.000	254.000

Notes: all calculations adapted for EU-27 using percentages of bogus self-employment for EU28 from Williams et al. (2020) and base numbers of 2,35 million self-employed in CCS in EU-27. More recent estimates are not available.

Sources: Authors; calculations using percentages of bogus self-employment from Williams et al. (2020) and cultural employment statistics of Eurostat.

Finally, sectoral social dialogue can be involved to improve enforcement of the regulations. It is noteworthy that *European Parliament resolution of 14 January 2014 on social protection for all, including self-employed workers* has called for the social partners to “to exchange good practices among trade unions and professional associations on services provided to the self-employed, fighting bogus self-employment, and organising own-account self-employed workers”.

Social partners matter in the enforcement of existing regulation for at least two reasons. First, they might engage in their own actions preventing misclassification, such as supporting workers in bringing claims to be reclassified. In a study undertaken by ETUC on its members, 22 out of 41 surveyed union bodies claimed that they have taken legal action against bogus self-employment (Fulton, 2018). Second, they might cooperate with labour inspections (Stefanov and Mineva, 2021), although the forms of cooperation between the social partners and labour inspections differ significantly depending on the institutional framework within the country, ranging from consultations, involvement in awareness campaigns, education and training, to joint inspections and tight cooperation between the trade unions and labour inspectorates (Kahancová and ICF, 2022). Social partners might identify the most effective measures improving enforcement of the regulation that can be used for designing solutions in other countries. The most suitable tool available to European sectoral social partners would be the framework of actions, which provide general goals for the social partners with the aim to promote effective measures at the EU and Member State level and provide follow-up and oversight mechanisms. Within the sectoral social dialogue for CCS, only one framework of actions agreements has been concluded so far. In 2011, the EU Audiovisual Sectoral Social Dialogue Committee signed a *Framework of Actions on Gender Equality*<sup>23</sup>, committing to undertake various actions at the EU and Member State level to promote inclusive workplaces, promote equal opportunities, and prevent harassment. The *Framework of Actions* contains an evaluation and assessment procedure to follow up on the developments in this area. Aside from audiovisual sectoral social dialogue, the Sectoral Social Dialogue in live performance is vivid, although it mainly produces joint statements and calls that are not binding.

**The sectoral social dialogue within CCS could be more actively involved to develop a framework of actions aimed at devising actions to prevent bogus self-employment and improve enforcement of employment regulation in the sector.** Such a framework of action could provide a platform for cooperation of social partners with labour inspections at the Member State level to limit the use of non-standard forms of employment where it is excessive. Apart from working instruments, such as framework of actions, other measures like joint statements and preparation of handbooks of good practices to prevent misclassification of CCS professionals are also possible.

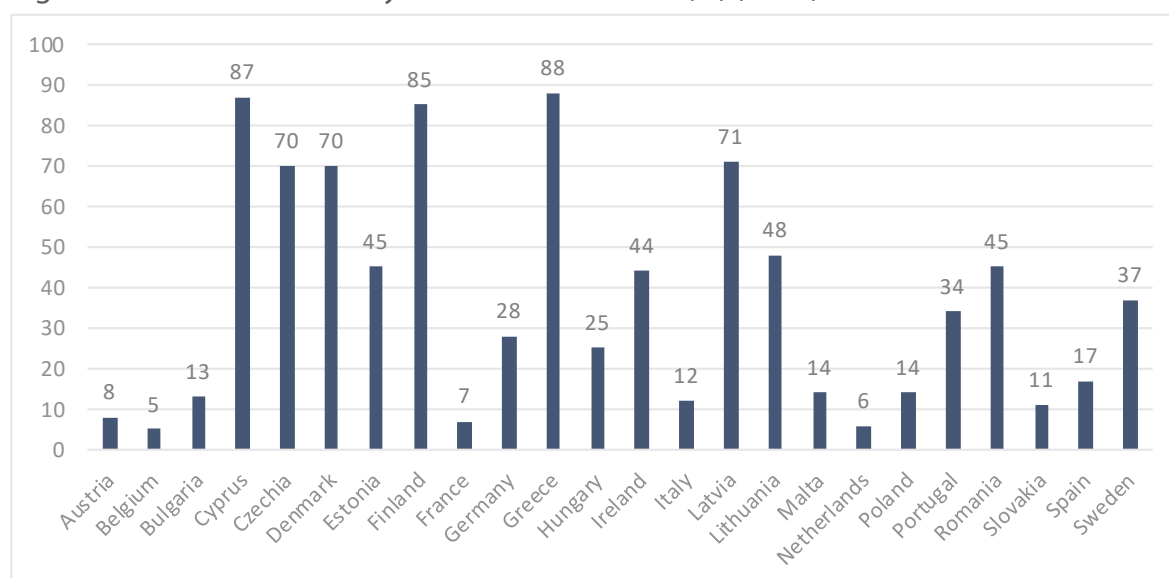
The extent to which sectoral social dialogue could affect bogus self-employment within the CCS can be assessed through three indicators: trade union density (i.e. percentage of workforce affiliated in trade unions participating in sectoral social dialogue), collective bargaining coverage (i.e. percentage of workforce whose conditions of employment is determined by one or more collective agreement), and employers' density in terms of organised workforce (i.e. percentage of workforce hired in companies that participate in sectoral social dialogue). These three indicators can be broken down for two subsectors where European social dialogue is present – audiovisual and live performance sector, allowing to assess the potential of actions within the sectoral social dialogue across different Member States. The differences across the sectors and Member States are substantial but social dialogue could have an important impact on the enforcement of employment regulation, particularly in countries where trade union density, employers' organisation density in terms of organised workforce, and collective bargaining coverage are high, as evidenced by the scholarly research (Murgia et al. 2020).

In the audiovisual sector, the trade union density of European social partners ranges from 5% in Belgium to 88% in Greece; employers' organisation density in terms of organised workforce ranges from 0% in Cyprus, Hungary, Lithuania, Latvia, Luxemburg, Malta, Poland, and Romania, to 100% in Austria; while collective bargaining coverage ranges from 3% in Poland to 100% in Belgium.

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<sup>23</sup> EU Audiovisual Sectoral Social Dialogue Committee, [Framework of Actions on Gender Equality](#).

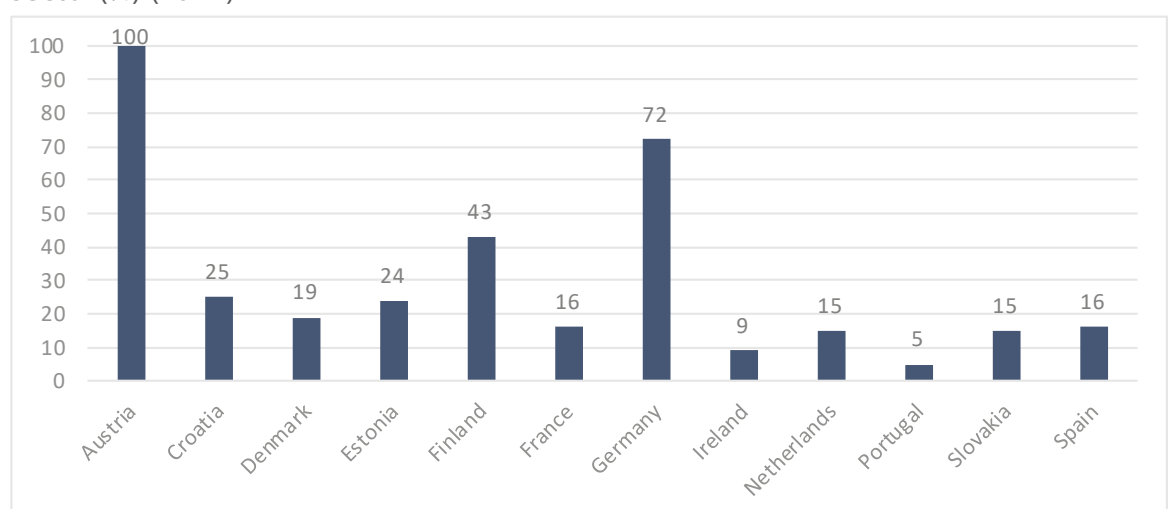
Figure 8. Trade union density in audiovisual sector (%) (2017)



Notes: based on trade union data; no data for Croatia, Luxembourg, Slovenia.

Source: Eurofound, 2021a

Figure 9. Employers' organization density in terms of organised workforce in audiovisual sector (%) (2017)

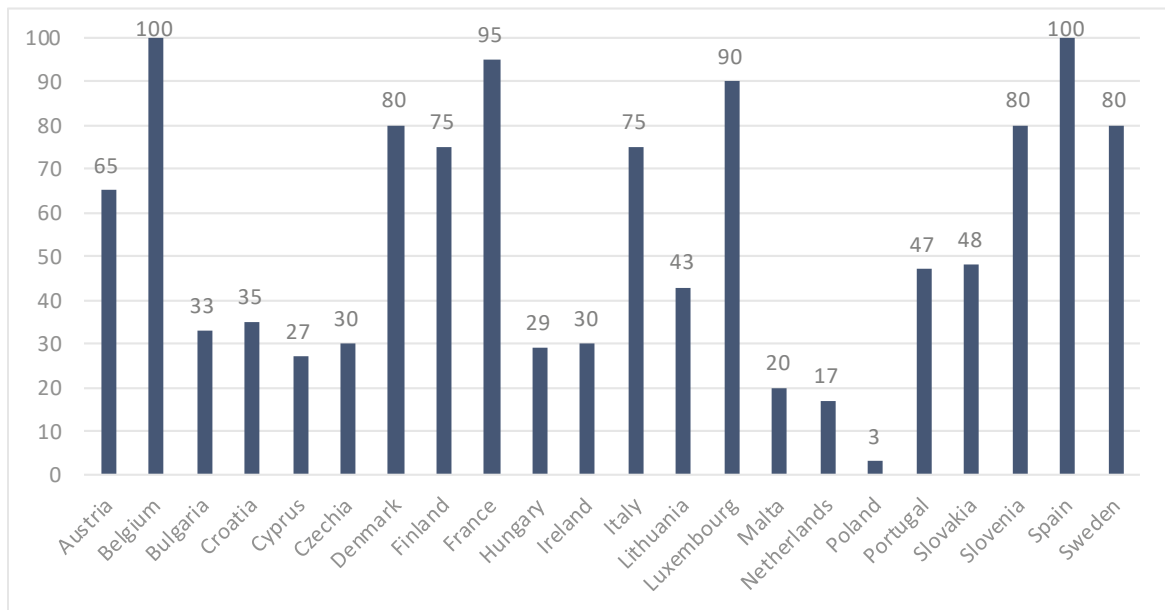


Notes: No data for Belgium, Bulgaria, Cyprus, Czechia, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, Slovenia, Sweden. In case of Austria, all companies are required to be members of the chamber of commerce by the law.

Source: Eurofound, 2021a



Figure 10. Collective bargaining (multi- and single-employer) coverage in audiovisual sector (%) (2017)

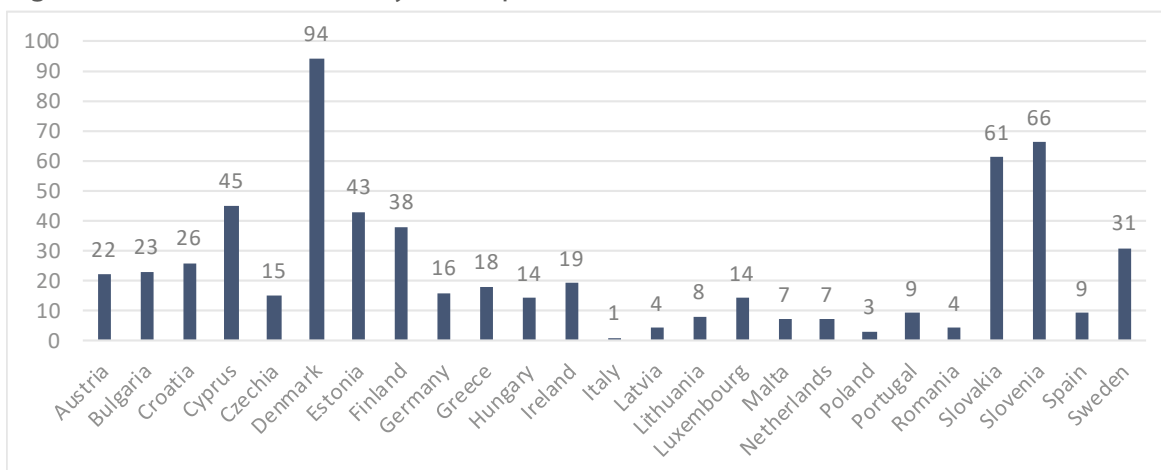


Notes: No data for Estonia, Germany, Greece, Latvia, and Romania. For Portugal, 47% represents collective bargaining coverage all employees – it stands at 37% for all persons employed.

Source: Eurofound, 2021a

The trade union density of European social partners in live performance sector ranges from 1% in Italy to 94% in Denmark, employers' organisation density in terms of organised workforce ranges from 0% in Cyprus, Greece, Ireland, Lithuania, Luxemburg, Latvia, Malta, to no less than 48% in Belgium, and collective bargaining coverage in live performance ranges from 0% in Poland to 100% in Belgium.

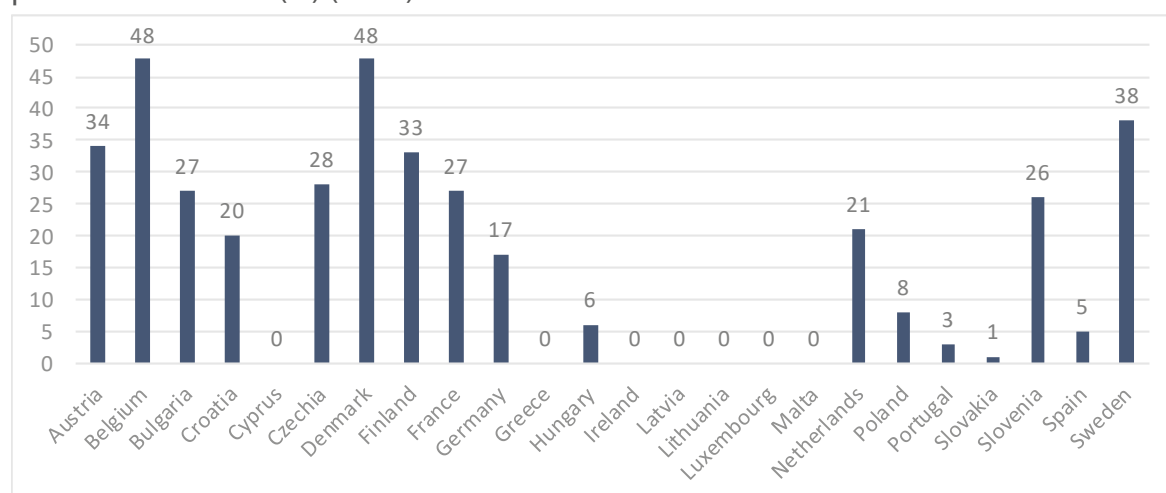
Figure 11. Trade union density in live performance sector (%) (2019)



Notes: no data for Belgium and France.

Source: Eurofound, 2021b

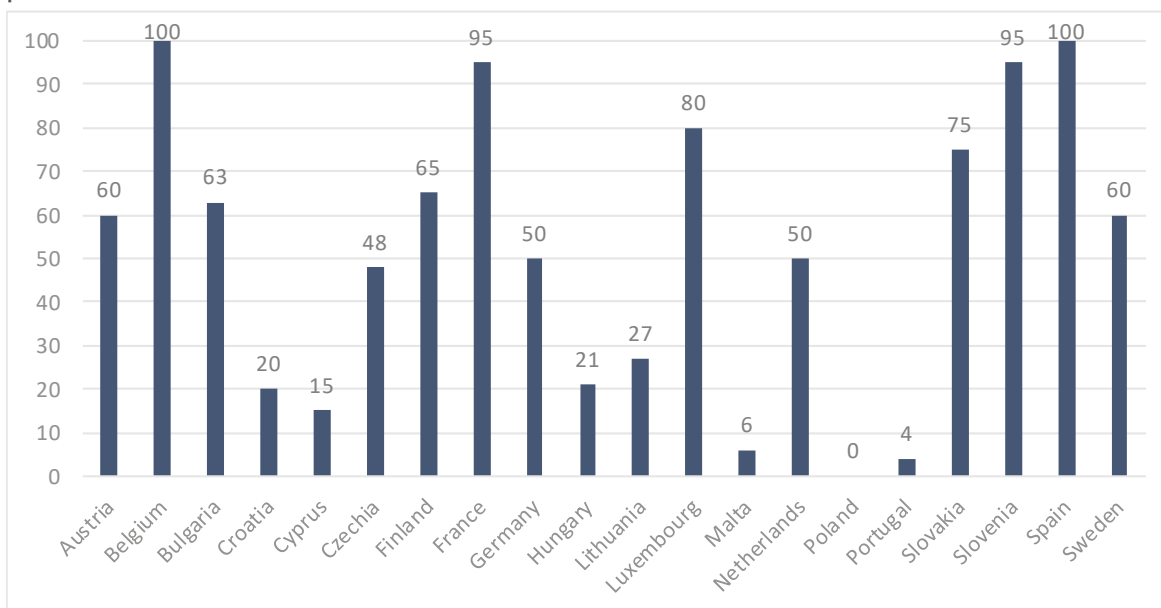
Figure 12. Employers' organization density in terms of organised workforce in live performance sector (%) (2019)



Notes: No data for Estonia, Italy, and Romania. To calculate density, the numbers for separate organizations were added by the authors and rounded. Employers' organization density in terms of organised workforce is probably higher, as organizations which membership is not known are not included in the calculations.

Source: Eurofound, 2021b.

Figure 13. Collective bargaining (multi and single employer) coverage in live performance sector (%) (2019)



Notes: No data for Denmark, Estonia, Greece, Ireland, Italy, Latvia, and Romania.

Source: Eurofound, 2021b

The last issue discussed in the gaps' section related to the problem of the impact of labour platforms upon the bogus self-employment within the CCS. No regulatory measures are proposed here. It is assumed that this problem would be tackled through the proposed *Directive on improving working conditions in platform work* which is currently subject to inter-institutional negotiations between the co-legislators.

Table 8. Overview of policy measures aimed to improve enforcement and prevent bogus self-employment in the CCS

Policy objective	Who	Policy instrument	Costs /drawbacks	Positive impact/benefits	Policy point of reference
Gathering information, data on bogus self-employment within the CCS; coordination of the sources of information and databases; creating common understandings and definitions of bogus self-employment	European Commission, Eurostat, Eurofound, ELA, national labour inspections, statistical offices, Platform tackling undeclared work, European Platform on social and professional situation of artists and workers in CCS	Cooperation between the EU and Member States' institutions	<p>+</p> <p>Costs related to the functioning of the European Platform on social and professional situation of artists and workers in CCS (depending on the budget)</p>	<p>++</p> <p>Up to between 38.000 to 254.000 bogus self-employed CCS professionals could benefit from reclassification; improvement of ELA and national labour inspections capacities to undertake</p>	Operations of <i>European Platform tackling undeclared work</i>

Policy objective	Who	Policy instrument	Costs /drawbacks	Positive impact/benefits	Policy point of reference
				audits; improvement of the capacity to implement policies at the Member State level; improvement of the mutual learning processes between the Member States	
Supporting Member States' labour inspectorates; detection and prevention of bogus self-employment	ELA and national labour inspections	Cooperation, Information and practice sharing between the labour inspections, trainings, good practices handbooks	0 Costs incurred by ELA within its operational budget	++ Up to between 38.000 to 254.000 bogus self-employed CCS professionals could benefit from reclassification; improvement of ELA and national labour inspections capacities to undertake audits; improvement of the capacity to implement policies at the Member State level; improvement of the mutual learning processes between the Member States	Current operations of ELA
Creation of European Platform on social and professional situation of artists and workers in CCS	European Commission, European Parliament, Council	Decision of the European Parliament and Council or alternatively ELA reorganisation	+ Costs related to the functioning of the European Platform (depending on the budget)	+++ Creation of a comprehensive information and practice sharing platform analysing the social and professional situation within the CCS	European Platform tackling undeclared work

Policy objective	Who	Policy instrument	Costs /drawbacks	Positive impact/benefits	Policy point of reference
Improving detection of bogus self-employment at the Member State level	European Commission, Council	Actions aimed to improve detection including possibility to issue CSR on: -grey area of employment in the CCS; -functioning of labour inspections; -HR policies of government and public organisations	+	++ Up to between 38.000 to 254.000 bogus self-employed CCS professionals could benefit from reclassification	CSRs in the mentioned areas
Improving detection of bogus self-employment at the Member State level	Social partners in audiovisual and live performance sector  Potentially other social partners	Framework of actions concluded by European social partners	+  Costs for social partners varied across the countries and sectors.  Impact limited to social partners implementing the agreements and varied across the countries	+ / ++  Impact varied across the countries and to live performance and audiovisual subsector (see explanation above)	EU Audiovisual Sectoral Social Dialogue Committee' Framework of Actions on Gender Equality

### 2.1.3. Regulating intermittent project-based organisation of work

Measures aimed to regulating intermittent project-based organisation of work can be implemented at the level of the Member States (incentivised by the EU-level measures), through measures introduced by the social partners, as well as at the level of the EU.

**At the Member State level, regulating intermittent project-based organisation could be best envisaged through changes in the financing structures and incentives.**

This issue is partially regulated by the *Directive 2014/24/EU on public procurement* that provides that the public procurement procedures should comply with the applicable regulations. Article 18 of the *Directive on public procurement* provides that “Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law”. However, given that the use of project-based employment is in many cases allowed from a formal standpoint, the real applicability/enforcement of this provision in the cultural sector is ambiguous. Moreover, the *Directive* refers to public procurement proceedings and not to the operations of governmental agencies themselves (i.e. HR practices of central and local government and public organisations). Several pathways are possible.

**First, Member States can be incentivised to shape their cultural and creative policies to foster more stable employment arrangements and sustainable careers.** This can be potentially

achieved through soft-law supervisory framework set within the European Semester, with potential support by the *European Platform on social and professional situation of artists and workers in CCS*. CSRs can be considered as a tool to recommend the Member States to verify whether:

- **HR practices of the government**, public cultural and creative organisations and/or private organisations receiving public funding incentivise such arrangements and **allow for sustainable careers to flourish**;
- **existing programmes supporting CCS professionals regulate the issue of employment arrangements**, e.g. through requirement to hire professionals on stable forms of employment or to observe certain criteria (such as thresholds providing that some share of costs for personnel must be directed towards professionals on employment contracts).

Further, Member States can be incentivised through the European Semester Tools to make **broader use of the social clauses in public procurement proceedings within the CCS area**. Such clauses are explicitly allowed by the article 70 of the *Directive on public procurement* providing that “contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract within the meaning of Article 67(3) and indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation-related, environmental, social or employment-related considerations”.

Again, it is also possible to imagine softer solutions such as suggesting Member States to **require organisations to sign declarations of honour containing a disclosure clause pertaining to the existing employment standards and HR practices** within public granting and tender procedures.

All these measures can be in particular implemented through the European Semester CSR/RRF toolbox in the context where a number of countries (16 out of 22 approved recovery and resilience plans<sup>24</sup>) provide spending on CCS within their plans.

In order to calculate the estimate impact of these policy measures, we have to calculate the number of CCS employees in the cultural sector who do not have a permanent employment (Table 9). Over 1,2 million CCS professionals in the EU can be affected by these policy measures, which would result in greater employment stability, predictability of income, as well as bridging the gaps in social security protection of intermittent professionals.

Table 9. Number of cultural employees without permanent employment in the CCS (2021)

	Cultural employment [thousands in 2021]	CCS employees without a permanent job (%)	Number of cultural employees without a permanent employment [thousands in 2021]
Austria	171	11	19
Belgium	210	15	32
Bulgaria	91	5	5
Croatia	56	12	7
Cyprus	15	11	2
Czechia	210	8	17

<sup>24</sup> European Commission, [Recovery and Resilience Scoreboard. Thematic analysis. Culture and Creative Industries](#), 2022

	Cultural employment [thousands in 2021]	CCS employees without a permanent job (%)	Number of cultural employees without a permanent employment [thousands in 2021]
Denmark	132	14	19
Estonia	32	1	0
Finland	119	20	24
France	1 086	24	261
Germany	1 579	15	237
Greece	144	19	27
Hungary	166	4	7
Ireland	73	10	7
Italy	771	17	131
Latvia	36	1	0
Lithuania	54	1	1
Luxembourg	13	8	1
Malta	12	15	2
Netherlands	471	28	132
Poland	542	18	97
Portugal	188	20	38
Romania	111	0	0
Slovakia	75	3	2
Slovenia	46	16	7
Spain	729	26	190
Sweden	231	15	35
EU 27	7 363	17	1 252

Note: CCS employees refer only to those CCS professionals in employment relationship and does not include self-employed.

Source: Authors calculations based on Eurostat cultural statistics [indicator: cult\_emp\_wsta]

Moreover, it is possible to engage social partners in regulation of the status of CCS professionals. **Sectoral social dialogue can produce guidelines of employment practices within the sector.** While no similar documents have been produced in the sectoral social dialogue for live performances and audiovisual sectors, such documents have been created in other sectors. For instance, the social partners in sectoral social dialogue in industrial cleaning have created a guide

*“Selecting best value. A guide for private and public organisations awarding contracts for cleaning services”* in 2016 that provides recommendations on how to promote high employment standards in public tendering<sup>25</sup>. Trade unions are also active within this area. UniEuropa’s ongoing campaign *“No public procurement without a collective agreement”* aims to assure the increased presence of collective bargaining in the regulation of public procurement<sup>26</sup>. The campaign is supported by over 130 MEPs. The campaign mostly focuses on the issue of pay and working conditions. However, collective agreements concluded within the public sector for the CCS professionals could stipulate limitations on the use of non-standard forms of employment as well.

The potential impact of social dialogue has been discussed in the section 2.1.2 in detail. It would be limited to live performance and audiovisual sector and would depend upon trade union density, employers’ organisation density in terms of organised workforce, and collective bargaining coverage.

At the EU level, **several policy measures can be suggested to regulate employment through the changes in the EU funding structures.**

#### Case study 5. Regulation of employment status in the existing EU programmes

Erasmus + programme defines eligible costs for the personnel as both costs which are employment-related, as well as costs for natural persons working under a direct contract other than an employment contract (e.g. on self-employment). This suggests that in fact the programme treats these forms of employment as meaningful alternatives, without prioritising more regular forms of employment. However, the Erasmus + programme limits the use of the work of volunteers for the action, providing that they cannot exceed 50% of the total (ineligible and eligible) project costs and contributions estimated in the proposal.

Source: Source: Erasmus+ Programme. General Model Grant Agreement, Available at: [https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/erasmus/agr-contr/general-mga\\_erasmus\\_en.pdf](https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/erasmus/agr-contr/general-mga_erasmus_en.pdf)

First, the **regulations for the currently existing and planned EU programmes for the CCS should be revisited** to make sure that they promote more stable forms of employment. In particular, such revisions could be introduced to the new programmes financed within the Creative Europe framework. It is noteworthy that some of the programmes regulate to some extent the employment conditions within organisations and professionals who are beneficiaries of these programmes (Case study 5).

Secondly, a more comprehensive approach is possible, such as **introduction of social clauses within the EU programmes** that would be based upon acknowledgment of the precarious nature of the currently predominant forms of financing. Such employment-oriented social clauses could provide that, where possible, funding should be preferentially given to beneficiaries who provide that they will hire and contract CCS professionals on more employment contracts (either open-ended or fixed term) and limit the use of self-employment.

Alternatively, in the context of still prevalent use of (genuine) self-employment within the sector, another possible solution would be **setting thresholds for the use of standard and non-standard forms of employment within the EU-funded programmes**. For instance, the funding programmes and/or decisions within the funding programmes can provide that a certain

<sup>25</sup> European Federation of Cleaning Industries (EFCI) and UNI Europa, *Selecting best value. A guide for private and public organisations awarding contracts for cleaning services*, 2016.

<sup>26</sup> Uni Europa, [Campaign](#) "No public procurement without a collective agreement", 2022.



percentage (e.g. 50%) of eligible costs for the personnel should be allocated to cover employment costs of CCS professionals on employment contracts (either open-ended or fixed-term).

Moreover, softer solutions such as the **requiring organisations to sign declarations of honour containing a disclosure pertaining to the existing employment standards and HR practices** can be used within EU granting and tender procedures.

At the current stage, it is not possible to quantify the impact of the proposed actions at the EU-level on the working conditions of CCS professionals. This is because the **data on the types of employment forms utilised in the projects financed within the EU programmes are not available. We recommend that European Commission, for example Directorate-General for Education and Culture (“DG EAC”), gathers such information.**

Table 10. Overview of policy measures aimed to regulate intermittent project-based employment

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
Promotion of stable forms of employment within the Member States cultural policies	European Commission, Council	Promotion of stable forms of employment, including the possibility of using CSR on: -HR practices of the government and public organisations -shape of already existing programmes supporting CCS professionals in the Member States -use of social clauses -use of declarations of honour in granting and tendering procedures	++  Final costs dependent upon selected policy instrument. Costs for the Member States/CCS organisations (less manpower as more stable forms of employment require more financing)  Non-binding instrument  RRF limited to countries that provided spending on CCS in their recovery and resilience plans (16 out of 22)	+++  Improved employment situation of up to 17% of CCS professionals (over 1,2 million) without permanent employment	Other CSR
Promotion of stable forms of employment in the CCS	Social partners in live performance and audiovisual sector	Sectoral social dialogue tools – e.g. guide	+ / +++  Impact limited to social partners and varied across the countries  Costs for the institutions	++  Improved standards within organisations involved in European Social Dialogue in live performance and audiovisual sector (for details see	e.g. Sectoral social dialogue in industrial cleaning <i>“Selecting best value. A guide for private and public organisations awarding contracts for</i>

				section on enforcement)	cleaning services"
Promotion of stable forms of employment within EU cultural programmes	European Commission, for example DG EAC	Changes in the regulations of EU cultural programmes (alternatively): -changes in eligible costs -introduction of social clauses -introduction of thresholds -introduction of declarations of honour	++ Final costs dependent upon selected policy instrument. Costs for the institutions/ EU (less manpower as more stable forms of employment require higher financing)	++/+++ Employment situation of CCS professionals working within EU cultural programmes improved. Insufficient data to assess the quantitative impact at this moment (potentially to assess based on DG EAC/CULT Committee data/reports if data on how funds are spent are available)	Erasmus + programme regulations (to some extent)

## 2.2. Improving protection of solo self-employed CCS professionals

### 2.2.1. Improving working conditions protection of solo self-employed in the CCS

Within the CCS, the creation of an intermediary category seems to be a suggested pathway by the *European Parliament resolution of 20 October 2021 on the situation of artists and the cultural recovery in the EU* that called to create a European Status of an Artist, a “common framework for working conditions and minimum standards common to all EU countries” and also “to ensure full access to social protection for artists and cultural workers, regardless of their employment status, including access to unemployment allowance, healthcare and pensions; urges the Member States and the Commission to take specific measures for different categories of creative professions in order to tackle unstable income, unpaid work and job insecurity, and safeguard a minimum standard for their income”.

The EU lacks competences to directly regulate the working conditions of solo self-employed in the CCS except for the areas where competition law is applicable. As a result, the EU can only utilise soft law and coordination policies and tools.

**European Semester CSRs can be considered to suggest the introduction of intermediary forms of protection for self-employed CCS professionals.** Alternatively, **Member States can continue coordination through OMC expert groups or through the proposed *European Platform on social and professional situation of artists and workers in CCS*.**

Further, *Guidelines on the application of EU competition law to collective agreements* have opened a scope for the improvement of the situation of solo self-employed through collective bargaining. Guidelines might have an important effect for the stimulation of collective bargaining within the sector due to widespread use of self-employment which previously prevented self-employed from engaging in collective bargaining based on EU competition law, bridging one of the most important gaps in the protection of working conditions for solo self-employed in the CCS that was mentioned by the workers in the sector (Charhon and Murphy, 2016). Here, the European Commission should

continue its monitoring process and support for the social partners, as provided by the section 9 of the *Impact assessment report accompanying the Guidelines*. No further regulatory action is advised at this moment.

Table 11. Overview of policy measures aimed to improve working conditions protection of solo self-employed in the CCS

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
Introduction of intermediary forms of protection for solo self-employed CCS workers	European Commission, Council	Actions intended to introduce intermediary forms of protection, including possibility of using the CSR	+ Non-binding mechanisms	+++ Working conditions protection for dependent self employed in arts, recreation and other service activities (42% of self-employed in 2015 EWCS study) to receive higher level of protection	Other CSR
Introduction of intermediary forms of protection for solo self-employed CCS workers	European Commission, OMC/ European Platform on social and professional situation of artists and workers in CCS	Coordination between the EU institutions	+ Non-binding mechanisms	+++ Working conditions protection for dependent self employed in arts, recreation and other service activities (42% of self-employed in 2015 EWCS study) to receive higher level of protection	European Platform tackling undeclared work efforts to define informal work.

### 2.2.2. Improving access to social protection of solo self-employed in the CCS

While *Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed* improved the situation in some Member States, there are still gaps to bridge. As the *Council Recommendation* was focused on self-employed as a whole, without any specific occupational focus, we recommend the discussions to be moved towards occupational/sectoral dimension where particularly problematic issues emerge. In the context of CCS professionals, the main problem seems to be the intermittent and unstable nature of contracts prevalent in the sector that make it difficult to accumulate rights over time and thus meet eligibility criteria.

A particular focus should be given to **measures ensuring that CCS professionals can build up rights within the social protection systems in the context of the prevalent use of project-based self-employment**. Achieving such a goal is complex and requires efforts that coordinate changes in labour laws (introduction of sectoral presumptions of employment) and social protection systems. The regulation of project-based employment by legal presumptions would enable it to

cover intermittent professionals by EU labour protection while these professionals are performing work within the sector. At the same time, it would enable them to benefit from social protection if criteria are met. The French *intermittent du spectacle* system can be given as an example of such a solution (Case 4).

#### Case study 4. France's status of "Intermittent du spectacle" protects art professionals but is costly

The French system stands as a rare exception in its acknowledgement of the short-term and irregular nature of work within the CCS (French Sénat, 2013). The country built a separate social system for CCS professionals, called "Intermittent du spectacle". It is specifically designed for people working in the arts who alternate between periods of employment and unemployment (hence its name: "intermittence" means a "break"). Slightly similar to art unions in the US that provide health insurance to their members who have worked a minimum number of hours, the French system provides a salary for up to eight months to those who worked a minimum number of hours in the past 10,5 months (e.g. 507 hours for actors). In comparison, the regular eligibility criteria for the unemployed require 122 days or 610 hours of work in the past 28 months for those under 50 years old, or 36 months for those over 50 years old.

Performing artists are automatically classified as employees even if they are on short contracts, meaning that they are covered by labour law protection according to Article L7121-3 of French Labour Code providing that *"Any contract by which a person secures, in return for remuneration, a participation of a performing artist, is presumed to be an employment contract, when this artist does not carry out the activity which is the subject of this contract under conditions implying its registration with a business or association framework"*. Further, Article L7121-4 strengthens it by confirming that *"the presumption of the existence of an employment contract is applicable regardless of the method and amount of remuneration, as well as the qualification given by the parties to the contract. The presumption remains even when the artist retains his/her freedom of expression in art, that s/he is the owner of all or part of the material used or employs one or more persons to assist him/her, as long as s/he is personally involved in the show"*. The French law sets out a closed list of sectors (including "Spectacle", "Action Culturelle" and "Audiovisuel, production cinématographique, édition phonographique") that are authorised to use "CDD d'usage contracts" – employment contracts that can be issued even for one performance.

Created in 1936 for the film industry, the system has grown exponentially over time. It covered 9 060 art professionals in 1984 and 254,394 in 2011. The number of benefit claimants increased from 103 thousand in 2003 to 127 thousand in 2018 - approximately equally divided between artists and art technicians (Issehnane and Merchaoui, 2020). The average intermittent claimed benefits for 8 months over a year with salary significantly higher than that for the remaining unemployed. In 2016, "intermittents" received, on average, €1,730 gross per month – when compared to €1,158 for others (Pôle Emploi, 2017). The population of "intermittents" is young-to-middle age (with median of 39 years), masculine (66%), highly metropolitan (46% live in the Paris area) (Pôle Emploi, 2017). The long-established system gets adapted to changing circumstances. For example, in May 2020, at the onset of the COVID-19 pandemic, President Macron removed a minimum requirement of hours for those already in the system (and established government insurance for TV and film shoots).

#### Advantages of the intermittent du spectacle system:

- Protection of working conditions: Since workers are presumed to be employees even when hired on short contracts, they are subject to labour law protection while performing work.
- Support of the cultural sector: the French state is not only providing a safety net for art professionals but also making a long-term investment in culture (as during the breaks in remuneration, many artists pursue their preferred art projects).
- Avoiding deskilling: France is avoiding the problem well-known from the American context, where highly educated artists resort to multiple job holding, including day jobs for which they are overqualified, such as waiting tables or driving taxis (Alper and Wassall, 2000).

#### Remaining challenges with intermittent du spectacle system:

- Maternity leave not taken into consideration: Women lose their intermittent status when they go on maternity leave (as they can't show enough hours worked to qualify for the scheme). In the less generous system precarious work for women workers is an even more problematic issue.
- Need for reinforced controls and better enforcement: The common problem is racking up the hours – taking advantage of the system by over-reporting hours or including other types of work to boost the reported hours and earn a longer period of unemployment pay. This is probably not an issue only in France, although less generous systems probably naturally attract less potential overuse.
- Complexity: The system is complicated with plenty of intricacies and exceptions. The minimum number of hours differs depending on the profession (e.g. actors must have worked at least 507 hours which are converted to 43 "fees" (which can be comprised of 12 "isolated" hours on contracts that last less than 5 days, or 8 "collective" hours for contracts that last five or more days). The period of hour collection was recently reduced from 12 months to 319 days (10,5 months).
- Costs: In 2009, UNEDIC (agency of the French government which provided unemployed people with social benefits before it was replaced in 2009 by Pôle Emploi) collected 223 million in contributions from art workers and transferred 1.276 billion euros in 2009, creating a deficit of 1.054 billion euros. In 2012, France's Court of Audit, a body responsible for ensuring the correct use of public money, warned that the system for "intermittents" represented more than 30% of the unemployment insurance deficit - i.e. one billion euros - while its workers represented only 3% of job seekers on unemployment insurance. Although this is explained by the extreme insecurity and precarity of the CCS, there are questions of efficiency and fairness vis-à-vis other professions.

As the EU still lacks a mandate to regulate classification of CCS professionals within the Member States and their access to social protection, only soft law solutions can be used in the short term. In line with the *Council Recommendation*, we recommend that the **topic of the access of self-employed CCS professionals to social protection is involved within the work of the Social Protection Committee ("SPC") using Open Method of Coordination tools with the aim to**

**improve the access of CCS professionals to social protection**, including social security, pension system, health and long-term care. SPC monitors the social situation and the development of social protection policies, coordination policy approaches between the Member States and the Commission. SPC can operate with subgroups. A subgroup focused on CCS professionals could be established to facilitate the inclusion. **SPC can also prepare the CSR for the European Commission and the Council in the view of improving access of CCS professionals to social protection in the long term. SPC, together with Employment Committee (EMCO), can also task the development of a policy paper on the issue of CCS professionals' access to social protection and involve this topic within their work programmes.** Coordination through CSR is advised in the light of many countries including further social protection reforms in their recovery and resilience plans. Cooperation through OMC group can be set up to engage in mutual learning processes and sharing experiences across the Member States, also considering the large discrepancies in the systems of protection between the Member States. Alternatively, **the coordination, the information and practice sharing could take place in the proposed *European Platform on social and professional situation of artists and workers in CCS.***

These CSRs can be focused on:

- creating presumptions of employment for CCS professionals while they perform artistic activities,
- creating more flexible access to social protection systems that allow to build up eligibility while performing work in an intermittent fashion.

These measures can improve the protection of self-employed CCS professionals in the countries where they either cannot claim unemployment benefits at all, or fall within the general system of protection which makes them vulnerable due to the challenges of meeting eligibility criteria. In most cases, making sure that self-employed struggling with intermittent character of their work would benefit from the access to unemployment benefits requires some form of public input to cover the breaks in contributions.

In order to assess the potential impact of the EU level action, Table 12 presents the estimated costs of expanding the system of unemployment benefits to cover self-employed struggling with intermittent character of their work. These costs are directly related to the income substitution received by the CCS professionals in each Member State. The scenarios are presented only for 18 Member States that do not foresee special unemployment benefits system for self-employed CCS professionals (see: Table 1): either do not provide access to unemployment benefits to self-employed CCS professionals at all, or include them in the general system which makes them more vulnerable than the general population.

In case of countries that include self-employed CCS professionals within the general system, the costs would be effectively lower, as the self-employed CCS professionals are already to some extent included.

The expansion of unemployment benefits system requires deciding on 1) eligibility criteria; 2) benefit duration; 3) the replacement rate vis-à-vis the benchmark wage; 4) the extent of public contribution (depending on the efficiency of tax system, and effective social security contribution rates of self-employed CCS professionals and, possibly, also their clients).

Adopting different assumptions about these four decisions allowed us to produce cost simulations for 18 Member States: three scenarios representing three levels of generosity in terms of time, money and eligibility – each calculated for three levels of public subsidies:

- Scenario 1 assumes that the benefit of a monthly minimum wage would be claimed for the average of 6 months in a year by one third of the self-employed in CCS<sup>27</sup>.
- Scenario 2 assumes the same parameters but for an average duration of 4 months per year.
- Scenario 3 assumes that 20% of self-employed would claim the benefit for an average maximum duration of 4 months per year but paid at 80% of minimum wage (accepted as a benchmark because in 14 EU Member States replacement rates of unemployment benefits hover between 70% and 90% of the previous income<sup>28</sup>).

For each of these three scenarios, we estimated three levels of contributions from the central budget: 80% paid covered by the public<sup>29</sup>, 20% covered by the public<sup>30</sup>, and a scenario in between (50%).

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<sup>27</sup> This scenario is built on a modified French “intermittent du spectacle” regime where each year app. 120.000 art workers (which corresponds to 1/3 of all self-employed in CCS in France) claim the benefit close to the French minimum wage for 8 months in a year.

<sup>28</sup> Unemployment benefits after two months of unemployment have the following income replacement rates: Belgium (90%), Luxemburg (85%), Lithuania (79%), Spain (79%), Croatia (79%), Denmark (78%), Latvia (78%), Bulgaria (77%), Slovenia (76%), Portugal (75%), Italy (74%) and Sweden (72%). See: <https://data.oecd.org/benwage/benefits-in-unemployment-share-of-previous-income.htm>

<sup>29</sup> This assumption is taken from France where 80% of the intermittent du spectacle costs come from the public purse and 20% from social security contributions of CCS workers.

<sup>30</sup> This assumption is taken from Germany where public subsidy covers 20% of Artists’ Insurance Fund (Tobsch and Eichhorst 2018).

Table 12. Simulated cost of expanding unemployment benefit to self-employed CCS professionals in the EU countries – three scenarios versus a baseline of limited protection

	Number of self-employed in CCS [thousands in 2021]	Monthly minimum wage 2023 [EUR]	Scenario 1 and 2: 33% of eligible claimants in each year [thousands]	Scenario 3: 20% of eligible claimants in each year [thousands]	Total annual budget [millions of EUR]			Annual budget: 80% public contribution [millions of EUR]		
					A	B	C	Scenario 1 A*B*6 months	Scenario 2 A*B*4 months	Scenario 3 80%A*C*4 months
<b>Countries with a statutory minimum wage</b>										
<i>Germany</i>	442	€ 1 997	147	88	€ 17 614	€ 11 742	€ 5 649	€ 14 091	€ 9 394	€ 4 519
<i>Spain</i>	255	€ 1 260	85	51	€ 6 426	€ 4 284	€ 2 056	€ 5 141	€ 3 427	€ 1 645
<i>Poland</i>	125	€ 811	42	25	€ 2 044	€ 1 362	€ 649	€ 1 635	€ 1 090	€ 519
<i>Czechia</i>	80	€ 729	27	16	€ 1 181	€ 787	€ 373	€ 945	€ 630	€ 299
<i>Greece</i>	56	€ 910	19	11	€ 1 037	€ 692	€ 326	€ 830	€ 553	€ 261
<i>Portugal</i>	54	€ 887	18	11	€ 958	€ 639	€ 307	€ 766	€ 511	€ 245
<i>Hungary</i>	50	€ 624	17	10	€ 636	€ 424	€ 200	€ 509	€ 339	€ 160
<i>Slovakia</i>	25	€ 700	8	5	€ 336	€ 224	€ 112	€ 269	€ 179	€ 90
<i>Slovenia</i>	14	€ 1 203	5	3	€ 361	€ 241	€ 108	€ 289	€ 192	€ 86
<i>Romania</i>	15	€ 604	5	3	€ 181	€ 121	€ 58	€ 145	€ 97	€ 46
<i>Lithuania</i>	10	€ 840	3	2	€ 151	€ 101	€ 54	€ 121	€ 81	€ 43
<i>Croatia</i>	9	€ 700	3	2	€ 126	€ 84	€ 40	€ 101	€ 67	€ 32
<i>Latvia</i>	9	€ 620	3	2	€ 112	€ 74	€ 36	€ 89	€ 60	€ 29
<i>Cyprus</i>	4	€ 940	1	1	€ 56	€ 38	€ 24	€ 45	€ 30	€ 19
<i>Malta</i>	3	€ 835	1	1	€ 50	€ 33	€ 16	€ 40	€ 27	€ 13
<b>Countries without a statutory minimum wage</b>										
<i>Italy</i>	355	€ 1 368	118	71	€ 9 685	€ 6 457	€ 3 108	€ 7 748	€ 5 166	€ 2 486
<i>Sweden</i>	60	€ 2 265	20	12	€ 2 718	€ 1 812	€ 870	€ 2 174	€ 1 450	€ 696
<i>Denmark</i>	27	€ 2 690	9	5,4	€ 1 453	€ 968	€ 465	€ 1 162	€ 775	€ 372



	Number of self-employed in CCS [thousands in 2021]	Monthly minimum wages 2023 [EUR]	Scenario 1 and 2: 33% of eligible claimants in each year [thousands]	Scenario 3: 20% of Eligible claimants in each year [thousands]	Annual budget: 50% public contribution [millions of EUR]			Annual budget: 20% public contribution [millions of EUR]		
					A	B	C	Scenario 1 A*B*6 months	Scenario 2 A*B*4 months	Scenario 3 80%A*C*4 months
<b>Countries with a statutory minimum wage</b>										
<i>Germany</i>	442	€ 1 997	147	88	€ 8 807	€ 5 871	€ 2 825	€ 3 523	€ 2 348	€ 1 130
<i>Spain</i>	255	€ 1 260	85	51	€ 3 213	€ 2 142	€ 1 028	€ 1 285	€ 857	€ 411
<i>Poland</i>	125	€ 811	42	25	€ 1 022	€ 681	€ 324	€ 409	€ 272	€ 130
<i>Czechia</i>	80	€ 729	27	16	€ 590	€ 394	€ 187	€ 236	€ 157	€ 75
<i>Greece</i>	56	€ 910	19	11	€ 519	€ 346	€ 163	€ 207	€ 138	€ 65
<i>Portugal</i>	54	€ 887	18	11	€ 479	€ 319	€ 153	€ 192	€ 128	€ 61
<i>Hungary</i>	50	€ 624	17	10	€ 318	€ 212	€ 100	€ 127	€ 85	€ 40
<i>Slovakia</i>	25	€ 700	8	5	€ 168	€ 112	€ 56	€ 67	€ 45	€ 22
<i>Slovenia</i>	14	€ 1 203	5	3	€ 180	€ 120	€ 54	€ 72	€ 48	€ 22
<i>Romania</i>	15	€ 604	5	3	€ 91	€ 60	€ 29	€ 36	€ 24	€ 12
<i>Lithuania</i>	10	€ 840	3	2	€ 76	€ 50	€ 27	€ 30	€ 20	€ 11
<i>Croatia</i>	9	€ 700	3	2	€ 63	€ 42	€ 20	€ 25	€ 17	€ 8
<i>Latvia</i>	9	€ 620	3	2	€ 56	€ 37	€ 18	€ 22	€ 15	€ 7
<i>Cyprus</i>	4	€ 940	1	1	€ 28	€ 19	€ 12	€ 11	€ 8	€ 5
<i>Malta</i>	3	€ 835	1	1	€ 25	€ 17	€ 8	€ 10	€ 7	€ 3
<b>Countries without a statutory minimum wage</b>										
<i>Italy</i>	355	€ 1 368	118	71	€ 4 843	€ 3 228	€ 1 554	€ 1 937	€ 1 291	€ 622
<i>Sweden</i>	60	€ 2 265	20	12	€ 1 359	€ 906	€ 435	€ 544	€ 362	€ 174
<i>Denmark</i>	27	€ 2 690	9	5,4	€ 726	€ 484	€ 232	€ 291	€ 194	€ 93

Notes: Countries are arranged from the highest to the lowest cost within each category (statutory and non-statutory minimum wage). Countries in *italics* are countries where self-employed CCS professionals are covered in the general system and, as a result, estimates provide for a maximum cost (which would effectively be lower as self-employed CCS professionals are already to some extent covered). Minimum wages are quoted for the second half of 2023. For countries without a statutory minimum

wage, we made estimates in a following way: for Denmark, we made estimates based on minimum hourly wage (17,7 EUR) multiplied by 152 working hours per month; for Italy, we made estimates made on recent proposals of hourly minimum wage (9 EUR) multiplied by 152 hours; for Sweden, we took as reference the standard wage for a low-paid jobs of cleaners. Gross amounts are quoted because a) they allow for a better international comparison (due to the variety of the types of contracts possible within one country with different net-gross rates), b) in the case Europe's minimum wages, the difference between gross and net is primary driven by social contributions not taxes (e.g. in France minimum wage earners pay an effective tax rate of 5,3%, or 92 euros monthly on the top of 16%, or 272 euros monthly, paid in social contributions).

Source: Authors calculations based on: Eurostat cultural statistics for 2021 [CULT\_EMP\_SEX], Eurostat monthly minimum wages for semester 2 of 2023 [EARN\_MW\_CUR\$DEFAULTVIEW].

While the system would be beneficial for over 1,5 million CCS professionals in the 18 Member States mentioned above, a tentative assessment shows that costs might also be significant (although this depends on the decided level of public contribution to the system). Such system can however be suggested to the Member States as a solution protecting the self-employed CCS professionals through the CSR.

However, the CSRs can also be structured in a different manner to assure CCS professionals' access to social protection and/or developing new forms of protection, in the context of intermittent character of artistic and creative work. Two recent developments in the Ireland and Portugal can be indicative (see: Case study 6).

### Case study 6. New ideas for bridging artists' gaps in social security protection in Portugal and Ireland

In 2022, Portugal introduced a new legal framework protecting professionals in performing arts, audiovisual, visual arts and literary sector (Decree-Law no. 105/2021). To benefit from protection, workers must register as professionals in culture. They are then subject to a special contributory regime and can receive a special benefit for the suspension of cultural activity. The benefit, effectively similar to unemployment benefit, covers all scenarios such as suspension, parenthood, illness, and occupational disease. The system provides a simplified social security contributions through tax withholdings. Moreover, similarly to the French "intermittent du spectacle", artists benefit from the presumption of an employment contract while performing artistic work.

In the same year, the Irish government started a pilot programme for a universal basic income for artists. Rather than the logic of social protection, the programme follows the logic of basic income: the transfer is not means tested, so beneficiaries can earn additional money. Still, the system can be seen as an alternative to an expansion of unemployment benefits for CCS professionals. Within its scope, 2000 professionals will receive 325 EUR weekly for 3 years. The programme also involves a control group of persons who were eligible but did not receive the benefit. The discussions around the programme revolved around general income instability of the CCS professionals and necessity to retain the skills and talent of artists in the post-COVID period (Johnston, 2022).

Effects of the Portuguese and Irish programmes have not been evaluated yet. The programmes point to a potential direction of social protection reforms that acknowledge the nature of the sector - either through a special social protection regime (Portugal) or through new tools such as basic income (Ireland).

Source: Citizens Information, Basic Income for the Arts (BIA), Available at <https://www.citizensinformation.ie/en/employment/unemployment-and-redundancy/employment-support-schemes/basic-income-arts/> (Accessed 14 June 2023)

Table 13. Overview of policy measures aimed to improve access to social protection of solo self-employed in the CCS

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
Improving access to social protection, including social security, pension system, health and long-term care	SPC and EMCO in cooperation with European Commission and Council (if CSR) SPC and EMCO in cooperation with European Platform on social and	CSR Work programme for the SPC and EMCO for 2024 or later	++	+++ Improved social security protection for up to 2,3 million self-employed CCS professionals (ranging from	Other CSR Operations of SPC so far

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
	professional situation of artists and workers in the CCS			13% in Romania to 47% in the Netherlands)	
Increasing access to unemployment benefits by adapting the system to the challenges associated with intermittent character of work	SPC and EMCO in cooperation with European Commission and Council (if CSR)  SPC in cooperation with European Platform on social and professional situation of artists and workers in the CCS	CSR	+++  Non-binding; substantial public expenses if introduced	+++  Over 1,5 million self-employed CCS professionals in 18 Member States eligible for unemployment benefits	Other CSR

### 2.2.3. Improving occupational safety and health protection for self-employed in the CCS

Expanding some of the OSH Directives to also cover self-employed would be the most ambitious solution in this domain. This could involve the OSH Framework Directive 89/391/EEC or other OSH-directives related to particular occupational risks (in particular, in the context of the occupational safety and health risks prevalent in the sector - *Directive 2003/10/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise)* and *Directive 90/269/EEC on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers*). It is possible to **create a separate sectoral OSH Directive in the CCS**. However, that would require creating an EU definition of the sector (although such definition might be limited to OSH protection only), and it seems like an excessive solution given creative work generally is not associated with sector specific and generalisable OSH risks.

Secondly, without changing the OSH Directives, the **EU can continue to incentivise Member States to expand OSH protection to self-employed professionals** – either in general or within the CCS. Such action can be done either through further cooperation by the Senior Labour Inspectors’ Committee (“SLIC”) and Advisory Committee on Safety and Health at Work (“ACSH”) coordination and sharing of best practice and information tools, or further Council Recommendations (in the spirit of the *2003 Council recommendation concerning the improvement of the protection of the health and safety at work of self-employed workers*), with monitoring and evaluation framework. Next, European Semester Tools, including CSR, can be considered as a tool in a similar fashion as in the previous years (Clauwaert, 2013). More data, which can be gathered by updating existing studies undertaken by Eurofound and EU-OSHA, is needed on this issue to analyse where the problem is most pressing.

The above-mentioned regulatory actions would have an impact on the safety and health of self-employed in the CCS, i.e. would impact upon the safety and health situation of over 2,3 million self-employed professionals in the CCS in the EU-27, as discussed in section 2.1.2.

Further, **social dialogue can be an important tool to promote safety and health at work**, also for the self-employed professionals. While there are controversies regarding the unionisation rights and

representation of self-employed by the trade unions, ETUC has been advocating for a fuller inclusion of self-employed within the OSH protective framework<sup>31</sup>. Social partners in many sectors, including live performance and audiovisual, have increased their activities in the context of COVID-19 pandemic. The 2022-2024 Work programme of the European sectoral social dialogue committee in Live Performance sets out safety and health as one of the priorities for social partners, without referring to the self-employed. While no binding measures have been undertaken within the sectoral dialogue in live performance and audiovisual sectors (neither in reference to employees nor self-employed), there are examples of binding measures within the OSH area covering self-employed from other sectors. *European framework agreement on the protection of occupational health and safety in the hairdressing sector* concluded between sectoral social partners extends the scope also to the self-employed<sup>32</sup>. The agreement is implemented by the social partners and has not been translated into a directive, but the European Commission has issued *Non-binding guidelines for the hairdressing sector* to support its implementation in June 2021<sup>33</sup>. However, the self-employed are not present in the *Guidelines*.

If the Framework agreement would be translated into directive, it would have a binding impact on all self-employed in the Member States. If the Framework agreement would not be translated into directive, it would have an impact limited to social partners only (potential impact of social dialogue has been presented in the section 2.1.2 in detail).

Table 14. Overview of policy measures aimed to improve occupational safety and health protection for self-employed in the CCS

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
Granting OSH protection to self-employed in the CCS at the EU level	European Commission, European Parliament, Council	Directive	++ Difficult policy process; long implementation	+++ Up to 2,3 million self-employed CCS professionals would benefit from OSH protection through binding EU-level legislation	Other OSH Directives
Granting OSH protection to self-employed at the Member State level	SLIC/ACSH OR Council OR European Commission and Council	Coordination, Council Recommendation, or CSR	+ Non-binding measure	++ Improving OSH protection of up to 2,3 million self-employed CCS professionals	Already existing coordination within Health Committee; 2003 Council recommendation concerning the improvement of the protection of the health and safety at work of self-employed

<sup>31</sup> ETUC [position](#) on a new EU strategy on Occupational Safety and Health, 2019.

<sup>32</sup> Coiffure EU and Uni Europa Hair and Beauty, *European [framework agreement](#) on the protection of occupational health and safety in the hairdressing sector*, 2016.

<sup>33</sup> European Commission, *Non-binding [guidelines](#) for the hairdressing sector*, 2019.

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference	
					workers; CSRs on OSH	
Granting OSH protection to self-employed	European Social Partners supported by EU-OSHA, with potential support from European Commission and eventually Council	Framework agreement concluded by the social partners (translated into directive or not)	+	Impact limited to social partners if not translated into directive; costs varied across sectors and countries	+/++ If not translated into directive, impact limited to social partners and varied across sectors and countries (see section on enforcement and bogus self-employment)	<i>European framework agreement on the protection of occupational health and safety in the hairdressing sector supported by Non-binding guidelines for the hairdressing sector</i>
Collecting data	Eurofound, EU-OSHA	updating surveys	+	Costs associated with updating surveys	++ Improved capacity to implement policies, undertake audits, mutual learning etc.	

## 2.3. Improving cross-border mobility, employability, and skills

### 2.3.1. Improving working conditions protection in case of cross-border mobility

First, it is possible to provide a comprehensive solution such as separate rules for the labour mobility of artists and creative professionals similar to the ones applicable to the road transport sector (i.e. *Directive 2020/1057 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 in the context of the Directive (EU) 2018/957 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services*). This would require an extension of the exception created for the road transport sector to the CCS and drafting of a **new Directive containing specific rules regulating working conditions for the CCS**. This is the most ambitious solution but requires very complex efforts to also coordinate the definitions of artists. Such a measure might also be challenged from the point of view of EU competences (i.e. article 6 and 167 TFEU).

In case of problems related to the access to information of workers, **Member States should be further monitored from the point of view of whether the required information is readily available, not only by providing information about the statutory regulations but also collective agreements** having an impact on the issues regulated by the Article 3(1) of the *Posting of Workers Directive*. This monitoring should be coordinated by ELA.

Further, **ELA should be asked to create a website informing employers in the CCS sector, CCS professionals, and social partners about the applicable rules and ensuring that it is updated on a**

regular basis. Such an information website has been created by ELA for the road transportation sector, as ELA decided to undertake various initiatives to support transparency of rules and enforcement of regulation in this sector, coordinating drafting of information leaflets through its 2022 *Road to Fair Transport Campaign*<sup>34</sup>. More focus upon CCS can also be included in the current activities of the Posting 360 Programme<sup>35</sup>. Within the CCS, ELA could cooperate with social partners. CCS can be included within the ELA's agenda in the future, as this sector has similarities with road transport from the point of view of the extent of cross-border mobility, and short-term nature of posting that might disincentivise employers from utilising posting regulations (and effectively organise posting informally or semi-formally, without full compliance).

It is difficult to quantify the impact of these changes due to lack of reliable data on the level of consciousness of the legal regulations in the sector. A 2021 survey of PEARLE members indicated that ¼ of the respondents were aware of the recent legal changes in the posting area suggesting the extent of the knowledge gaps that can be bridged to be around 75% (De Wispelaere et al., 2021).

Moreover, campaigns by social partners can be used to bridge the gap in terms of information sharing. **Social partners in the live performance sector prepare information guides on the social security and posting issues**<sup>36</sup>.

The issue of the necessity to apply rules of the host Member State in case of short-term posting can be dealt with by **more intensive use of exceptions based upon Article 3(4) of the Posting of Workers Directive by the Member States**. Some Member States provide exceptions for CCS professionals. For instance, Belgium provides such an exception for artists with an international reputation if their stay does not exceed 21 days per quarter. Sectoral social dialogue partners in the live performance sector support introducing exceptions based on Article 3(4), so this issue is not contentious between the trade unions and employers' organisations. On 3 June 2019, PEARLE issued a *Call to the EU to address disproportionate administrative burdens and legal gaps in context of posting of workers* which asked the Member States to introduce exemptions for the live performance sector in national law considering that tours of live performance organisations can be very short and limited in time when implementing the Revised Posting Directive<sup>37</sup>.

Further, the European Commission could consider incentivising Member States to introduce **relaxed regimes for short postings under a month within the CCS**. While the current regulatory framework explicitly leaves that to regulate at the Member State level, only the soft law mechanisms, such as **European Semester CSR or Council Recommendations could be utilised in this regard**.

The quantification of the estimated impact of regulatory actions aimed at improving working conditions protection in case of cross-border mobility can be given under certain assumptions and limitations.

There is no detailed breakdown of the number of posted workers in Europe in the CCS alone. Based on the data from 12 reporting countries having detailed breakdown, Wispelaere and Rocca (2020) estimate that 3,5% of all posted workers in Europe are artists and musicians. We can take this share and calculate the number of posted artists and musicians for the whole EU-27. However, this share covers only artists and musicians, and not the whole employment in the CCS (which is aggregated together with education, health, and social work, and other services in the databases on posting).

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<sup>34</sup> European Labour Authority, Road to fair transport [campaign](#), 2022.

<sup>35</sup> European Labour Authority, Posting 360 [Programme](#), 2023.

<sup>36</sup> Pearle, Posting & Social Security - A [Guide](#).

<sup>37</sup> Pearle, [Call to the EU to address disproportionate administrative burdens and legal gaps in context of posting of workers](#), 2019.

In order to make calculations, we have to take the number of PD A1 issued in the whole EU-27 as a point of reference, assuming that each PDA1 represents one posted worker. In 2021, 2.131.338 PD A1 have been issued in the EU-27 (De Wispelaere, De Smedt, Pacolet, 2022). We can estimate that measures aimed at improving working conditions protection in case of cross-border mobility in the art sector can improve the situation of around 75.000 professionals based on that number.

This number is however probably higher for two reasons. First, as mentioned earlier, the number covers only touring artists and musicians, and not CCS employment as a whole. Second, the most recent detailed data on posting of workers (from 2021) probably will not be representative for the extent of posting in the near future, as in 2021 the market for posting of workers was still severely affected by the COVID-19 pandemic and mobility restrictions. In the last pre-pandemic year (2019), the number of PD A1s issued in EU-27 amounted to 3.135.123 (De Wispelaere, De Smedt, Pacolet, 2020). If that number is taken as a point of reference and if we assume that each PD A1 represents one professional, the number of posted CCS professionals potentially affected by the policy measures would be around 110.000.

As a result, we estimate that policy measures aimed to improve working conditions protection in case of cross-border mobility would affect at least between 75.000 to 110.000 CCS professionals in Europe, considering all the limitations and assumptions.

Table 15. Overview of policy measures aimed to improve working conditions protection in case of cross-border mobility

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
Protecting working conditions in case of cross-border mobility of CCS workers	European Commission, Council. Parliament	New Directive	++ Difficult policy process; long implementation	++ Up to between ca. 75.000 to 110.000 mobile CSS professionals would benefit from working conditions protection based upon binding EU-level regulations	Road transport directives
Improving access to information	ELA, labour inspections, social partners	Website, coordination between the institutions	+ Costs associated with establishing websites and coordination	+ Improving knowledge about the regulations, with an impact on rights and benefits of up to between ca. 75.000 to 110.000 mobile CSS professionals	Already existing website for Road transport in the EU



Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
Improving access to information	Social partners	Campaigns	+	++ Improving knowledge about the regulations, with an impact on the rights and benefits of up to between ca. 75.000 to 110.000 mobile CSS professionals	Information guides on social security and posting issues
Introducing exceptions based on Article 3(4) of the <i>Posted Workers Directive</i> to reduce obligations in case of short-term posting	European Commission + Council incentivizing Member States / Council	CSR; Council Recommendations	+ Possible circumventions of rules of short-term posting (used to avoid obligations associated with longer posting)  Non-binding mechanism	++ Reduced administrative burdens for short-term posting among mobile workers (unknown subgroup within between 75.000 to 110.000 mobile CSS professionals)	Belgian exception for artists with international reputation

### 2.3.2. Improving access to social security in case of cross-border mobility

In case of problems related to the access to information, Member States should be further monitored from the point of view of whether **required information on social security systems is readily available**. This monitoring should be coordinated by **Administrative Commission for the Coordination of Social Security System in collaboration with ELA**. Further, **ELA should be asked to create a website informing about the applicable rules and making sure that they are updated on a regular basis**.

Improving information will not however solve the complexities of the existing legal landscape. In order to clarify and simplify the legal complexities, several regulatory options are possible.

Next, it is possible to **provide an exception to apply for PD A1 for CCS professionals posted for a short period of time**. Creating such an exception would require amending *Regulation 987/2009*. Alternatively, it is possible to provide exemptions for the CCS to enable artists not to be subject to a social security system for the period of one month before being posted in case of employees and two months in case of self-employed. Such exemption would enable touring artists to benefit from social security protection in case of posting earlier, before the period of one/two month passes, and one can expect that as a result it would improve compliance with these regulations. This change would require **changing Decision A2 of the Administrative Commission for the Coordination of Social Security Systems**. This would reduce the administrative burdens for the short-term posted workers among the mobile CCS professionals (all mobile CCS professionals constitute 3,5% of all posted workers, and there is an unknown number of self-posted workers as well). However, creating

such an exception would go against the regulatory trend in the sector that aims to limit bogus posting, which would be facilitated by such an exception.

Alternatively, EU could **speed up work on the introduction of European Social Security Pass (“ESSPASS”) and make sure that ESSPASS document is useful for the nature of mobility characteristic for the CCS**. So far, not much information on the pilot programme of ESSPASS is available publicly, but the programme has the potential to contribute to bridging the gap in the social security protection of workers in the CCS. This is because the mobility in this sector seems to be often shorter than in other sectors which might have disincentivised employers and self-employed from properly applying for PDA1. ESSPASS can lower the barriers to access to the national social security institutions issuing PDA1 for both regular employees who are posted by employers, as well as self-posted workers. The ESSPASS would facilitate verification of social security status due to wallet-type verifiable credential of the holder. The European Commission could be asked to ensure that the procedures and applications are simplified for the workers whose mobility is short-term (e.g. touring artists). This would impact the situation of artists and musicians, who constitute around 3,5% of all posted workers according to De Wispelaere and Rocca (2020).

The measures improving the access to social security in case of cross-border mobility would impact on the same group as the measures from point 2.3.1. We estimate that these would affect between 75.000 to 110.000 workers in the touring arts and music sectors in Europe, considering all the limitations and assumptions mentioned in point 2.3.1.

Table 16. Overview of policy measures aimed to improve access to social security in case of cross-border mobility

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
Improving access to information	ELA, Administrative Commission for the Coordination of Social Security Systems, Member States' Social Security Institutions	Website, coordination between the EU and Member States' institutions	0/+ Costs potentially covered within Administrative Commission or operational activities of ELA and Member States' social security institutions	++ Improving knowledge about the regulations, with an impact on rights and benefits of up to between ca. 75.000 to 110.000 mobile CSS professionals	Already existing websites
Reducing administrative burdens in posting from social security standpoint (exception to apply PDA1s for CCS professionals posted for a short time)	European Commission, Council, Parliament	Amendment to the <i>Regulation (EC) 987/2009</i> .	++ Difficult policy process	++ Less administrative burdens for up to between ca. 75.000 to 110.000 mobile CSS professionals	
Reducing administrative	Administrative Commission	Changing <i>Decision A2 of the</i>	+	++	

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
barriers (exceptions for CCS professionals not to be subject to social security system of sending country for 1 or 2 months prior to posting)		<i>Administrative Commission for the Coordination of Social Security Systems</i>	Risk of abuse (bogus posting)	Less administrative burdens for up to between ca. 75.000 to 110.000 mobile CSS professionals	
Simplifying PD A1s applications through European Social Security Pass	European Commission	European Social Security Pass	+	++ Less administrative burdens for up to between ca. 75.000 to 110.000 mobile CSS professionals	

### 2.3.3. Improving transparency in employment opportunities

It is advisable to expand the use of the **EURES website to advertise employment and funding opportunities for the CCS professionals**. This can be done by EURES strengthening collaboration with national public employment services to facilitate exchange of information. Moreover, EU funding programmes within the cultural sector might be adapted to require the institutions that are beneficiaries of the public funding from the EU to make use of the EURES website to advertise the job offers within EU funded projects.

An alternative option would be the **creation of a separate portal for the CCS professionals at the EU level**. Here, some private initiatives as well as activities of the EU in other fields can be used as an example. For instance, On the Move initiative<sup>38</sup> provides information on available funding and employment opportunities for CCS professionals that includes not only job offers, but a range of granting opportunities, and visiting options such as residencies, and other forms of funding. Secondly, the experiences pertaining to the EU activity within career development for researchers can be used as a template. The European Commission EURAXESS initiative<sup>39</sup> provides a one-stop solution containing information for the researchers (not only within the EU, but also linking job offers from the affiliated countries). The creation of a separate portal for the researchers seems to be substantiated by the nature of the scientific sector where numerous opportunities are available for the researchers, which might involve not only employment opportunities, but also grants, job offers, short-term research stays, and other research collaborations.

The CCS resembles the academic sector in the oversupply of aspirants and the heterogeneous nature of employment opportunities. As noted earlier, CCS professionals often are hired short term

<sup>38</sup> On the Move, [About](#), Accessed 14 June 2023.

<sup>39</sup> European Commission, [EURAXESS](#).

for highly specific projects and might be highly mobile for very short periods of time (residences, artistic grants, etc.).

As a result, the creation of a separate one-stop portal is the preferable solution. The initial influx of the employment opportunities could be provided by linking it to funding opportunities within the Creative Europe programme. Moreover, EU funding programmes could involve the necessity to advertise job opportunities on such a separate portal for the CCS professionals, similarly to the requirement stated above for the EURES website. A requirement to publicly report the extent of social insurance next to each art opportunity in the EU would contribute to greater transparency of working conditions and could promote “race-to-the top” dynamics.

Currently, available data do not allow to evaluate the impact of the proposed changes for the CCS professionals.

Table 17. Overview of policy measures aimed to improve transparency in employment opportunities

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
Improving cross-border access to information on employment opportunities	European Commission (EURES administrators), DG EAC	Changes to EURES portal	+ Impact difficult to quantify	+ /+++ Improved access to employment opportunities for CCS professionals	-
Improving cross-border access to information on employment opportunities, including job offers and other funding opportunities	European Commission (EURES administrators), DG EAC	Creation of a separate one stop portal	+ Impact difficult to quantify	+ /+++ Improved access to employment opportunities for CCS professionals	EURAXESS

### 2.3.4. Improving recognition of qualification and education in case of cross-border mobility for CCS professionals

There is no data allowing to speculate to what extent the gaps in the recognition of qualification and education hinders the cross-border mobility of professionals within the CCS.

The existing literature and policy reports do not seem to treat the issue of recognition of qualification and education as serious due to two factors. In case of qualification, a relatively limited number of regulations pertain to access to occupations for the CCS professionals. In case of both qualification and education, the literature highlights that the most important issue in terms of employability of professionals within the CCS is their portfolio/experience rather than their qualifications and diploma. Moreover, the recognition of education seems to have been tackled by *Council Recommendation on the automatic mutual recognition of higher education and upper secondary education periods abroad*. It is too early for the evaluation of the impact of the Council recommendation as the Member States are obliged to implement measures by 2025.

From the point of view of CCS professionals' "portfolio careers", more flexible solutions seem to be preferable. These can be well integrated into the ongoing European Digital Credentials initiative that aims to provide online tools subject to authentication and verification allowing to disclose various credentials<sup>40</sup>. **Making sure that heterogeneous experiences relevant for the sector (such as participation in projects, trainings, etc) is included within the European Digital Credentials initiative** would be an important step facilitating skills recognition of CCS professionals.

Table 18. Overview of policy measures aimed to improve recognition of qualification and education in case of cross-border mobility for CCS professionals

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
Improving recognition of qualifications and education experiences (making sure heterogeneous nature of sector is included in the initiative)	European Commission	European Digital Credentials	+ Impact difficult to quantify	+/ +++ Improved cross-border recognition of skills, project participations, etc. for CCS professionals	-

### 2.3.5. Improving skills, skills mismatches, trainings and reskilling programmes

Dealing with skills mismatches would be partially alleviated by better tools pertaining to information about job offers and employment opportunities as suggested above.

While many policy papers in this area suggest that further investment in training of CCS professionals is needed, we believe that in the context of prevalent overeducation in the sector, the **attention should be on skills mismatches and – eventually – upskilling initiatives, defined as adaptation of the existing skills to the digital economy**. This is because the CCS professionals are already extremely well educated in comparison to other groups, and more investment in "pure" training and retraining seems to be misdirected. However, the data suggests that more investment in digital skills and marketable skills might be helpful.

More **investment in upskilling and changes in the education system can be suggested through CSR**. Changes should primarily target the education system to provide students with more marketable skills. Moreover, programmes financed from Recovery and Resilience Facility that aim to train the CCS professionals should consider providing them with more digital and marketable skills that are in demand. Overall, spending on CCS represents 2,3% of total expenditure of the recovery and resilience plans, with 16 out of 22 plans having some funds assigned to CCS<sup>41</sup>. This can be achieved through the current European Semester CSR/RRF monitoring toolbox.

Since finding effective tools to support upskilling of CCS professionals is a difficult task in the context of the overall abundance of skills in the sector, **Member States should reinforce mutual learning processes and information sharing on the practices they found effective in tackling skills mismatches and labour market transitions in the CCS**. This can be facilitated by meetings of the Council in the format of "Employment, Social Policy, Health and Consumer Affairs Council" ("EPSCO")

<sup>40</sup> European Commission, [European Digital Credentials for Learning](#).

<sup>41</sup> European Commission, [Recovery and Resilience Scoreboard. Thematic analysis. Culture and Creative Industries](#), 2022

and “Education, Youth, Culture and Sport” (“EYCS”). More structured cooperation could also take place within the proposed *European Platform on social and professional situation of artists and workers in CCS*.

In this context, we advise to **develop more labour market and education intelligence regarding skills mismatches** that might be helpful in tackling the specific situation of CCS professionals, i.e. their high skills and tendency to engage in “diploma hoarding” (overeducation). Here, strategies intending to equip CCS professionals with more marketable skills through the education system might be helpful. Eurydice Network could analyse the programmes of the art studies to identify the existing gaps in skills formation. In 2009, Eurydice produced a report on arts education in primary and secondary schools, but it has not yet focused on tertiary education<sup>42</sup>. On the basis of such analysis, recommendations for the policy makers and universities can be formulated to improve the chances of arts graduates on the labour market.

Actions improving skills matching should involve social partners. In 2016, European Skills Council for employment and training in the Audiovisual and Live Performance sectors published a report suggesting in particular improvements in labour market intelligence, mutual learning processes between the Member States, support for digital skills and career management, as well as on-the-job learning<sup>43</sup>. Further, European cross-sectoral social partners included improving skills matching as one of the core programmes of their 2022-2024 Work Programme<sup>44</sup>. A substantial interest of social partners in issues related to skills formation has been manifested by the *2020 European Social Partners Framework Agreement on Digitalisation*<sup>45</sup>. The Framework agreement set out a framework by the social partners to support enterprises in their efforts to establish skill plans to accommodate changes related to the digitalisation, both through reskilling and upskilling. A similar **framework agreement could be concluded by the social partners to deal with the skills mismatches in the CCS**, facilitating reskilling and upskilling of professionals. The impact of social dialogue would be limited to social partners, with potential impact discussed in detail in section 2.1.1.

The topic of the **access to training of self-employed in the CCS could be researched by the European Platform on social and professional situation of artists and workers in CCS**. Here, the potential impact would cover all self-employed professionals in the CCS. *The European Platform* could coordinate pan-European data collection on the professional trajectories of art graduates. The calls to replicate the Strategic National Arts Alumni Project (SNAAP) survey for Europe have been voiced in 2020 by the art community itself<sup>46</sup>. Initiated in 2011, SNAAP has followed over time the graduates of American art majors with samples of up to 65.000 respondents per wave. It enabled a reflection on the skill mismatches, art attrition rates and relationship between socio-economic, and geographical status, art education and career outcomes.

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<sup>42</sup> Eurydice, [Arts and Cultural Education at School in Europe](#), 2009.

<sup>43</sup> European Skills Council for employment and training in the Audiovisual and Live Performance sectors, [Creative Skills Europe](#), 2016.

<sup>44</sup> ETUC, BusinessEurope, SMEUnited, SGI Europe, European Social Dialogue [Work Programme](#) 2022-2024.

<sup>45</sup> ETUC, BusinessEurope, SMEUnited, SGI Europe, *European Social Partners Framework Agreement on Digitalization*, 2020

<sup>46</sup> Disce, Creative Higher Education in Europe. Statistics [Report](#), 2020.

Table 19. Overview of policy measures aimed to improve skills, skills mismatches, trainings and reskilling programmes

Policy objective	Who	Policy instrument	Costs/ drawbacks	Positive impact/ benefits	Policy point of reference
Dealing with skills mismatches and upskilling	European Commission and Council	CSR CSR in the context of RRF	0/+ Costs depend on whether new measures are provided or existing measures are re-directed	++ Better adaptation to digital transition for the CCS professionals in 16 countries that included CCS in their recovery and resilience plans	CSR in education and training area
Dealing with skills mismatches and upskilling	Social partners	Framework agreement	+ Limited to social partners if not translated into directive	+ Improved skills for CCS professionals in unionised companies	2020 European Social Partners Framework Agreement on Digitalisation
Labour market intelligence, providing CCS professionals with marketable skills	Eurydice Network	Analyses and recommendations to policy makers/universities	+	++ Better skills for art graduates	-
Finding efficient active labour market policies for CCS professionals	EPSCO, EYCS, Member States European Platform on social and professional situation of artists and workers in CCS	Information exchange, informal cooperation	+ Quantitative impact difficult to assess	++ Improved active labour market policies	-
Data and information on programmes tailored to the self-employed	European Platform on social and professional situation of artists and workers in CCS	Cooperation	+	+++ Improved active labour market policies for up to 2,3 million self-employed CCS professionals	-

## 3. Annex: additional data and information

### 3.1. Note about principles of subsidiarity and proportionality

All the policy measures suggested in this paper are in the areas where EU does not have exclusive competence. As a result, they have to be analysed in the light of the principle of subsidiarity that provides that the EU shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States. Secondly, all EU actions must be analysed through the principle of proportionality, where the content and form of EU action shall not exceed what is necessary to achieve the objectives of the Treaties.

All the policy measures aim to establish a framework that would improve the working conditions and clarify the situation of CCS professionals. Most of the policy measures aiming to establish the EU framework for social and professional situation of artists and workers in the cultural and creative sectors consist of improvements in cooperation between the social partners, Member States, EU institutions, and/or are soft law mechanisms. As a result, they leave the stakeholders with a broad range of discretion regarding how to implement particular policy instrument. The only exceptions are the policy propositions aiming to establish the Directives (granting self-employed OSH protection at the EU level and protecting working conditions in case of cross-border mobility of CCS professionals). In these two cases, the fragmented legislation at the Member State level leads to differing forms of protection of CCS professionals (both employees and self-employed). Moreover, the EU-level action is substantiated by the high level of cross-border mobility within the CCS. To limit fragmentation and bridge the regulatory gaps, EU framework for social and professional situation of artists and workers in the cultural and creative sectors is necessary.

In our tables with overviews of policy measures, we have included points of reference to the propositions that can help conceptualise the regulatory pathway of the suggested policy instrument.

### 3.2. Added value of the CCS

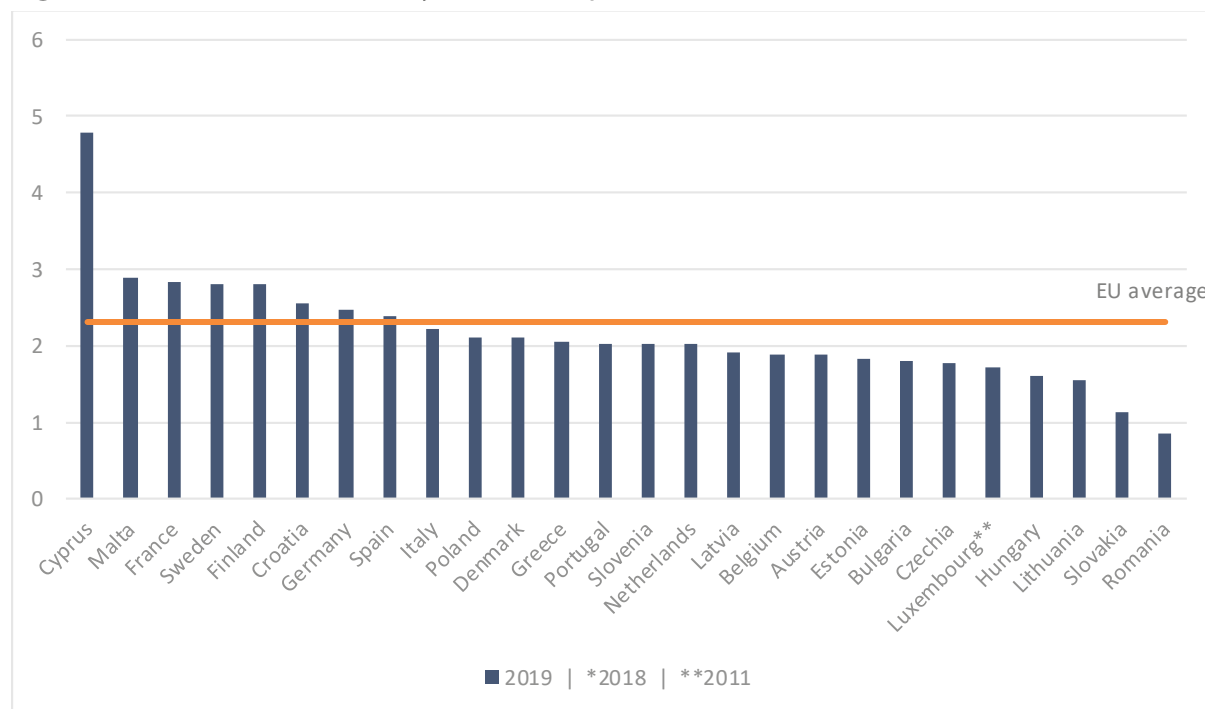
Creative and cultural sectors are a key economic driver. In 2019, culture and creative sectors directly accounted for an average of over 2,3% of the total gross value added (GVA) in the EU countries. In 2019 (the most recent data), these sectors were responsible for almost 4,8% of the total gross value added by enterprises in Cyprus, over 2,8% in Malta and in France (Figure 14).

Table 20 shows that across the EU-27, 5,4 million CCS workers had almost €330 billion of added value. Per worker, this would translate into an average added value of €60,5 thousand – above the average of €60 thousand in the economy as a whole – and more than double the EU's GDP per person. Input-output multipliers show 0,93-0,96 of the value added generated by the economy as a whole from a one-euro external increase in final demand for CCS.

Both inside and outside the EU, €44 billion of cultural goods were exported, while €34 billion of cultural goods were imported in 2019. When only extra-EU trade is considered, the numbers are correspondingly €25 billion to €17 billion in 2019 which means €8 billion of positive trade balance for the EU.



Figure 14. Gross value added by the cost of production factors of CCS (%)



Source: Kutwa, K. (2022) based on the Eurostat data.

Table 20. Added value of the CCS in the EU-27 (2019)

	EU-27	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czechia	Denmark
<b>Gross added value of CCS (million in 2019)</b>	€ 329 497	€ 9 207	€ 8 733	€ 1 302	€ 1 366	€ 511	€ 6 666	€ 9 438
<b>CCS employees (thousands in 2019)</b>	5442	134	105	68	36	11	176	109
<b>Added value per CCS employee (thousands)</b>	€ 60,5	€ 68,8	€ 83,1	€ 19,0	€ 37,7	€ 45,3	€ 37,8	€ 86,9
<b>Labour productivity in the economy (thousands)</b>	€ 60,0	€ 78,3	€ 87,2	€ 15,0	€ 27,0	€ 45,3	€ 37,5	€ 90,1
<b>GDP per capita in the economy (thousands in 2021)</b>	€ 27,8	€ 36,9	€ 35,9	€ 6,7	€ 13,5	€ 24,9	€ 18,0	€ 50,0
<b>Employment (by subsector in thousands)</b>								
Core	1545,1	35,2	24,8	23,4	8,4	2,0	52,6	32,0
Cultural	1832,0	43,9	35,9	27,4	18,3	4,6	61,3	38,2
Creative	2065,3	54,9	44,5	17,7	9,5	4,7	62,5	38,3
<b>Added Value by subsector in 2019 (million)</b>								
Core	€ 76 833	€ 2 506	€ 1 740	€ 385	€ 258	€ 104	€ 1 560	€ 2 904
Cultural	€ 146 279	€ 3 434	€ 4 215	€ 590	€ 717	€ 154	€ 2 513	€ 3 606
Creative	€ 106 385	€ 3 268	€ 2 778	€ 328	€ 391	€ 253	€ 2 593	€ 2 928
<b>Labour productivity (by CCS subsector in 2019)</b>								
Core	49,5	71,3	70,1	16,5	30,8	53,4	29,6	90,6
Cultural	80,0	78,3	117,5	21,5	39,2	33,7	41,0	94,3
Creative	51,6	59,5	62,5	18,5	41,0	53,3	41,5	76,5
<b>Trade (both EU and non-EU in thousands in 2020)</b>								
Exports of cultural goods	€ 43 879 546	€ 1 362 845	€ 1 507 596	€ 152 274	€ 91 478	€ 4 750	€ 2 244 053	€ 488 824
Imports of cultural goods	€ 34 734 741	€ 2 033 906	€ 1 866 437	€ 119 486	€ 103 406	€ 63 083	€ 1 430 651	€ 650 618
<b>Input-output multipliers</b>								
Information and communication	0,94	0,94	0,94	0,96	0,94	0,95	0,97	0,94
Broadcasting and other information services	0,96	0,96	0,95	0,96	0,94	0,97	0,97	0,94
Arts, entertainment, recreation	0,93	0,95	0,94	0,84	0,92	0,94	0,94	0,94
<b>Impact of CCS on labour productivity (elasticity)</b>								
CCS	2,9%	1,2%	2,9%	0,0%	-0,1%	-0,3%	-3,1%	4,4%
Rest of Copyright industries	2,6%	-0,6%	4,6%	-8,6%	-4,6%	-0,5%	-3,9%	1,1%
CCS+Rest of Copyright industries	4,8%	0,9%	5,8%	-1,8%	3,5%	1,4%	-9,0%	3,4%

EU framework for the social and professional situation of artists and workers in the cultural and creative sectors

	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy
<b>Gross added value of CCS (million in 2019)</b>	€ 792	€ 5 737	€ 61 499	€ 82 917	€ 2 931	€ 3 414	€ 8 483	€ 35 486
<b>CCS employees (thousands in 2019)</b>	25	84	761	1108	114	141	68	673
<b>Added value per CCS employee (thousands)</b>	€ 31,4	€ 68,2	€ 80,8	€ 74,8	€ 25,6	€ 24,2	€ 125,4	€ 52,7
<b>Labour productivity in the economy (thousands)</b>	€ 37,2	€ 77,5	€ 76,1	€ 69,2	€ 33,8	€ 26,2	€ 147,3	€ 63,2
<b>GDP per capita in the economy (thousands in 2021)</b>	€ 16,3	€ 37,3	€ 32,5	€ 35,3	€ 17,6	€ 13,7	€ 70,9	€ 26,7
<b>Employment (by subsector in thousands)</b>								
Core	11,5	25,2	250,0	302,2	25,4	54,3	12,1	164,0
Cultural	7,9	34,9	245,7	321,3	48,4	53,4	30,2	218,8
Creative	5,8	24,0	265,5	484,8	40,5	33,5	25,4	289,9
<b>Added Value by subsector in 2019 (million)</b>								
Core	€ 256	€ 1 263	€ 14 653	€ 17 173	€ 1 130	€ 1 070	€ 1 013	€ 8 905
Cultural	€ 306	€ 2 792	€ 25 893	€ 40 546	€ 1 096	€ 1 357	€ 4 731	€ 16 274
Creative	€ 229	€ 1 682	€ 20 952	€ 25 198	€ 705	€ 987	€ 2 740	€ 10 306
<b>Labour productivity (by CCS subsector in 2019)</b>								
Core	22,2	50,1	58,6	56,8	44,4	19,7	83,6	54,3
Cultural	38,7	80,0	105,4	126,2	22,6	25,4	156,8	74,4
Creative	39,8	70,0	78,9	52,0	17,4	29,5	108,0	35,5
<b>Trade (both EU and non-EU in thousands in 2020)</b>								
Exports of cultural goods	€ 143 808	€ 82 630	€ 7 463 116	€ 9 429 846	€ 153 783	€ 269 482	€ 1 255 496	€ 6 649 067
Imports of cultural goods	€ 59 152	€ 279 568	€ 6 905 844	€ 8 501 958	€ 224 244	€ 239 981	€ 1 247 727	€ 2 283 214
<b>Input-output multipliers</b>								
Information and communication	0,94	0,95	0,93	0,95	0,94	0,91	0,98	0,93
Broadcasting and other information services	0,96	0,95	0,96	0,97	0,96	0,96	0,96	0,96
Arts, entertainment, recreation	0,92	0,92	0,94	0,97	0,94	0,93	0,97	0,91
<b>Impact of CCS on labour productivity (elasticity)</b>								
CCS	-3,5%	3,8%	3,3%	3,2%	0,6%	4,2%	4,6%	3,0%
Rest of Copyright industries	-2,5%	-0,6%	3,7%	3,7%	-0,9%	-2,7%	-0,4%	3,1%
CCS+Rest of Copyright industries	-9,3%	1,8%	7,4%	8,3%	0,5%	-2,2%	3,2%	6,4%

	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania
<b>Gross added value of CCS (million in 2019)</b>	€ 789	€ 1 237	€ 999	€ 738	€ 17 719	€ 13 301	€ 3 586	€ 7 634
<b>CCS employees (thousands in 2019)</b>	28	48	11	8	322	428	90	100
<b>Added value per CCS employee (thousands)</b>	€ 27,9	€ 25,9	€ 88,1	€ 87,2	€ 54,9	€ 31,1	€ 39,9	€ 76,1
<b>Labour productivity in the economy (thousands)</b>	€ 29,7	€ 31,6	€ 122,8	€ 49,8	€ 75,3	€ 28,6	€ 37,5	€ 23,3
<b>GDP per capita in the economy (thousands in 2021)</b>	€ 12,8	€ 14,7	€ 86,6	€ 22,3	€ 41,9	€ 13,6	€ 17,9	€ 9,4
<b>Employment (by subsector in thousands)</b>								
Core	9,4	23,4	2,8	1,7	105,7	149,5	17,0	30,4
Cultural	7,7	13,8	3,7	2,5	109,1	131,8	38,6	40,5
Creative	11,1	10,6	4,8	4,3	107,7	147,0	34,2	29,5
<b>Added Value by subsector in 2019 (mln)</b>								
Core	€ 297	€ 459	€ 224	€ 158	€ 5 105	€ 2 186	€ 607	€ 2 337
Cultural	€ 293	€ 408	€ 369	€ 171	€ 7 934	€ 5 894	€ 1 617	€ 2 830
Creative	€ 200	€ 371	€ 405	€ 409	€ 4 681	€ 5 221	€ 1 361	€ 2 467
<b>Labour productivity (by CCS subsector in 2019)</b>								
Core	31,5	19,6	80,3	94,0	48,3	14,6	35,7	76,8
Cultural	37,8	29,6	99,9	68,9	72,8	44,7	41,8	69,9
Creative	18,1	34,9	83,7	95,0	43,4	35,5	39,8	83,7
<b>Trade (both EU and non-EU in thousands in 2020)</b>								
Exports of cultural goods	€ 260 496	€ 193 098	€ 53 494	€ 267 048	€ 4 024 469	€ 4 310 599	€ 145 683	€ 177 028
Imports of cultural goods	€ 69 570	€ 81 814	€ 203 277	€ 42 217	€ 2 691 354	€ 2 092 565	€ 427 617	€ 229 816
<b>Input-output multipliers</b>								
Information and communication	0,93	0,92	0,95	0,94	0,95	0,95	0,93	0,96
Broadcasting and other information services	0,96	0,97	0,94	0,94	0,95	0,96	0,95	0,96
Arts, entertainment, recreation	0,93	0,96	0,96	0,94	0,94	0,93	0,92	0,96
<b>Impact of CCS on labour productivity (elasticity)</b>								
CCS	0,7%	-0,4%	2,2%	-0,1%	2,9%	-0,7%	-0,9%	-1,2%
Rest of Copyright industries	-0,6%	-1,9%	-1,4%	-0,7%	2,5%	-0,5%	-3,6%	0,4%
CCS+Rest of Copyright industries	-2,6%	1,7%	-2,8%	0,0%	2,6%	-1,7%	0,4%	-1,8%

	Slovakia	Slovenia	Spain	Sweden
<b>Gross added value of CCS (million in 2019)</b>	€ 2 690	€ 1 312	€ 27 377	€ 13 632
<b>CCS employees (thousands in 2019)</b>	74	39	517	162
<b>Added value per CCS employee (thousands)</b>	€ 36,6	€ 33,7	€ 53,0	€ 84,4
<b>Labour productivity in the economy (thousands)</b>	€ 34,4	€ 40,5	€ 55,4	€ 82,6
<b>GDP per capita in the economy (thousands in 2021)</b>	€ 15,7	€ 21,3	€ 23,5	€ 44,8
<b>Employment (by subsector in thousands)</b>				
Core	18,7	12,8	100,2	50,3
Cultural	27,5	14,1	199,9	52,9
Creative	27,4	12,0	216,8	58,4
<b>Added Value by subsector in 2019 (million)</b>				
Core	€ 1 189	€ 391	€ 6 103	€ 2 857
Cultural	€ 771	€ 586	€ 11 580	€ 5 601
Creative	€ 730	€ 334	€ 9 693	€ 5 173
<b>Labour productivity (by CCS subsector in 2019)</b>				
Core	63,6	30,5	60,9	56,8
Cultural	28,1	41,5	57,9	106,0
Creative	26,6	28,0	44,7	88,6
<b>Trade (both EU and non-EU in thousands in 2020)</b>				
Exports of cultural goods	€ 355 890	€ 270 931	€ 1 885 026	€ 636 736
Imports of cultural goods	€ 330 037	€ 162 670	€ 1 575 299	€ 819 230
<b>Input-output multipliers</b>				
Information and communication	0,95	0,94	0,93	0,96
Broadcasting and other information services	0,96	0,95	0,95	0,96
Arts, entertainment, recreation	0,90	0,93	0,96	0,93
<b>Impact of CCS on labour productivity (elasticity)</b>				
CCS	0,9%	-2,0%	3,0%	3,1%
Rest of Copyright industries	-4,9%	-4,1%	5,4%	-0,6%
CCS+Rest of Copyright industries	0,1%	-4,4%	6,6%	1,2%

Notes: The authors thank Constantin van Grevenstein and Stefanie Thomas of Measuring CCS project as well as Susana Justo and Vera Brito from QMETRICS for sharing the datasets. The impact on labour productivity means increase in labour productivity for each 100% increase in the contribution of CCS to the total employment. Input-output multiplier indicates the value added generated by the economy as a whole from a one-euro increase in final demand for CCS (both direct and indirect effects but without an induced effects).

Source: Measuring CCS ([www.measuring-ccs.eu](http://www.measuring-ccs.eu))

### Case study 7. Case study of job and income spillovers across the economy – Poland

CCS create jobs and income spillovers across the economy. Their scale will be illustrated using the case study of Poland – with the added value generated by CCS of 2,1% - very close to the EU average of 2,3% (Figure 14). The monetary multiplier effect was 2,2, which means that each EUR 1 that CCS generated in 2019 contributed to generating additional EUR 1,2 of added value in the entire economy (Kutwa, 2022).

In nominal terms, the largest beneficiaries of the impact exerted by CCS are: the real estate market (especially in terms of added value), construction (especially in terms of jobs), and professional, scientific and technical services (mainly due to paid salaries). In proportion to their size, the information and communication section comes first (10%), followed by professional, scientific and technical services (8,1%). CCS has a strong impact not in a direct way but through an induced channel on tourism and recreation (3,3%).

Table 21. Added value of CCS in a case country (Poland), arranged by the magnitude of indirect impact [in thousand EUR].

Industry	Direct impact	Indirect impact	Induced impact
CCS	5 997,1	0,0	0,0
Real estate	0,0	366,5	528,9
Construction	0,0	586,0	155,5
Other industries	0,0	297,8	347,1
Professional services	0,0	429,8	158,6
Trade	0,0	132,0	450,3
Information and communication	0,0	386,6	134,9
Service financial and insurance	0,0	217,4	286,7
Energy and services communal	0,0	221,5	263,6
Wholesale trade	0,0	233,6	242,1
Transport and storage	0,0	235,7	184,6
light industry	0,0	250,6	78,2
Chemical industry	0,0	137,4	105,3
Food processing	0,0	28,3	185,9
Agriculture	0,0	25,5	158,6
Electromechanical industry	0,0	119,1	64,7
Tourism and entertainment	0,0	47,1	112,5
<b>Total (impact composition)</b>	<b>5 997,1</b>	<b>3 714,7</b>	<b>3 457,6</b>
<b>MULTIPLIER</b>			<b>2,20</b>

Note: Sectors arranged by the magnitude of the sum of indirect and induced impact. The authors thank Krzysztof Kutwa and the Polish Economic Institute for sharing these data.

Table 22. Multiplier effect of CCS workplaces in Poland [in thousand EUR]

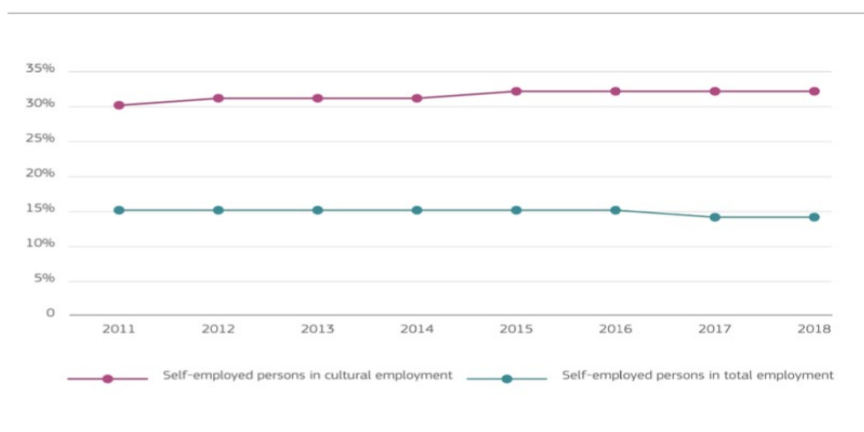
Industry	Direct impact	Indirect impact	Induced impact
CCS	11 808,4	0,0	0,0
Construction		1 084,9	287,9
Light industry		166,0	1 031,3
Other industries		227,0	774,3
Transport and storage		668,7	208,8
Professional services		306,0	441,7
Real estate		383,3	300,3
Information and communication		240,7	317,4
Service financial and insurance		153,1	366,1
Electromechanical industry		222,3	230,5
The retail trade		309,9	114,4
Wholesale trade		187,3	223,0
Chemical industry		294,0	102,6
Energy and services communal		52,0	341,6
Agriculture		238,6	129,6
Tourism and entertainment		207,2	158,8
Food processing		560,6	719,7
<b>Total (impact composition)</b>	<b>11808,4</b>	<b>5301,6</b>	<b>5747,7</b>
<b>MULTIPLIER</b>			<b>1,94</b>

Note: Sectors arranged by the magnitude of the sum of indirect and induced impact. The authors thank Krzysztof Kutwa and the Polish Economic Institute for sharing the data.

### 3.3. Employment in the CCS

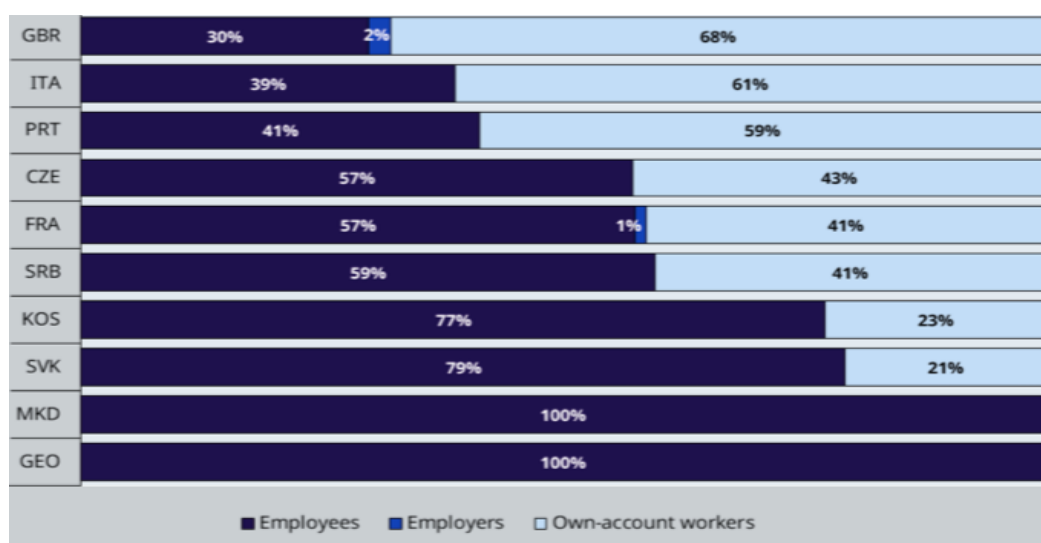
#### 3.3.1. Self-employed in the CCS

Figure 15. Self-employed persons in cultural employment and in total employment



Source: Snijders et al., 2020

Figure 16. Employment in the creative, arts and entertainment subsector by employment status in 2019

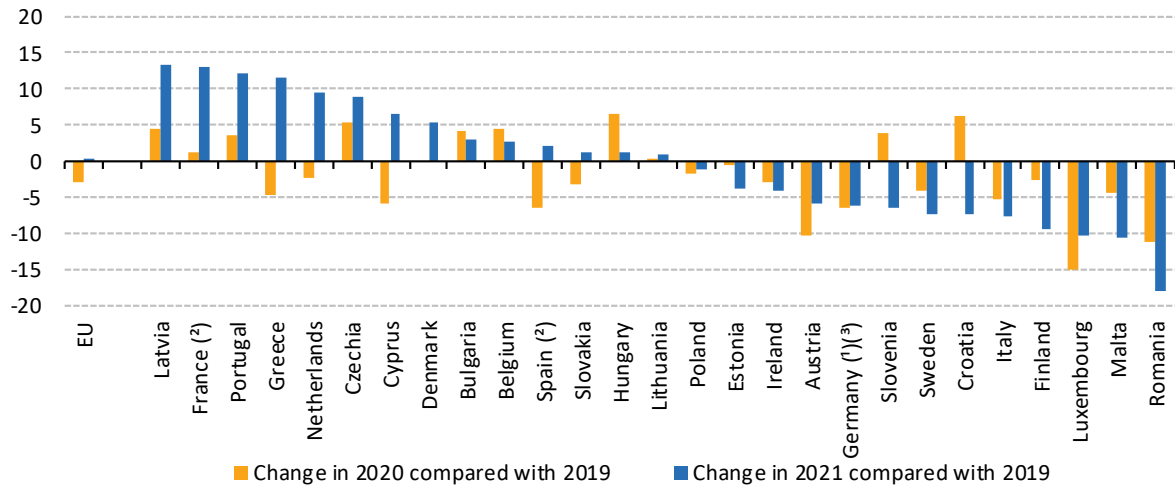


Source: ILO, 2023



### 3.3.2. Employment trends during COVID-19

Figure 17. Cultural employment changes by country in 2020 and in 2021 compared with 2019 (%)



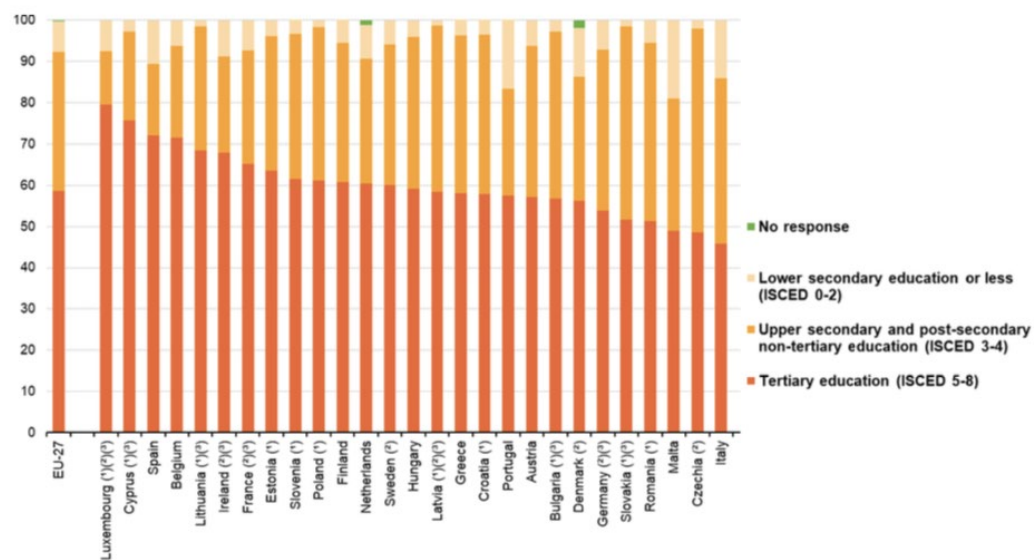
Note : (1) 2020, 2021 - provisional data, (2) 2021 - definition differs (see LFS metadata).

(3) 2020 - break in time series.

Source: Eurostat, <https://ec.europa.eu/eurostat/databrowser/bookmark/0ceb7b81-90e8-4ddd-90e2-85a984adac95?lang=en>

### 3.3.3. Employment by level of education

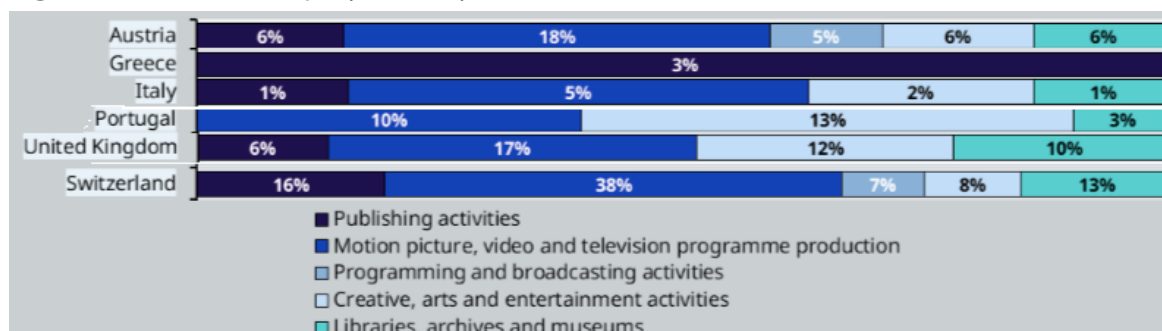
Figure 18. Cultural employment by level of educational attainment (2019)



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

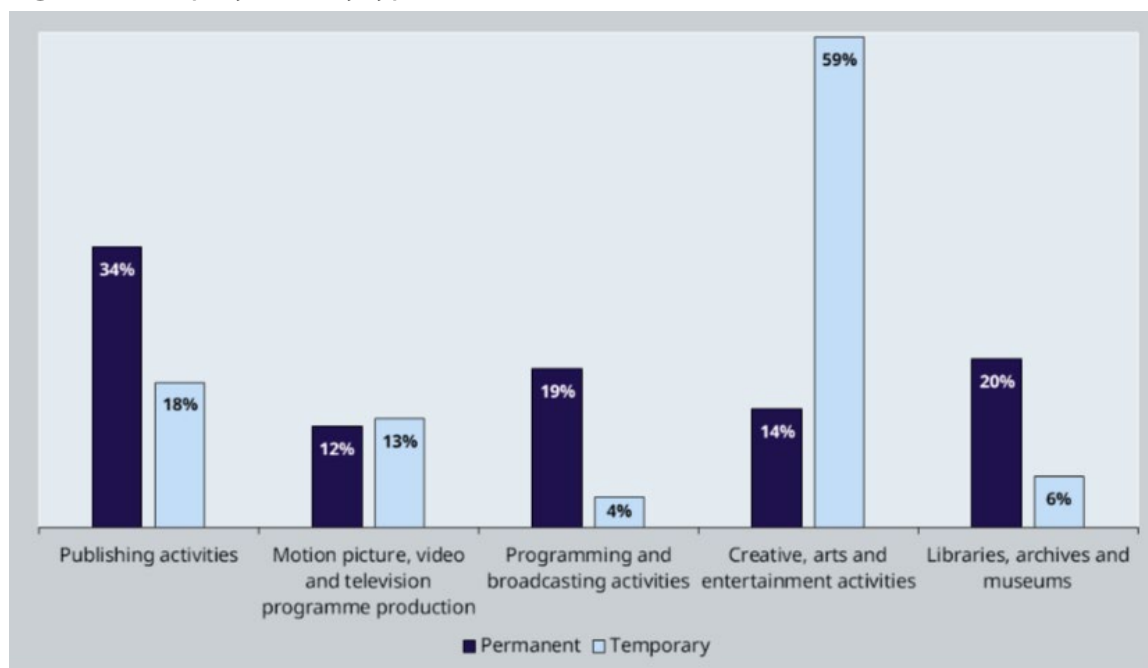
### 3.3.4. Employment by subsector

Figure 19. Cultural employment by subsector (2019)



Source: ILO, 2023

Figure 20. Employment by type of contract and subsector (2019)



Note: Based on data for 27 countries or territories: Albania, Austria, Costa Rica, Cyprus, Czechia, Dominican Republic, Egypt, Georgia, Greece, India, Italy, Jordan, Kosovo, Maldives, Mexico, Mongolia, North Macedonia, Occupied Palestinian Territory, Philippines, Portugal, Serbia, Seychelles, Slovakia, Switzerland, Turkey, United Kingdom, Vietnam.

Source: ILO, 2023

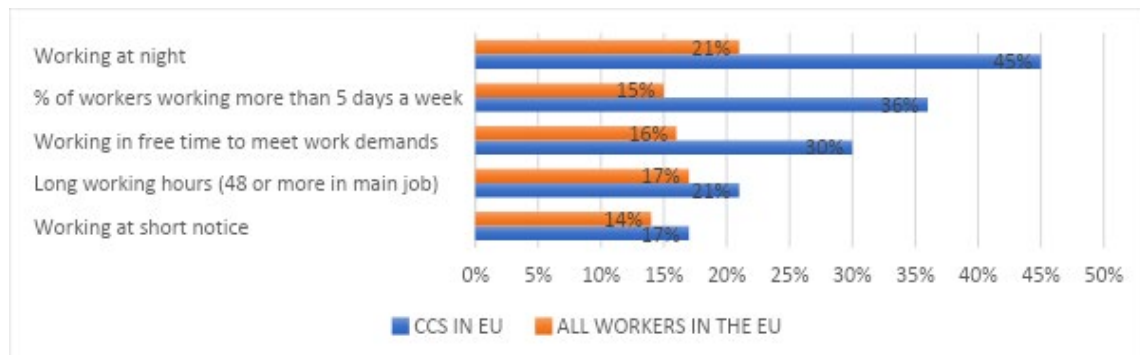
### 3.4. Evidence of structural vulnerabilities of artists and workers in the CCS

Weak protection and unregulated employment means that discretionary HR practices take precedence. This means not knowing whether to use the employment contract, contract of mandate, commission contract or self-employment. In the context of massive oversupply of art aspirants this can also mean unpaid labour. These economic difficulties found their political articulation in Poland during a major strike for art workers' rights on the 24th of May, 2012. In 2013, the new trade union of art workers aimed to introduce standards of cooperation with artists, including coverage of social security. In 2014, only a few institutions signed off on an agreement on minimum wages for artists. It was the first initiative to indicate the need to pay artist fees for exhibitions.

#### 3.4.1. Job quality

Aspects of job quality related to OSH comprise six categories: physical and social environment, job tasks, organisational characteristics, working time arrangements, job prospects and intrinsic job features. CCS professionals stand out in two of them. On the positive note, they score higher on intrinsic job features when compared to the remaining workforce: 57% feel they have enough opportunities to use their knowledge and skills in their current job (when compared to 48% of general workforce) and are more likely to feel their work is well-done (93% to 86%). On the negative note, they systematically and by a large margin stand out in each of the five aspects of time (Figure 21) – with consequences for the work-life balance.

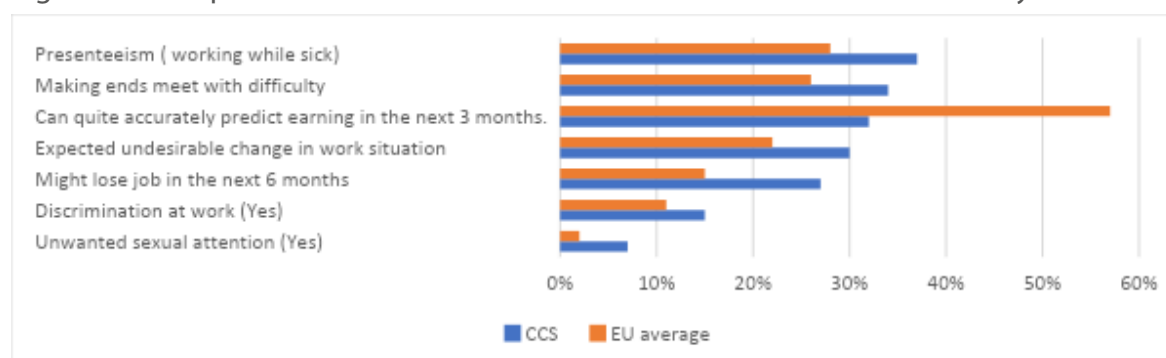
Figure 21. CCS professionals declaring non-standard working time



Note: Working at short notice (at least several times a month). Working at night (sometimes, often, always).

Source: Eurofound, 2021

Figure 22. CCS professionals – selected dimensions of structural vulnerability



Source: Eurofound, 2021

### 3.4.2. Income

Artists straddle the fields of the market exchange and the gift exchange. When compared to other professions that require higher education, artists derive the second lowest share of their income from the market and the highest from gifts and donations, right after the clergy (Abbing, 2002). Donations include those by the state, art exchange, gifts and everyday support from family and friends. For instance in Poland, only 14% of artists' incomes came from art sales, less than the proportion of income they received as gifts from partners and families (Kozłowski et al., 2014). In the Netherlands, 73% of income in the visual arts is derived from the market (Abbing, 2002). In this way, arts are also exceptional because they are exceptionally far from the market exchange.

In the UK, artists earn an average of £ 16.150 each year – less than a half the UK's average salary of £ 38.600. However, only a third of artists income (£ 6.020) comes from their art practice. One in five respondents works three or more jobs, and of those taking jobs, a third work in fields that has nothing to do with the arts (TBR Creative and Cultural Team, 2018).

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Reviewing the existing legal framework and identifying the gaps, the study explores possible policy options to tackle the problems and looks at why EU action is needed. It analyses the potential impacts of the policy options, also conducting a qualitative and quantitative assessment.

The analysis considers that, to a varying extent, the four policy options have the potential to reduce the fragmentation stemming from differing national legislation in the field of working conditions and social security rights for certain groups of workers in the cultural and creative sectors.

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