

**Pearle\* position**  
**on an EU framework**  
**for the social and professional situation of artists and workers in the cultural**  
**and creative sectors**

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## **I. Introduction**

Following up on its resolutions of 2020<sup>1</sup> and 2021<sup>2</sup> on the topic of artists' and cultural workers' post-pandemic recovery and welfare, the EP launched on 12 June a **legislative own-initiative draft report on an EU framework for the social and professional situation of artists and workers in the cultural and creative sectors**, with a view to call the Commission to take action.

With this paper, Pearle\* wishes to contribute to the reflections and present its considerations for a European initiative. It is underlined that comments are based on the experience and scope of the membership of Pearle\* which is the live performance sector, and thus only one of the many other cultural and creative sectors that are being targeted.

Pearle\*-Live Performance Europe is the European sector federation representing more than 10,000 organisations in the music and performing arts sector through its national federations and associate European network associations. Pearle\* represents both public and private organisations, ranging from large enterprises (such as opera houses) employing more than 250 workers to very small and micro-enterprises with one or two employees. Since 1998, Pearle\* is recognized as a European social partner where it represents the management-side in the European sectoral social dialogue committee 'live performance', facilitated by DG Employment. It is consulted under article 154 TFEU on initiatives and proposals of the European Commission in the field of employment and social affairs.

In general, Pearle\* members welcome the attention paid by the European Parliament on the situation of artists and cultural professionals in the cultural and creative sectors. In this regard, it's also welcomed that a parallel debate is taking place in Council, through the OMC group, including representatives of ministries of culture and of employment, on working conditions of artists and cultural workers, as part of the Cultural Council work plans 2019-2022 and 2023-2026.

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<sup>1</sup> EP resolution of 19 September 2020 on "the cultural recovery of Europe"

<sup>2</sup> EP resolution of 20 October 2021 on "the situation of artists and the cultural recovery in the EU"

**Good cultural policy goes hand in hand with taking attention for those working in the sector. In other words, it is conditional for public authorities to interconnect cultural funding, fair remuneration and (the financing of) social security schemes.**

Indeed, the pandemic has highlighted the specific career patterns of people working in those sectors, although social partners had already highlighted the **negative impact of reduced funding for the cultural sector since the economic crisis of 2008** in comprehensive position paper issued in 2016 on the ‘prime role of culture in society’<sup>3</sup>. The sector is highly labour-intensive, moreover creation and production is “made in Europe”. At present the sector also faces increasing financial costs and high investments to keep up with demands on greening and digitization, whilst inflation pushes up the prices of resources and goods<sup>4</sup>.

Therefore, as European social partners live performance expressed in a joint opinion<sup>5</sup>, a single approach focusing on artist income and social status, falls short if the other components of the ecosystem are under threat. What is needed for a healthy and thriving ecosystem, is a policy framework that supports the entire ecosystem of the cultural sector that is embedded in a healthy economic environment, as all elements connect to and influence each other. **If the sectors can thrive so can those working in the sector.** For that matter, the EU can definitely undertake actions in various policy areas.

In this regard, Pearle\* strongly calls upon the EP to take a broad vision when drafting the INL report and when calling for an EU framework for the social and professional situation of artists.

## **II. Background**

During the pandemic, as the EP has underlined in its resolutions, the situation of many artists and cultural workers was under pressure, which made it clear that there was uneven access to social protection and social benefits across countries in the EU<sup>6</sup>.

Such uneven balance has accelerated initiatives in different countries to provide for specific solutions and addressing the gaps that exist to access social protection. Concrete examples are Portugal and Spain that now have a ‘status of the artist’ by which specific attention is given to the career patterns of artists. Other countries, e.g. Czechia, are working on the topic or experiment with other schemes, e.g. Ireland and a basic income.

### **1. The issue**

Because of the differences and variety of situations across the EU, the EP considers that a legislative initiative is desirable so that all Member States would be required to apply common standards on working conditions.

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<sup>3</sup> <https://www.pearle.eu/positionpaper/the-prime-role-of-culture-and-the-arts-in-society-february-2016>

<sup>4</sup> <https://www.plasa.org/plasa-wemakeevents-survey-report-2023/>

<sup>5</sup> <https://www.pearle.eu/positionpaper/joint-opinion-social-partners-live-performance-following-ep-resolution-on-social-situation-of-artists-and-the-recovery>

<sup>6</sup> See <https://www.pearle.eu/activity/covid-19-information-pearle-statements-and-action-on-the-crisis>

The general approach in the EP is that there is a need to improve the lives (i.e. income and social protection) of artists based on an assumption that artistic careers are precarious.

Such simplification is obviously not corresponding with the reality, which is much more diverse and complex. It would do unjust to the initiatives in many Member States for the benefit of artists and not in the least to the achievements realised by social partners, in the form of collective agreements providing a level playing field for all those working in one or the other sector and the many support facilities and mechanisms set up by social partners.

Besides, it would do unjust to the European Union's core principle of a social Europe which is further developed and endorsed by Member States through a set of principles in the European Pillar of Social Rights. This was affirmed at the high level Porto Social Forum in May 2021 and just recently reaffirmed at the second Forum on 26-27 May 2023<sup>7</sup>. It would also neglect the large EU acquis in the field of employment and social affairs, which have been strengthened under the current term of the Commission. These European rules and standards, following transposition in national law, equally apply to the cultural sectors.

On the other hand, the issue is raised on the access to social protection and social benefits of those working in the cultural sector. Whilst the different branches of social protection are organised by the Member States itself, essentially they cover the same areas: sickness, maternity and paternity, old-age pensions, pre-retirement and invalidity pensions, survivors' benefits and death grants, unemployment, family benefits, accidents at work and occupational illness. It is acknowledged in several countries, that there are specific gaps to be addressed for categories of workers, including artists (and cultural workers) that may experience difficulties to access one or the other social benefit. This often results from the specific career and work patterns of those working in the cultural sectors.

## **2. The specific career and work patterns**

In the live performance sector, across Europe, cultural institutions (opera houses, theatres, orchestras), production companies (theatre, music, dance...), festivals, entertainment providers, and service suppliers commonly use permanent contracts for the core basis of their employees. This can range between more than 90% of workers to less than 10% depending of the type of activity and organisation. Across Europe opera houses or theatres are listed as the largest employers, with a 1,000 employees already being considered as the largest employers in the live performance sector.<sup>8</sup> Recently it's been reported that cultural institutions in some countries have difficulties to recruit artists, as the wage scales of permanent contracts tend to be less competitive than when working as freelancer. If combined with a 'beneficial' unemployment status, the effect is contradictory to what policy makers aim for: i.e. difficulties to fill in permanent positions, versus attractiveness of freelance work. But in other countries, one observes another phenomenon: a permanent position with a cultural institution is used as a secure basis (a kind of basic income, without being called this way), whereby one takes up additional engagements and in this way tops up the income. The effect is then reverse, as those in a permanent contract can pick up extra engagements at more competitive level than

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<sup>7</sup> See <https://forumsocialporto.gov.pt>

<sup>8</sup> [Representativeness study](#) of the live performance social partners – October 2021

those whose only income is deriving from non-permanent contracts. This example illustrates that the **labour markets differ substantially between countries**, also depending on the facilities provided through social security benefits and status.

More than 90% of companies are small and micro-companies (whether profit or non-profit)<sup>9</sup>. They usually employ people when a project or a production is planned or hire them on the basis of a service contract. This is referred to as non-standard forms of employment. As it is set against permanent employment as a standard, any other career type is considered as not sustainable, even if in reality this is not necessarily co-related.

A large portion of people in the live performance sector work as 'freelancer'. This is a concept that refers to a type of career and working pattern that can include a combination of periods of employment and periods of self-employment, or mixed and sometimes also combined with longer or more permanent jobs such as teaching at an academy or conservatoire. The figures that are currently available through Eurostat on cultural employment, or more precisely for the live performance<sup>10</sup>, do not provide an accurate picture, as the labour market force survey is still focused on main employment, although it should become possible to obtain more granular information on people with different forms of labour contracts (people indicating second job) in future statistics. **Better data collection** is therefore crucial for good policy-making.

Because of the **mix of employment status**, the income is mixed, as one may have income from wages, assignments through service contracts, copyrights or neighbouring rights, bursaries, or (sometimes informal) work for private occasions.

**Careers may be uneven throughout the time**, whereby a year of full agendas may be alternated with a year of less success, or where years of longer project duration are alternated with years of several succeeding or overlapping small project assignments. Obviously this impacts the level of income taxes, which was an issue raised during the pandemic period, affecting artists in a double way, as they received less income during the pandemic and had to pay taxes on income of the previous year.

In between, there may be periods of research and exploration of new ideas. There may also be periods of training on new skills or upskilling, or there may be periods of unemployment, or others (illness, maternity leave, paternal or carers leave).

Finally careers may also be quite **international** (in average more compared to other workers in the EU) whereby a person may have lived in a number of countries during a lifetime. Whether or not the live performance sector is highly-mobile was the subject of an academic study, support by the EU, and published in May 2021. As the researchers described<sup>11</sup> a highly mobile person in the live performance sector, is characterised by "a high number of cross-border movements (frequency), executing various short-term assignments in different countries (duration) while often having an atypical employment situation (status)".

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<sup>9</sup> See <https://www.pearle.eu/publication/mobilive-final-report> and see [Representativeness study](#)

<sup>10</sup> According to the Labour Force Survey LFS of Eurostat, employment in the live performance NACE90 amounts to 1,3million for the EU27, UK and EFTA

<sup>11</sup> <https://www.pearle.eu/publication/mobilive-final-report-summary>

The reasons of such careers are multiple and explain the specifics of the artistic and creative sectors. To start with, there is a historic development within the cultural ecosystem (of live performance). Since the '80-ies there is an artistic development that is built around (famous) artistic creators and artistic leaders, who work with a pool of people that are committed to be part of the artistic vision and project. At the same time, artists graduating from art schools seek to develop their own talents and interests in an independent way. They often do so, by setting up collectives (groups/bands/ensembles) that work together around a specific artistic idea which they like to test and develop. Several countries also provide direct or indirect (through low VAT or tax exemptions) support to non-traditional arts fields, especially in the live music (such as jazz, pop, rock, world music), comedy, variété, and others.

### **3. The labour market**

From a labour market point of view, the **rules of supply and demand** such as those applicable in many industrial sectors, **do not function in the same way**. Studying an arts degree or other related education has become more and more popular, so the influx on the labour market is large, but the demand is not as such that it can provide enough work. As explained above, it has become quite common that young graduates set up their own groups, bands, ensembles, creation and production companies, even if they have not been able yet to gain experience and reputation. Initiatives supported e.g. through Creative Europe help emerging and young artists<sup>12</sup> to establish a place in the market. But the Covid-crisis hit hard where it concerns technical professions, as technicians left the sector to go and work in other sectors that were able to continue working during the pandemic (e.g. construction sector). However, it is also reported that technicians moved from the live performance to work in the AV & film sector. In addition it is reported<sup>13</sup> that it is difficult to find qualified or specialised people for marketing, sales, PR, communication, fundraising, accountants, data or other IT-specialists, even front of house and those in catering.

**Creation and production of artistic work is blossoming in Europe. Indeed Europe is a hub for talents and artistic encounters.** All those talents hope to be able to be seen and perform on stages. The question is whether the infrastructure (venues, cultural centres, theatres, ...) is expanding enough and obviously whether the audience is interested and willing to see performances and shows. Over the years, there is a slow and steady growth of infrastructure, such as in initiatives which give new purposes to old industrial buildings by turning those into cultural spaces<sup>14</sup>, new buildings (sometimes linked to holding the title of European cultural capital), and a growth in the number of festivals<sup>15</sup> (whether classical, pop, rock, jazz, world music...). Festivals are an indispensable player in addition to the year-round programming of venues, as they can fill the gaps in between two engagements. Whilst opportunities to perform have increased, it is uncertain whether this meets the demand of the high growth of artistic talents.

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<sup>12</sup> See for example <https://liveurope.eu>

<sup>13</sup> See <https://www.pearle.eu/positionpaper/shortages-of-skills-in-technical-production-and-administrative-functions-in-the-live-performance-need-to-be-urgently-addressed-as-part-of-the-european-year-of-skills>

<sup>14</sup> See Trans Europe Halles – history <https://teh.net/about-us/>

<sup>15</sup> See <https://www.efa-aef.eu/en/about/history/>

Finally, an artistic career is highly competitive and very demanding. The pressure to excel artistically is substantial and probably more than in any other sector (apart from the sports sector) extremely personal. There is more and attention to this aspect of well-being and prevention on socio-psychological risks are put in place.

Because of the competition, not everyone stays in the sector throughout their entire career or they may change, sometimes after obtaining another diploma or by focusing on new skills, towards other occupations inside or related sectors. This is not unusual for dancers<sup>16</sup> who, due to physical reasons, change their career at a certain age.

It even so is an issue for the non-artistic profiles working in the sector, where it is difficult for a sector as the live performance to compete on skills and wages with other industrial sectors, which is a major challenge for the years to come.

To summarize, it is a fluctuating labour market. As illustrated above, the situation differs substantially between Member States and between the people themselves working in the live performance sector.

### **III. The European context and EP initiative for an EU framework**

Last April, in its meeting with and survey to stakeholders, including sectoral social partners, various civil society organisations, cultural (EU funded) network, and trade associations, the EP asked a question **which principles** should lie at the basis of a future EU framework for the social and professional of artists and workers in the cultural and creative sectors. Subject to Pearle\*'s reservation on an EU framework (bearing in mind the differences between member states, and sometimes even within a country), a number of considerations can be made in this regard. As a disclaimer, it is underlined that the comments below focus on the live performance sector, whilst note should be taken that the situation in other cultural sectors is different and may not always be comparable, but where possible comments have been made on a cross-sectoral approach.

#### **Consideration 1: the EU social acquis applies also to the cultural sector**

The European Union has a very strong commitment to employment and social affairs. Any initiative and rule which is part of the European acquis also applies to artists and cultural professionals. This includes protection through social security and conditions related to employment, health and safety, gender equality, non-discrimination, and others. There is also a strong copyright acquis<sup>17</sup> protecting specifically creators and performers alike. The European Union also established core and common principles under the European pillar of social rights<sup>18</sup> in 2017 and the ensuing action plan<sup>19</sup> of March 2021. All those do not distinct any citizen or worker from another, and therefore also guarantees that those principles are applied in the cultural and creative sectors.

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<sup>16</sup> See <https://www.omscholingdansers.nl/en/> in NL which has retraining scheme for dancers since 1986, supported by social partners

<sup>17</sup> See <https://digital-strategy.ec.europa.eu/en/policies/copyright-legislation> the EU copyright acquis has 13 directives and 2 regulations

<sup>18</sup> See [https://commission.europa.eu/publications/european-pillar-social-rights-booklet\\_en](https://commission.europa.eu/publications/european-pillar-social-rights-booklet_en)

<sup>19</sup> See [https://commission.europa.eu/publications/european-pillar-social-rights-action-plan\\_en](https://commission.europa.eu/publications/european-pillar-social-rights-action-plan_en)



Before any debate on a European framework on working conditions and status for artists this should be the starting point and basis, as **it is first matter of applying and respecting the European rules in each of the Member States**. There is also a large set of ECJ case-law that has to be taken into account.

In this regard, Pearle\* as employers federation, constantly informs its members of new rules, provides them info and guidance, which in turn they check with the national legislation and inform and train their members. Pearle\* also undertook a European funded project “behind the stage”<sup>20</sup> taking the social pillar principles as the basis to identify and describe the activities of employers organisations, and where applicable together with unions. In countries where there are no similar branch or sector or employers organisations, we observe a lack on informed knowledge and application of the rules by those in the sector. It is also reported that some organisations do not want to become member of an employers association as they do not want to adhere to the collective agreements in place. This may lead to create unfair competition and put a bad reputation on bona fide employers. In other cases informal work is often used as a quick win and a quick way to earn money, but such work does not contribute to the social protection system and does not allow to acquire and build social protection rights. Some Member States also have schemes which allow people to earn income below a certain threshold that is not contributing but also not allowing to benefit of social protection.

The first objective and principle of the EP when taking a look at artists and cultural professionals should be : a call for the application and respect for the European rules in the broad field of employment and social affairs. The EU-wide social acquis applies to the cultural and creative sectors in the same way as other workers. There is still a substantial lack of knowledge and understanding of the rules that apply to employment conditions and others.

## **Consideration 2: acknowledging and supporting role of social partners across the EU**

Furthermore, as a European social partner representing the management (employers) side, whose members in turn are social partners (sectoral or at company level) in their respective countries, it is observed that people working in the sector are often not aware of the role of (sectoral) social partners and their embedded position in society, which is different to the one that civil society organisations have. Indeed the European Union in the Treaty<sup>21</sup> recognises the specific role of social partners, in addition to the fact that the European Union shall consult management and labour (social partners) before taking any action in the field of employment and social affairs<sup>22</sup>.

European sectoral social partners have also full autonomy to their work programmes<sup>23</sup> and on the actions they undertake. At national level, in the sector of the live performance for example, besides concluding collective agreements on wages, they also include agreements on issues

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<sup>20</sup> See <https://www.pearle.eu/activity/behind-the-stage-dec-2017-to-sep-2020>

<sup>21</sup> See [article 152 TFEU](#)

<sup>22</sup> See [article 154 TFEU](#)

<sup>23</sup> See <https://www.pearle.eu/policyarea/social-affairs-and-social-dialogue>

as working time, rest time, rehearsals, breaks, rules related to travelling, additional compensations, and more. Social partners may run sectoral funds, such as on pensions or related to training. They are often also involved in bodies that focus on health and safety at work, and prevention of risks. Recently they have been involved in independent bodies for people who wish to file complaint on transgressive behaviour or sexual harassment.

As such, the **role of social partners is a crucial factor to create a level playing field** for those working in the sector, and to address specific issues. Members of Pearle\* take a general stance to respect collective agreements, apply labour law and health and safety rules, undertake trainings on continuous basis on human resources management, develop fair practice codes, and more.

The second objective and principle of the EP is to underline the crucial role of social partners in creating level playing field for those working in the sector. This implies the necessary conditions for right to association on both sides, employers and labour, also in the cultural sectors. It is noted that in some countries, ministries of culture ignore the potential of what social partners can achieve. The recently proposed<sup>24</sup> Council recommendation to further strengthen social dialogue and collective bargaining at national level, as well as the Communication on reinforcing and promoting social dialogue at EU level, are therefore key instruments to be looked at also for the cultural sectors.

Whether or not this is also extended to solo self-employed is a careful consideration to be made by each Member State as it is closely related to the functioning of labour markets, the labour law and competition law in place and to the role of social partners. The example of the Netherlands<sup>25</sup>, is an exceptional case, as it was a decision and a negotiation that was jointly initiated and undertaken by the social partners in the sector.

### **Consideration 3: adequate social protection as a basic principle**

The social protection schemes in the EU Member States belong to the best developed in the world. Indeed, since the foundation of the European Union employment conditions and protection of workers have been a guiding principle in many areas of activity and policy areas. It shows also clearly from OECD data<sup>26</sup>, that employers and employees in the EU pay in average 35,2% and in EU+EFTA+UK in average 32% social contributions. This is substantially higher than other parts of the industrialized world included in OECD data, where in countries like New Zealand there are no social contributions, or very low (e.g. Australia 5,3%, Canada 16,6% and USA 15,8%) and still lower than Japan (29,9%) and Korea (20,3%). Also self-employed contribute to the social security schemes either directly or through the overall income taxes<sup>27</sup>. Originally schemes were based on people working in fulltime permanent employment, providing them optimal protection and access to benefits. As working patterns changed over time, there is an uneven answer as regards the way in which Member States have provided access to benefits for people working as self-employed or through other (non-standard) forms of employment. **Principle 12 of the European pillar of social rights underlines that everyone has a right to adequate social protection.**

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<sup>24</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_23\\_289](https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_289)

<sup>25</sup> See 2014 ECJ judgment C-413/13 FNV Kunsten v Staat der Nederlanden

<sup>26</sup> Own calculations based on [https://stats.oecd.org/Index.aspx?DataSetCode=TABLE\\_III2](https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_III2)

<sup>27</sup> See [https://stats.oecd.org/Index.aspx?DataSetCode=TABLE\\_III2](https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_III2)



This is also addressed in the Council recommendation of November 2019 on access to social protection for workers and the self-employed<sup>28</sup>.

It seems quite obvious that when all contribute to the social protection scheme it is then expected that one can benefit from it, when it is needed. **Employers and employees pay contributions from day one of employment.** When there are waiting times or thresholds related to a duration of employment, in the case of several contracts of short duration, contributions are made from day one, whilst social benefits are not automatically linked to the payments made. Indeed, governments have built in thresholds before one can access one or the other benefit. Whilst this was already an issue before the pandemic and was addressed on various occasions, it is with the pandemic that it became clear for the wider public and with public authorities that it could no longer be accepted to ignore that a specific group in society is denied access to benefits even when contributions are made, and even if everyone in the EU also enjoys minimum protection, such as the recently adopted recommendation on adequate minimum income<sup>29</sup>.

The third objective and principle for the EP, is to underline that adequate social protection schemes provide to artists an important level of sense of security in case of sickness, unemployment, as well with regard to pension or old age income, care, and minimum income. With adequacy is meant the access to social benefits that take into account the specific career pattern of artists and cultural workers, by which they are exempted from waiting times or thresholds, or other conditions (e.g. having to be available for the general labour market during unemployment).

#### **Consideration 4 : the role of copyrights and neighbouring rights as source of income**

The EU has established a large *acquis* to protect creators and artists when it comes copyrights, neighbouring rights and other intellectual property rights, to ensure income for those mainly living of their creations. Rightsholders, receive therefore income from their creative work from the fees collected through collecting management organisations (CMOs) and music publishers. In the live performance sector, besides social security contributions as explained above, employers also contribute by paying fees which are not calculated on the artists fees, but on the tickets sold and other income collected from the audiences.

The fourth objective and principle for the EP, is to acknowledge the achievements of the European Union over the decades of existence in the field copyright and neighbouring rights. It is crucial for the EP to endorse that copyrights and neighbouring form an essential part (sometimes fully) of a creator or artist income.

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<sup>28</sup> See [https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AC%3A2019%3A387%3ATOC&uri=uriserv%3AOJ.C\\_.2019.387.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AC%3A2019%3A387%3ATOC&uri=uriserv%3AOJ.C_.2019.387.01.0001.01.ENG)

<sup>29</sup> See <https://www.consilium.europa.eu/en/press/press-releases/2023/01/30/council-adopts-recommendation-on-adequate-minimum-income/>

### Consideration 5: short-term mobility requires proportionate and adequate rules

A core principle of the European Union is the **free movement of persons, services and capital**, which covers a large part of the Treaty of the EU<sup>30</sup>. This year, the EU celebrates the 30<sup>th</sup> anniversary<sup>31</sup> of the Single Market, which is considered as one of the major achievements of European integration.

As mentioned in part II of this paper, international careers are quite common in the cultural sectors. Again, this has very different dimensions. A European funded study undertaken on *“cross-border employment in the live performance sector. Exploring the social security and employment status of highly mobile workers”* shows that there are very diverse patterns with regard to the transnational dimension of the live performance sector. On the one hand there is a percentage of people not very active in a transnational way and on the other side of the spectrum there is a percentage of people that are very active transnational. The concept of highly mobile workers seems to be difficult to define, and there are different approaches and descriptions: one approach is that of looking at two variables, i.e. ‘how frequently’ a person is mobile and the ‘length of stay’; another approach is that of geographic mobility and job mobility (referring to pattern of work engagement); another one is that of professional activities that are characterised by a very intense and high degree of mobility; finally, the ECJ describes another approach in the *Dobersberger*<sup>32</sup> case that highly mobile workers are different to other mobile workers when they have no connection to either the country of origin or the country of destination, but that their place of is immaterial, which would be difficult to argue for mobile artists performing at different locations.

As such, the concept of highly mobile worker may only fit a very small percentage of people, with a **much broader basis of artists that can be identified as people working internationally**, but with the specific notion that it often concerns short (to very short) transnational activities. It is the latter that makes international working in the sector unnecessarily complicated and difficult for both employers and employees, as well as for self-employed and for freelancers.

There is a clear conflict between EU cultural policy promoting and supporting mobility, whilst international and European rules in the field of employment and coordination of social security lead to administrative burdens because of enforcement rules. On top, it is noted that Member States create additional obstacles through administrative burdens which lead to disproportionate compliance costs compared to the short period of mobility to another country. It results even in cancellations of cultural and transnational cooperation, because of the related administration.

The fifth objective and principle for the EP is to call for a rebalancing of EU rules, so that it is fit for purpose and does not lead to unnecessary or disproportionate conditions to be fulfilled by employers, employees, self-employed, and citizens when working across Europe and internationally.

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<sup>30</sup> See [title IV](#) of the European Treaty

<sup>31</sup> See [https://single-market-economy.ec.europa.eu/single-market/30th-anniversary\\_en](https://single-market-economy.ec.europa.eu/single-market/30th-anniversary_en)

<sup>32</sup> ECJ Case C-16/18 *Dobersberger* – AG Opinion

## **IV. Addressing gaps and providing solutions**

### **1. Addressing the gap “lack of stability and security”**

The main challenges people face in the cultural and creative sectors are to be situated with the variable working patterns and related to that the a degree of uneven income, as well as the protection of their intellectual property rights. A broad policy is needed because of several reasons: highly labour intense sectors, such as the live performance, are substantially underfunded and underfinanced, furthermore with the digital age there are other industries (such as technology companies, streaming platforms) that impact the cultural sectors business models and income levels, and finally there is an uneven balance between supply and demand of labour, and the high competition between talents. A broad policy should therefore provide the **right incentives on the right place**, including a combination such as tax incentives, reduced VAT rates, specific rates for social contributions where they are high, funding that takes into consideration the labour cost for the number of people employed, targeted exemptions when they clearly hinder the ecosystem.

Artists want to create, develop, and be seen, heard, read, ... more than anything else. Whilst schemes like securing unemployment from day one at the highest level and exempting from being available for the general labour market, or through a basic income scheme may provide a solution for particular countries, other schemes exist which allow people to obtain targeted training, and get re- and upskilling, when not being in employment.

**SOLUTION:** given the variety of labour markets and social protection structures, the OMC method allows for Member States to exchange on a regular basis good practices (on the social status) in the field of social security and others cross the EU. It also allows to monitor the situation in different countries, by presenting an annual report to the Culture Council. Thanks to the reporting, besides between Member States, it also helps to advance the debate in each Member State, and to be encouraged to take initiatives. An annual report allows the Commission and EP to take stock of and evaluate the progress made.

### **2. Addressing the gaps of “social dialogue structures in some Member States”**

2.1. Whilst social dialogue is embedded in the European treaty, there are still countries where an autonomous dialogue between management and labour or employers and workers in sectors like the cultural sectors are not recognized or facilitated<sup>33</sup>. It is hoped with the recent social package those countries may be stimulated to catch up soon.

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<sup>33</sup> See several reports of European social partners sector ‘live performance’

**SOLUTION:** the Commission can more actively encourage and promote sectoral social dialogue towards ministries of culture. Whilst European social partners have done so and continue to do, it is of great importance that the Commission addresses directly Member States that fall short in setting up sectoral social dialogue structures. A specific attention by the Commission on the cultural sectors can be given once the 'Council recommendation on strengthening social dialogue in the EU'<sup>34</sup> is adopted and becomes implemented. If (sectoral) social dialogue is practiced across the EU, it also strengthens the European social dialogue and as such can contribute to the objectives presented in the Communication of January 2023 on "Strengthening social dialogue in the European Union: harnessing its full potential for managing fair transitions"<sup>35</sup>.

2.2. Negotiations between organisations representing employers and workers (social partners) through social dialogue and collective agreements help to improve living and working conditions. It is essential that the collective agreements are applied and respected, as they create a playing field for all those working in a specific sector.

In this regard the use of contractual arrangements, including labour contracts are a way to ensure that social security contributions are made so that one can benefit of entitlements when needed. Proper labour contracts (permanent or fixed term) are therefore favoured above service contracts. When service contracts are used the payment can take into consideration the personal cost of paying into the social security system as a self-employment. In a transitional period, Member States could encourage the take up of employment contracts, which provide for contributions to the social security system, by providing a reduced social contribution in countries with very high social charges or countries lagging behind in the practice of using employment contracts. The idea behind is that if more contribute at a 'reduced' social charge, it will be better than a limited number at a high social charge. In the end this would also contribute to the 'Future of social protection and the welfare state in the EU', such as explored by the high level group that finalized its work in February 2023<sup>36</sup>.

**SOLUTION:** funding bodies can ask to provide information on the contractual arrangements that will be used, and where applicable, to reference the collective agreement. In addition, at national level, when labour contracts are used, funding bodies should top up with enough support to realise the objective. It could be considered to do so in combination with a reduction on the social charges , as way to encourage entry into applying EU labour law acquis and for a transitional period.

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<sup>34</sup> Proposal for council recommendation <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023DC0038>

<sup>35</sup> COM(2023) 40 final <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023DC0040>

<sup>36</sup> See the report of the group chaired by Anna Diamantopoulou, former Commissioner of employment and social affairs <https://op.europa.eu/en/publication-detail/-/publication/842d8006-c3b3-11ed-a05c-01aa75ed71a1/language-en/format-PDF/source-283143938>

### 3. Addressing the gap of access to (sufficient) social benefits

3.1. Because of the variable working patterns of many working in the cultural and creative sector that often lead to a lack of accumulated entitlement to benefits, it would be recommendable to change the threshold to start from day zero. After all employers as well as employees pay social contributions as from day one, whilst this is not to the immediate benefit of the persons concerned. Whilst there are no figures or evidence this surely must signify large amounts paid into the social security schemes over the past decades.

SOLUTION : an EU recommendation to MS calling to provide social entitlements from day one in line with social contributions that are paid for those working in defined NACE categories (to be exactly determined)

3.2. Self-employed, if not obliged by law in their respective country, should be encouraged to contribute to health insurance schemes, pension schemes, income insurance schemes for emergency situations. Depending on the income the contribution can be pro rata of the capability of the person concerned with an absolute minimum of contribution, matched by a dedicated scheme supported by ministry of culture and/or employment, for the lowest and lower incomes.

SOLUTION : an EU recommendation to provide for social protection schemes fit for those in the cultural sectors with different and alternating statuses, where appropriate and depending on the country.

### 4. Addressing the gap on social security and cross-border mobility

4.1. International work is common in the cultural and creative sectors, but should not be hindered by administrative burdens or uncertainty on entitlements or unclarity of which social security system applies. The social security coordination regulation aims to find solutions, which in theory and on paper may seem logic, in practice they are hard to apply for people with (very) short term mobility and working in several countries. For example the 25% rule to determine how much of the activities (time/income) a person spends in a resident country to identify which is the applicable legislation, is hard to use in practice, as the working and career patterns are much fluctuating. Scholars and academics have almost since the beginning of the social security coordination discussed the idea of the so-called 13<sup>th</sup> state, a supranational body that collects the contributions and redistributes to those entitled. Whilst it is worth further exploring from an academic and legal viewpoint, the challenges with regard to issues of governance, functioning and practical arrangements to set up such system are major, whilst it may also be vulnerable to potential risks of fraud. Moreover to make it workable and for all Member States to agree will take many years, if not decades (a generation), to develop.

Pearle\* favors **pragmatic solutions** which can be of help of artists and cultural workers immediately. Indeed, social security administrations can agree to specific solutions, such as the recently announced framework agreement on telework<sup>37</sup>, which became an issue due to the changing work patterns of a growing number of people working virtually since the Covid-crisis. In the case of telework, the text of the agreement was finalized in merely six months' time.

It sees therefore the **development of digital solutions** currently deployed or in pilot as an opportunity to solve specific gaps. Thanks to EESSI, the Electronic exchange of social security information, social security administrations can exchange data quickly and in a secure way. This is particularly important for cross-border work. As article 16 of the social security coordination regulation 883/2004 describes: "Two or more Member States, the competent authorities of these Member States or the bodies designated by these authorities may by common agreement provide for exceptions to Articles 11 to 15 in the interest of certain persons or categories of persons."

**SOLUTION** : several Member States can agree under article 16 that the social contribution for a worker (employed or self-employed) under articles 12 (posting) and 13 (working in two or more Member States) engaged for a short period of time (e.g. always shorter than 2 months) by an employer in NACE 90 (eventually others) is paid in the country of the employer or self-employed. The employer of the sending state could make clear through a dedicated code that it concerns a non-resident worker on the salary slip with a corresponding country code indicating the person's country of affiliation and is used throughout the EESSI system. In the EESSI the data are then transferred from country X (the employer) to country Y (worker). The ESSpass<sup>38</sup> would be instrumental as it would allow to identify the country of affiliation of the non-resident worker concerned.

A discussion can be held in the administrative commission on social security to establish a commonly agreed code that is accepted and recognised by all Member States and will be applicable for short term engagements (e.g. by employers registered under NACE 90).

As a result the level of compliance of payment of social security contributions by employers is up to a maximum, whilst the follow up by the administrative body in the country of individual person concerned is reduced to the endorsement of the social contribution. It reduces the costs of enforcement by public authorities as employers will comply automatically with the social security conditions for the non-resident worker, whilst -being micro and small companies- mistakes are made, due to ignorance or understanding of the processes and practices in other countries. It also overcomes the difficult question to determine the applicable legislation and country of residence, which is : 'does the person pursues a substantial part of the activity in the Member State of the country of residence'.

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<sup>37</sup> Framework Agreement on the application of Article 16 (1) of Regulation (EC) No. 883/2004 in cases of habitual cross-border telework, see <https://campaigns.eraanova.fgov.be/m-4fe0d8137eb155b13d14d17db3f7df650d78dfbc68ca8b51>

<sup>38</sup> See <https://ec.europa.eu/social/main.jsp?catId=1545&langId=en>



An agreement within the administrative commission on social security, would provide certainty both for the employer, fulfilling his duties, and the individual person concerned for having his rights ensured.

4.2. In the ongoing discussion on business trips to require an A1 form as part of the trilogue negotiations on the revision of the social security coordination regulation, it is surprising that legislators would give business travellers an exemption, whilst on a daily basis artists cross borders for sometimes even less than a day, or just a few days. It would discriminate artists and cultural workers posted for very short period against business travellers should the latter become exempted to present an A1 whereas artists that travel for very short periods of a few days would not be exempted even if the travel pattern is similar.

**SOLUTION:** As a general rule it would be better to consider all very short term posting to become exempt of the requirement to provide an A1. In fact, as the info on a persons' affiliation are normally available in the EESSI system and could also be facilitated (in future) through the ESSpass it should be solved thanks to the digital progress and developments made and as such the regulation could be amended to an exemption of very short-term posting (instead of business trips). In the same line, as is the case already in a few countries, exemption on administrative declaration for short postings in the meaning of the posting directive, is recommendable to all Member States.

## **5. Addressing the gap of cross-border taxation for performing artists**

When wanting to tackle issues related to working conditions and social status, also the aspect of taxation needs to be taken into account. Taxation is a member state competence, but when it comes to cross-border issues, the EU can establish ways of cooperation, such as in the field of administrative cooperation on direct taxation<sup>39</sup>.

According to the OECD model tax convention, updated in 2014 (and 2017)<sup>40</sup>, a country where a performing artist has a show, may levy withholding on the income earned of the performance in that respective country. This highly unfair practice is only applied to performing artists (and sportspeople). The large majority of artists are either employed or earn less than 20,000€ in another country. It is time to end this ongoing discriminatory situation.

**SOLUTION :** repealing the provisions in Member States' double taxation treaties with each other dealing with artists (and sportspeople) (art 17) and employees (Art 15 (b) and (c) of the OECD model by treating employed artists in the same way as any other employee in the EU working cross-border and by including a threshold of 20,000€ for self-employed, before withholding tax applies.

<sup>39</sup> See [https://taxation-customs.ec.europa.eu/taxation-1/tax-co-operation-and-control/general-overview/enhanced-administrative-cooperation-field-direct-taxation\\_en](https://taxation-customs.ec.europa.eu/taxation-1/tax-co-operation-and-control/general-overview/enhanced-administrative-cooperation-field-direct-taxation_en)

<sup>40</sup> See <https://www.oecd.org/ctp/model-tax-convention-on-income-and-on-capital-full-version-9a5b369e-en.htm>

As a result an end would be made to the long discrimination of treatment of performing artists with “normal wages” and “normal income”, whilst the top earners would still be subject to article 17 of the OECD model tax convention that aims to tackle fraud and tax evasion.

Now that at an international and at EU level several initiatives are put in place to address tax evasion and tax fraud, there is no longer a need or an argument to apply the right to levy withholding tax on employee performing artists or elf-employed earning less than 20,000 euros outside their resident country.

## **V . Conclusions**

Pearle\* welcomes the interest taken by the EU on the social situation of artists and cultural workers. As explained extensively, given the specific career and work patterns and the differences between Member States and the pace of reforms on social systems, there is no one-size-fits all EU solution. However, a number of initiatives can be taken by the EU and European bodies, such as in relation to cross-border mobility, which would already make a substantial difference and concretely contribute to Europe’s goals on cultural diversity and on a social Europe, and in relation to exchange of good practices and training for those working in the different sectors.