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The status and working conditions of artists and cultural and creative professionals

Executive summary

European Expert Network on Culture and Audiovisual (EENCA)



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Executive summary

Background to the study

One of the five priority themes of the Council Work Plan for Culture 2019-2022 is 'An **ecosystem supporting artists, cultural and creative professionals and European content**'. The objective of this study is to explore the concept of artist status and the working conditions and career paths of artists and creative professionals.

This study has been conducted during what are **extremely challenging times for the cultural and creative sectors amidst the COVID-19 pandemic**. At the time of writing, European countries are deploying unprecedented emergency responses to address the challenges facing the public health and social security systems across the continent. COVID-19 has already had a dramatic effect on the cultural and creative sectors, and the closure of cultural venues, along with the cancellation of performances, exhibitions and festivals is resulting in catastrophic economic, social, cultural and human consequences. As the following sections of this report will show, cultural and creative sector professionals are often already in a precarious situation (self-employed, freelancers, irregular contracts...), and with the additional circumstances related to COVID-19, many are left without any regular sources of income.

Background on working conditions and employment for artists and cultural and creative professionals

Those who work as **artists and professionals within the cultural and creative sectors work in a wide variety of ways**. Some spend the majority of their careers within the same structure or collaboration, while many others operate in a number of different environments through freelance or other precarious statuses. Artists and cultural and creative professionals are **highly likely to be self-employed, freelancers, work part-time, combine two or more jobs, or do not have a permanent contract**, which means that they are often excluded or only partially covered by social security protection.

Many artists and cultural professionals therefore have a **secondary job in either an arts- or non-arts-related field**, motivated either by (artistic) interest, or by (financial) necessity, which provide access to a certain degree of (social) security. One of the biggest challenges for such artists is to ensure that there is enough time to devote to their art or creative endeavours.

Artists and creative professionals tend to **get involved in cross-border mobility**, which is often a central component of the professional trajectory of their careers. Mobility patterns can be unpredictable and very often depend on the type of projects and opportunities that are available to an artist or creative professional.

Increasingly, there is a **shift away from the standard model of employment to more insecure forms of work**. The rise of the platform economy is having significant repercussions on the cultural and creative sectors, impacting artists and professionals as well as traditional intermediaries such as publishers and record labels.

European and international policy framework

The **New European Agenda for Culture adopted by the European Commission** in May 2018, together with the Council **Work Plan for Culture 2019-2022** provide the framework for actions and cultural cooperation at EU level. The Agenda has three strategic objectives with social, economic and external dimensions. One of the concrete actions is to support Member States in ensuring fair remuneration for artists and creators through general and sector-specific dialogues. The Council **Work Plan for Culture 2019-2022** identifies an “ecosystem supporting artists, cultural and creative professionals and European content” as one of the five main priorities for European cooperation in cultural policy-making.

The European Commission has initiated a series of **legislative and policy instruments** that have an impact on some aspects of the status and working conditions of artists and creative professionals discussed in this report. For instance, the 2017 **European Pillar of Social Rights** serves as a guide for the renewed process of convergence towards better working and living conditions in Europe. It sets out 20 key principles and rights essential for fair and well-functioning labour market and welfare systems in the 21st century. Other relevant EU legislation includes Regulation (EC) No 883/2004 on the coordination of social security systems, Directive 2010/41/EU on the application of the principle of equal treatment between men and women who are self-employed and the 2006 VAT Directive 2006/112/EC.

In addition, the European Parliament adopted a **resolution on 7 June 2007 on the social status of artists**, drawing attention to artists' social security and revenues problems, as well as their often precarious employment situation. In June 2016, the European Commission adopted a communication¹ on the collaborative economy. In June 2017, the European Parliament adopted the **resolution for a European Agenda on the collaborative economy** as a “first step towards a well-balanced, more comprehensive and ambitious EU strategy on the collaborative economy”. Whilst recognising the various opportunities which the sharing economy may create, the Agenda outlines the important challenges and risks arising, such as consumer protection and employment relations between collaborative platforms and workers.

The **EU Gender Equality Strategy 2020-25** was adopted on 5 March 2020. The EU Gender Equality Strategy is comprised of policy objectives and actions aiming at achieving significant progress by 2025 and moving towards a gender-equal Union. The primary goal of this strategy is to ensure that within the EU, women and men, girls and boys are free to pursue their own paths in life, have access to equal opportunities to thrive and can equally participate in and lead the European society.²

At international level, the 1980 **UNESCO Recommendation concerning the Status of Artists**³ “calls upon **Member States to improve the professional, social and economic status of artists** through the implementation of policies and measures related to training, social security, employment, income and tax conditions, mobility and freedom of expression”. The 1980 Recommendation does not call on states to grant artists specific privileges, but rather to grant them analogous rights to any other socio-professional group whose work has specific characteristics that need to be addressed through special measures.

¹ Commission Communication on the collaborative economy - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A356%3AFIN>

² European Commission, “Gender equality strategy”, available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en

³ <https://en.unesco.org/creativity/governance/status-artist>

The **OECD Model Tax Convention** is a model for countries concluding bilateral tax conventions, and plays a crucial role in removing tax-related barriers to cross border trade and investments. The rules outlined in this model treaty have implications for artists and creative professionals who work across borders.

National legal and regulatory frameworks

Artist status

The Status of the Artist is a transversal issue that draws on several legal areas and numerous institutional competencies. An important reference here is the 1980 UNESCO Recommendation concerning the Status of the Artist. The **improvement of the legal and social status of artists** is one of the objectives of many stakeholder organisations working within the cultural and creative sectors.

Laws in Member States that provide status and recognition to artists can help regularise their status as a professionals and acknowledge the atypical way in which they work. Approaches vary across the EU and in some cases there are no measures at all. The most comprehensive laws include a wide range of concrete policies and measures that address specific issues and challenges faced by artists. Having a dedicated law specifically relating to the status of the artist can be useful and should be encouraged, but some stakeholders point to measures not necessarily being the most effective means of addressing the issues faced by artists.

Due to COVID-19 and the resulting income losses, it has proven to be extremely difficult for artists to prove that they have been working as artists and to prove their eligibility for the status of artists and the subsequent social security benefits. The **outbreak of COVID-19 has exposed the fragility of a labour market increasingly shaped by the growing gig economy, zero-hour contracts and self-employment**. New forms of work lack traditional employment benefits such as paid sick leave, social security and health insurance, maternity leave and other benefits.

Minimum wage and basic income

Most EU Member States have either an hourly or monthly minimum wage for employed workers, yet **many workers are currently not protected by adequate minimum wages in the EU**, with major gaps in the coverage of minimum wages across the EU. Within the CCS, the status of self-employment and/or freelance is highly prevalent, and it is usually the case that minimum wage does not apply to this group of workers/people.

Opinions within the sector on the value of minimum wages set for the CCS are mixed. A common practice within the CCS in some Member States is that artists and creative professionals are often contracted for less time than they actually work, as employers can rely on the rest being paid out of unemployment benefits. Hence, artists and creative professionals are often charged/paid for less hours than actually worked. For some artistic professions, it is **difficult to set minimum rates of pay**.

Member States have started to take **initiatives for fair pay of artists and cultural professionals**. Some Member States prefer to speak about "fair practice", rather than "fair pay" in order to go beyond salary and to link up to 'good governance' and policies for diversity and inclusion. Work on this issue is ongoing and should further be discussed at EU-level, including sharing of experiences and good practice.

There have been calls for a **universal basic income** as a way of encouraging a more diverse range of people to think about the potential of developing a career in the arts through the creation of economic stability. The conversation around universal basic income has resurged during the COVID-19 crisis to help buffer its catastrophic economic and social effects for artists and creative professionals.

Social security

Non-standard workers, including many artists and creative professionals, often have **less access to the social security benefits of salaried employees**. It is estimated that 32% of the European cultural workforce works on a self-employed basis, compared to 14% for total employment.⁴ Whereas an employee receives a salary which is paid net with the tax and social security costs deducted at source, a self-employed artist submits invoices for fees, is paid gross and is responsible for paying their own taxes and social security costs. This can lead to a financial burden for self-employed artists and creative professionals.

Many artists and creative professionals are highly mobile across borders compared to the general workforce, which also creates **issues from a social security perspective**. Such artists and cultural and creative professionals may encounter difficulties when trying to access unemployment schemes or pension benefits as requirements vary in different Member State.

In some Member States, **specific rules and schemes exist for self-employed artists** (AT, BE, BG, HR, EE, FI, FR, DE, HU, LV, LT, NL). However, in practice, such provisions can be a mixed blessing as artists with low revenues can find it challenging to pay their obligatory monthly social security payments. While specific legislation for artists provides for a more appropriate social security protection, in some countries the measures taken focus on the special status of artists only to a certain extent. Some Member States have specific **unemployment benefit regimes**. Although beneficial for artists, it has also been widely criticised, and in some cases, organisations are underpaying artists and creative professionals because they know that the social security system is complementing the revenues. Member States' legislation also differs with respect to having/not having specific **legislation for self-employed artists**. The challenges in relation to artist and creative professionals having access to social security benefits have been brought to the fore recently in light of the COVID-19 pandemic.

Taxation and VAT

In some Member States, there are **tax exemptions or special rates for artistic income**, such as grants paid to artists from public agencies and arts' councils being specifically exempt from income tax. In other countries, all public grants, including those received by artists, enjoy an exemption depending on their purpose and duration.

The income of artists can fluctuate greatly from year to year, and artists may spend significant amounts of time developing work that will generate income only later. Therefore, **income averaging can be a valuable mechanism to reduce the tax burden of artists and creative professionals**, and addresses the atypical manner in which some artists earn their income.

Similar to social security provisions, artists often face **challenges in relation to taxation when working temporarily in a Member State other than the country**

⁴ European Commission, Joint Research Centre, based on 2018 data from Eurostat (online data code: cult_emp_wsta).

of their residence. Some of the predominant difficulties artists encounter when carrying out artistic activities cross-border include those caused by a multiple employment status in terms of income tax calculations and payments and the continued tax placed on irregular income. The **complex and non-uniform legislation across EU Member States may often lead to excessive taxation and discriminatory application of legislation.** Many organisations and artists report that often they find themselves confused regarding the precise application of taxation legislation, as a result of the different national rules on withholding taxes.

The **application of EU Member States' VAT legislation is among the challenges to cross-border artistic activity** often mentioned by creative professionals. Administrative procedures for VAT registration often puts a large burden on artists and cultural and creative professionals. Legal uncertainties may arise when artists from one EU Member State perform in another EU Member State as a result of the differences in the rates and the type of exemption (full, partial, none). As from 1 January 2021, a simplification will enter into force whereby VAT due on services by artists in various Member States can be declared via a single VAT registration ("One-Stop-Shop").

The nature of income and access to external finance

Nature of income for artists and cultural and creative professionals

Flexible working practices can lead to situations of **low income.** In the CCS, those who work from project to project inevitably face periods of inactivity in which no income is received. Artists often live in existential uncertainty and **only established artists can afford to live entirely from their income as an artist.** Income opportunities are unpredictable and artists and creative professionals that are working as self-employed or in atypical working patterns are more likely to earn less, have larger gaps between jobs and operate under partly reduced working times, with this precarious nature of the work having an impact on their ability to save money for retirement.

A common feature in the professional lives of artists and creative professionals is that the **revenues that are generated from their artistic or cultural creation are not entirely transferred to them,** in particular in the digital environment. Moreover, a number of different parties also have a stake in the revenue generated through sale or exploitation of the artist's works. **Strong copyright provisions are a means to ensure that artists are fairly compensated for their work,** which is becoming increasingly important for some sub-sectors given today's digital environment, such as music.

Support ecosystems for artists and cultural and creative professionals

Access to external finance is one of the key obstacles of self-employed and small enterprises in general and even more in the cultural and creative sectors. There are some support measures available that are specifically aimed at artists and creative professionals. Grants are considered as the most effective and most widely used public policy tool. In addition, there are also other instruments available, such as loans, guarantee schemes, tax advantages for donations, sponsorship or crowdfunding.

Career development of artists and creative professionals

Careers in the cultural and creative sectors may happen by chance and are often beyond rational planning and some artists have a steep career path, whereas for most artists this remains a remote dream and they struggle for most of their life. The main focus for many CCS professionals is often on the intrinsic value of culture or creative core and not so much on economic growth or revenues. The artist's "career choice" therefore is

very often centred on the intrinsic value of culture and creation, and economic sacrifices and uncertainty are part of this choice of life.

Certain artists and professionals have to transition in their careers for various reasons such as limitation of physical capacities or change in personal situation that requires a different lifestyle. Artists and professionals often transition within their sub-sector, and stakeholders state that that governments often focus vocational training on retraining to other professions rather than the sector the professional is active in.

A number of artists and creative and cultural professionals start their own enterprise. Art schools and other institutions that educate artists and cultural and creative professionals more and more provide courses and training schemes on entrepreneurship. These courses over the years have become integrated in a number of curricula, and for most formally trained artists and professionals, form the basis for their entrepreneurial knowledge and a starting point for the development of their career as an entrepreneur. However, once these artists and professionals leave the supporting structures of a school or institution, they are pretty much on their own. The same goes for self-taught artists and professionals, who never had the supporting structures of a formal education.

Next to information on training options and provision of training against reasonable costs, more information and data need to become available on the training and career development needs in the different sectors, at national and EU level.

Artistic freedom and expression

Freedom of Artistic expression is a **key component of European culture**. There is growing concern among international bodies and civil society organisations that the **universality of human rights is currently under attack from governments, political ideologies and some non-state actors around the world and in Europe**. The **rise of nationalism and populism is limiting the artistic freedom**. The promotion of "traditional values" is becoming more and more vocal in the world and in the region.

Some European states are increasingly restricting artistic works and expressions. Public morality is frequently being used as a justification for the restrictions of artistic expression. Restrictions on the basis of this criteria are often arbitrary, and are resulting in the censorship of artworks, and the persecution, imprisonment of artists as well as threats to artists by governments for creating art that is subjectively considered a danger to "public morality". Some European countries (EU and non-EU) have used prison sentences and measures to criminalise artists. Moreover, court cases have been issued, creative works have been withdrawn on the order of public authorities and state bodies have exercised undue control over cultural programmes. Other restrictions relate to religious values overriding artistic freedom, insult to the state and its symbols, undue government influence on museums and arts institutions. LGBTI artists and artworks targeted as well as challenges for women and minorities remain **a danger in undermining Europe's cultural diversity**.

Unnecessary and illegitimate restrictions can often be placed on fundamental rights and freedom of expression in times of uncertainty and securitisation, most recently also through COVID-19 (as voiced by Freemuse)⁵ or through anti-terror legislation.

⁵ <https://freemuse.org/news/hungary-must-not-misuse-the-covid-19-crisis-to-erode-democratic-values-freemuse/>

While most artists depend on public or semi-public support to survive, **artists and organisations working in the sector tend to self-censor their work** in order to keep access to funding and the ability to exhibit their work in public.

General conclusions and recommendations

Artists and cultural and creative professionals often work in precarious circumstances, and have been highly affected by the recent COVID-19 pandemic. Due to their often complicated employment status (often self-employed/freelance) and relatively low incomes compared to other sectors, provisions, to ensure that self-employed artists and cultural and creative professionals are able to earn a decent living and are covered by full access to social security benefits, need to be pursued.

In relation to the ongoing COVID-19 pandemic, Member States and the European Commission should carry out an inventory of existing good practices and examine together policies that acknowledge and improve the working conditions of those working in the CCS. Given the timing and the current need for action to improve the situation in the short-term, it is highly important that the implementation and impact of these measures is monitored and evaluated. A situation such as the current COVID-related one in which policy makers provide support to the CCS sectors is unprecedented and the support is temporary. It offers, however, opportunities to assess which type of support is the most beneficial to the sector and which type of support has the most positive impact on the working conditions of artists and cultural and creative proposals.