



Opinion of the European social partners 'live performance' following the reference of the Commission in its response to the EP **non-legislative resolution on the situation of artists and the cultural recovery in the EU** of 20 October 2021

Brussels, 20th June 2022

Introduction

This paper is in response to **European Parliament non-legislative resolution on the situation of artists and the cultural recovery in the EU** of 20 October 2021 and to the written response from the Commission to the EP of mid-March 2022.

In its response, the Commission makes a reference to the European social dialogue committee 'live performance' in the following paragraph:

Concerning the **European Status of the Artist and a common framework (paragraph 25)**, the Commission welcomes the Parliament's resolution. As regards the Parliament's proposal to establish an additional working group in the framework of the OMC and the call for a monitoring process: on the basis of the OMC group's recommendations (planned for mid-2023), it would need to be discussed with the Member States how and in which form to best ensure an appropriate follow-up. As to a Common Framework for a European Statute of the Artist, based on social partners' opinions via the sectoral social dialogue on performing arts, the Commission needs to reflect what can reasonably be done.

General remarks

The European social partners in the live performance sector welcome the attention given by the European Parliament's Culture committee to the impact of the Corona crisis on the cultural sector.

As the EY study 'rebuilding Europe' demonstrated, the two sectors most hard hit among cultural sectors were music and the performing arts, with dramatic falls in turnover of respectively 76% and 90% in 2020.

The European social partners in the live performance, representing Pearle*- Live Performance Europe on the employers side and the EAEA, composed of FIA, FIM, and UNI MEI on the workers side, warmly welcomed the European Parliament's call for a 2% reservation of the resilience funds to go to culture.

1

Pearle*-Live Performance Europe, Square Sainctelette 19, B-1000 Brussels

Tel: +32-2-203.62.96, e-mail: info@pearle.eu

EAEA-European Arts & Entertainment Alliance, p/a UNI-MEI/FIA, rue Joseph II, 40, B-1000 Brussels

Tel : +32-2-235.08.74, e-mail office@fia-actors.com

However, we also urge the EP to direct this guideline more precisely, so that the funds are distributed pro rata to those cultural sectors most severely affected.

European sectoral social dialogue

The European social dialogue committee ‘Live Performance’ was set up in 1999. It celebrated its twentieth anniversary in the presence of Joost Korte, Director-General Employment & Social affairs and Tamas Szucs Director at DG Culture on 10 October 2019.

Another social dialogue committee was set up in 2004 for the audiovisual sector, where the same unions, together with EFJ, representing journalists, meet with a delegation of the sector’s employers (EBU, ACT, CEPI, FIAPF, AER).

Role of social partners

According to art 154 of the European Treaty social partners are consulted on matters relating to the social policy field. This means that as recognised representative organisations they can contribute to European policy in the area of employment and social affairs.

At national level in the respective Member States social partners have a mandate to negotiate collective agreements on working conditions, which also includes pay, applicable in the sector. More information can be found in studies published by Eurofound¹ in 2021 on the representativeness of social partners (live performance & audiovisual).

Since the enlargement of the EU, the European social partners have undertaken studies, seminars, and trainings, to help the setting up of social dialogue in countries where this is still underdeveloped.

Social dialogue and collective agreements create a level playing field that provide a framework for those working in the sector and facilitates the creation of specific bodies that deal with issues such as training in the sector, pension funds, health, protection of victims of sexual harassment, etcetera. Social partners also provide advice, and input to government initiatives and policy making, including on artist status or other schemes.

Comments to the process of social partner involvement in the context of the recent EU’s cultural policy

As described above the social partners have a specific role in contributing to EU policy making in the field of social and employment affairs, alongside the role of the three institutions. At national level this is often taking place in a tripartite structure of government, and social partners (employers and trade unions).

It is therefore surprising that the EU institutions ignored this role when it started to work on the subject.

¹ <https://www.eurofound.europa.eu/observatories/eurwork/representativeness-studies>

Firstly, it is noted that the EP resolution refers to collective bargaining for self-employed (article 23) and in the online environment (article 43), whilst it hasn't referred to the specific role of social partners who conclude collective agreements, their contribution to policy discussions and the development of adapted social structures. Secondly, social partners equally noted with surprise that the DG Culture in the Voices of Culture structured dialogue put social partners at the same level as other organisations and individuals that were selected to the group, while the discussions were organized precisely around themes pertaining to the very core of social dialogue (e.g. working conditions, access to social protection, social benefits of freelancers, etc). This seems to point in the direction of a lack of awareness of the role of social partners.

In this regard social partners welcome the proposal put forward in the Nahles report² and the current review of the European social dialogue to appoint a social dialogue coordinator in each DG of the Commission.

Finally, social partners note that the Member States OMC group on working conditions is not actively involving social partners in a genuine tri-partite discussion.

Social partners deplore this approach by the cultural policy makers in the three institutions.

This approach seems to ignore the policy objectives in the employment field to which the EU institutions have adhered in follow up of the European pillar of social rights, and the role of social partners in respective Member States.

Role of social partners in the Member States on matters related to social protection

Social partners have a key function, thanks to their know-how and experience, when Member States develop artists' social protection mechanisms and access to social benefits.

Against the background of the large EU acquis on employment and social affairs each country has to respond to the challenges and structure of the labour market in their respective country and take into account the specific social and tax situation to deploy the best possible model. In this regard, there is no one-size-fits all solution.

For that reason, the social partners very much welcome the exchange between Member States in the OMC working group as it promotes learning from best practices and in this way raises awareness of the specific needs of the sector, a sector which has suffered since the economic crisis of 2008 and the wave of reduced funding across Europe that it drove.

As social partners underlined in their joint statement of February 2016 on the Prime Role of Culture on Society: "culture and the arts have a public mission in society". Whilst noting this, it was also observed that: "Everywhere across the EU we see swingeing cuts having an impact on production and employment, the ramifications of which will continue to be felt in the sector far into the future."

² Report by Ms Andrea Nahles on '[Strengthening EU social dialogue](#)' – February 2021

In their joint statement on 12th March 2020, at the very beginning of the Covid-pandemic they immediately urged governments to take emergency measures in support of the live performance sector, underlining that: "Without appropriate support measures, these decisions will have devastating economic and social consequences on the live performance sector".

Indeed, it is vital that public authorities provide the much needed support, fully acknowledging the value of public investment in the arts and culture at all levels and relevant policy areas. Public support for the sector needs to ensure that organisations can invest in all aspects of their activities, including digital and green transition, production costs and the payment of the wages. Collective agreements in this regard provide for a level playing field. Collective bargaining is a social partner prerogative and is a key means through which employers and their organisations and trade unions can establish fair wages and working conditions. It is a vital instrument to improve working conditions and ensure harmonious and productive industries and workplaces. Public support should uphold collectively bargained terms and conditions for work and encourage them where absent.

Role of European social partners

In the coming two years, the European social partners in the live performance intend to map the social dialogue structures which are set up in the different Member States and in which they are involved: it will include initiatives that provide training, employment transition support, labour market analysis, pension funds, organisations dealing with health and safety, support to victims of sexual harassment, etc. They also intend to provide information about collective agreements. All this information will become available on a web platform to the wider public.

This should help raise awareness in the sector on what exists and what social partners have achieved across Europe. It will also help to identify areas for further exchange and work in the European social dialogue committee. Social partners would be delighted to inform the EP Culture committee about the progress of this work and present best practices on initiatives in different Member States.

Finally but not least, we would like to mention the cooperation of social partners, with cultural networks and initiatives such as On-the-move and the Mobility Info Points, on specific issues related to artist mobility. In some areas there exist exemptions for artists, such as in the case of travelling with musical instrument containing protected species, which are beneficial to artistic mobility. However, artistic mobility is often harmed in the field of taxation since Member States have the right to withhold tax on income in the country where a performance takes place. This is also the case in the field of social security where the European social security coordination regulation does not provide a solution to highly mobile artists who work in several countries.

Despite its limited competences in this field, the EU could provide support as through guidance, information, tools, further research, and through initiatives aiming at reducing administrative burdens, such as by applying a threshold on taxing artiste income for performances abroad which would benefit a large majority of performing artists.

Comments to the EP call for a European status of the artist

For reasons linked to the respective competencies of the Commission and the Member States in the various fields that are relevant to the matter, the concept of a European status for artists cannot be envisaged as one binding framework applying uniformly across the EU. It seems reasonable and practicable that the Commission addresses different issues through different instruments which, added to one another, could constitute a coherent response to the Parliament's call.

The pandemic revealed weaknesses and gaps in the existing social security framework in countries across Europe, in particular in relation to the freelance and intermittent working patterns that are common in the sector. The system is often ill-adapted to making it possible to access social protection and social benefits.

The working patterns of artists and cultural workers vary hugely and cover a whole range of statuses and may include different forms of income from work. These may range from employment contracts during certain periods, self-employment (sometimes in combination with other forms of work) and sometimes artists and cultural workers may even have a civil servant status (e.g. when teaching or when employed on a long-term contract by a public cultural institution). This varied picture is often described under the loose term of "freelancing" which evokes the combining of incomes and statuses that many artists and cultural workers will experience. The term refers to different realities in different countries however, in some: a "freelancer" will be mostly operating on a self-employed basis, whilst in others a freelancer would have a series of fixed-term employment contracts, and yet elsewhere, patterns are more mixed. This is evidenced across Europe and while there are commonalities in the challenges arising from the intermittent nature of work and the challenge of combining different forms of work, which are evoked in the reflections on a European status of the artist, nonetheless, these play out in different ways in different countries, meaning national level solutions must be tailored to national situations, with national social partners well placed to reflect on them.

At present, in many countries, public employment and social policies (including pension schemes), are not designed to respond to such variations in careers nor are they always well-adapted to the often highly mobile working lives of artists. European exchanges can definitely add value and create a context where these issues may be better addressed through shared experience and better coordination.

At the European level, the European Pillar of Social Rights contains several principles which are relevant and of interest to artists and cultural professionals and the ensuing Action Plan contains several legislative initiatives which will also apply to them. It means that:

- the issues linked to social policy or the single market could be addressed in the form of directives or regulations, provided they do not disincentivise or restrict the freedom of national social partners to negotiate collective agreements.
- Cultural policy issues could be subject to non-binding instruments. The Open Method of Coordination, explicitly mentioned in art. 25 of the Resolution of 2021, represents one relevant tool to design and adopt such non-binding instruments.

Bearing in mind the limited competences of the European Union on social policy issues, a European discussion can also help to foster a common European understanding of what the status of the artist entails, the problems that it seeks to address and initiatives that member states can undertake.

Therefore, and in respect of the Member States competences, tailor-made solutions are required to address specific gaps that prevent artists to access social protection. A live performance also depend on many “behind the scenes” cultural professionals, who working patterns and who also require consideration for a flourishing cultural sector.

Conclusion

Social partners welcome the EU’s interest to the situation in the cultural sectors following the pandemic.

It is expected that it will take at least another two years for the live music and performing arts to recover from the impact of the Covid-crisis, which requires the full support of the EU institutions. With the new crisis, due to the invasion of Russia into Ukraine, the sector is even more destabilised.

Social partners are prepared to be involved in a more structural dialogue with the EU institutions on the particular issues which fall within their scope of activity and mandate.

Social partners consider the European Parliament’s call for a European status of the artist in the non-legislative resolution as a welcome invitation to policy makers to recognise the specific nature of artistic work and careers and as a concrete call to address gaps in social protection or working conditions as an important step in the cultural recovery. Social partners at national and European level are ready to take an active role in contributing to solutions that best meet the sector’s needs.