



EURO-MEI 

**STUDY RELATING TO THE VARIOUS  
REGIMES OF EMPLOYMENT AND SOCIAL  
PROTECTION OF CULTURAL WORKERS  
IN THE EUROPEAN UNION**

**EXECUTIVE SUMMARY**

**EAEA**  
EUROPEAN ARTS AND ENTERTAINMENT ALLIANCE

## **1. General introduction**

The DG – Employment and Social affairs – of the European Commission agreed to subsidise a comparative study carried out by the European Trade Union Confederation (ETUC) and the European Arts and Entertainment Alliance (EAEA) regarding the employment and social protection scheme of cultural workers within the member states of the European Union.

This study draws up a statement regarding contracts, working conditions, social protection, vocational training, unemployment, taxation and other professional aspects in relation to employment of cultural workers, such as authors, artists and technicians.

The study was drafted on the basis of data available at the European level and moreover of interviews carried out with representatives of unions representing the sector and specialists within each member state.

A huge amount of data was therefore compiled and analysed following a terminology common to every states. From this method flew a synthetic view of the employment and social protection schemes in force and appeared the discriminations and strong disparities existing from one member state to another, and the weaknesses of certain social security schemes compared to others.

The analysis of the interviews' results also makes it possible to draw some teachings and some tracks for thinking, especially regarding the needs for co-ordination of European social laws in the entertainment sector.

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## **2. Main aspects revealed by the study**

### **2.1 A distinction must be made between status with regards to labour legislation and status with regards to social protection.**

By labour legislation, we refer to norms relating to:

- . drawing up, content, length of suspension or breach of the contract of employment;
- . the amount of remuneration and how it is paid, the lapse of time before being paid, guarantee of payment in the eventuality of an employer becoming bankrupt;
- . working conditions including working hours;
- . paid leave;
- . professional training;
- . rules and regulations governing health and safety;
- . collective representation, including union representation and collective bargaining;
- . procedure before specialized jurisdictions.

By social protection, we refer to norms relating to:

- . social security (sickness insurance, maternity, disability, etc.);
- . protection covering accidents at the place of work;
- . unemployment insurance;
- . pension schemes.

In member countries of the EU other than France, it is possible that a worker may not be considered as being an “employee” protected by labour legislation and yet still benefit either totally or partially from social protection for employees. For example, if a non “employee” worker is a performing artist, he may by law be assimilated to an employee in such or such a field of social protection, as is the case in Belgium.

Certain social legislation rules may not be applicable to employees, because of the limited length of agreement or the limited amount of remuneration, as is the case in Germany and Austria.

Consequently, the traditional opposition between “employee” versus “self-employed worker” is not entirely pertinent. The reality of a status can only be analysed by examining its situation with regards to each type of possible social rights.

## **2.2. The need to take care with terminology used.**

In the entertainment and audio-visual fields, “self-employed worker” may in fact correspond to very different realities and above all it is not always the only alternative to “employee” status, whether this be with regards to labour legislation or social protection. Thus for example there are two other categories of employment in Germany between that of employee and self-employed worker in the strictest sense of the term. In Sweden, there are no self-employed workers in the aforementioned sectors, simply “entrepreneurs” with a specific licence. In Greece, employees and self-employed workers are treated in the same way when it comes to payment of main social contributions.

Similarly, it should not be considered that a free-lance worker is necessarily a self-employed worker. On the contrary, the casual nature of the work should not generally be taken into account when analysing status and rights. This is particularly the case with regards to labour legislation. Unfortunately the reality is often such that these workers benefit from rights which are significantly less than those with stable or permanent employment as applicable norms are not really well suited and this is particularly the case in the field of social protection.

Finally, the notion of employer is not always easy to define in the entertainment and audio-visual fields. In France, a performing artist may be an employee and himself employ musicians, choir members or dancers who accompany him. These two capacities are not incompatible. Moreover, the apparent employer may not be the actual employer and courts are able in certain countries to designate the real employer (for example, the manager of a theatre or show hall and not the insolvent go-between who recruited the artists) without taking into account the content of agreements.

We prefer the expression “non employees workers” to that of “self-employed workers” to designate those who generally do not benefit from protection afforded by labour legislation.

Finally we must not lose sight of the fact that a certain number of workers in the entertainment and audio-visual fields have statuses of civil servant and are generally not covered by the rules and regulations of legislation governing the private sector or that are covered by specific legislation.

### **2.3. One important question is to know whether non-employees workers are represented by a union and if they can benefit from protection afforded by collective agreements.**

Serious discriminations may arise, as they have done in Austria, if the reply to this question is negative, particularly with regards to workers who have accepted to be considered as non-employees whereas in fact their employment is more similar to that of an employee.

Generally speaking, non-employees workers do not benefit from protection afforded by collective agreements worked out by unions but in certain countries unions are becoming more and more active in the field of protection for non-employees workers. To a certain degree, they have been forced into this situation by employer practices.

NB: In Canada, there is a law of the 23 June 1992 covering the “status of the artist” which sets up a constrictive system for collective bargaining which is mandatory with regards to conditions of employment and remuneration for non-employees workers (who are defined under this law as “professional independent entrepreneurs”). In order to be applied, this law creates a mechanism of accreditation of organisations representative of independent artists as well as rules for proving the professional character of the artist’s activity.

### **2.4. An agreement should never itself impose the statutory qualification of employment.**

It is of course legislation and not contracts and agreements which determines what the worker’s status is. A worker should be qualified as an “employee” and consequently benefit from the protection afforded by labour legislation if facts show that he is employed with a relation of subordination but such a notion is interpreted differently depending on legal tradition in each country, particularly with regards to free-lance or casual workers. In Italy, it would seem that agreements can even impose statutory qualification of employment.

In the entertainment field, the case is often that workers are in a situation of job insecurity and consequently accept employer pressure, a status which causes them to lose the benefit of their rights as employees. This makes it possible for employers not to pay social contributions or to pay less but does not bring about sufficient increase in gross remuneration paid to the worker. The result is that the workers in question must themselves meet the financial costs of their social protection and only do so with regards to those insurance which are mandatory. In certain countries, the state is, to a certain extent, party to this type of practice and accepts statuses of non-employees workers which do not correspond to the reality of the relation of subordination, as is the case for example, in our eyes, in Germany and Portugal.

This “abuse” is limited to countries where unions are strongly represented as in Denmark, Finland or Sweden, thanks to collective bargaining and sometimes to the content even of collective agreements or as a result of specific social legislation of a protective nature for these categories of workers, as in France.

### **2.5. Taxation can have a direct bearing on the choice of social status.**

In certain countries (for example in Denmark, Spain or the United Kingdom), employees cannot deduct professional expenses from their taxable income or can only do so partially, whereas non-employees workers can generally deduct them in their entirety.

This results in a discrimination which is an incentive for those in a difficult financial situation to opt for the status of non-employees worker. The choice therefore is determined by immediate financial needs without concern for what the material situation would be in the event of falling ill, having an accident at the workplace, becoming unemployed or retiring, etc.

To act so, may be to have one bird in the hand, but there are certainly no birds in the bush, and unions play a very important role with regards to information and educating members in order for workers to assume responsibilities in this respect.

*NB: This problem is currently rife in the United States.*

**2.6. Generally speaking applicable legal frameworks have “elastic” limits and are subject to the whims of administrative or legal interpretation and it is the weakest who loose out in this process.**

This is the case in Denmark, Spain and Finland, where the distinction between statuses can vary from one tax office to the other or from one court to the next.

In Spain, abusive application to artists of the notion of “production enterprise” is a way round the rule whereby artists have a legally recognized status of employee.

In Finland, jurisprudence is divided as to how to interpret legal classification of employees and non-employees.

It is clearly this type of situation and the resulting legal insecurity which fostered the reform adopted in France in 1969 to set up presumption of status of employee for performers (cf. article L.762-1 of the Labour Code). It is disturbing to note that following a complaint from French employers, the European Commission has recently served France with notice indicating that such presumption of the status of employee, which in France is applied without discrimination to nationality, should be done away with since it is judged incompatible with freedom of movement of services within the EU.

**2.7. After a strong increase in non-employees employment, sometimes at the request of workers themselves, the main trend is today to claim status of employee or a similar status both with regards to labour legislation and social protection.**

The resolution adopted by the European Parliament in March 1999 makes reference to the need to improve the social status of performers by adopting the most protective form of national legislation.

Solutions adopted in Belgium, Spain and France, to favour application of status of employee for artists in the entertainment and audio-visual fields are worth studying at European level, just like the so called “Guichet Unique” administrative reform adopted in France.

In addition, workers' unions are, as in Sweden, seeking to make employers aware of their responsibility through social dialogue.

Such an approach is important not only to reverse the trend to exclude workers in the entertainment and audio-visual fields from protection which is due to employees but also in the field of professional training.

In Spain, Greece and Portugal, employers entirely refuse to contribute to financing professional training and the State in these countries does not make this a binding obligation.

## **2.8. Labour inspectorates should play an important role in the entertainment and audio-visual sector, but this presupposes training and specific working hours.**

Labour inspectorates do not generally intervene at work places in the evening or at night unless there is some form of specialised corps, with the result that the entertainment and audio-visual sector is often a control-free zone.

We can also see that in most of EU countries, Labour inspectorates will only intervene on grounds of health and safety which is clearly insufficient.

## **2.9. Beyond the question of “status”, and therefore of the legal framework of employment, there is frequently lack of written agreement.**

Such a situation places the workers concerned in a situation of permanent insecurity. They are particularly vulnerable when the nature of their activity is such that they are “replaceable” overnight without too much difficulty (musicians, technicians etc.), even if such a practice is to the detriment of artistic quality.

Very often, there is no general obligation to draw up a written agreement for contracts which last less than one month unless there is a collective agreement to this end (Germany, Austria, Denmark, Finland, Netherlands, Sweden etc.). In other countries (Spain, Greece etc.), breach of legal obligation practically never meets with any sanctions.

## **2.10. There is a great discrepancy with regards to legal limitation of the use of fixed-term contracts.**

Thus there is no legal limitation in Germany (as a result of jurisprudence), in Austria, Denmark, Spain, Finland and Sweden.

It is not uncommon for fixed-term contracts to succeed each other on a regular basis for several years without the employee being able to benefit from protection concerning the motives for which such a working relationship is ended, as for example is the case in Portugal and Sweden in permanent orchestras !

## **2.11. Payment of remuneration is generally poorly protected.**

There is great disparity in protection of remuneration.

With regards to the lapse of time by which payment must be made, the employer in Finland who does not respect the scheduled period once the job is finished must pay an “interim” salary equal to a maximum of 6 days wages in addition to late payment interest. Generally however, payment is due at the end of the month and is not covered by any specific protective measures. Collective agreements play an important role in this respect, as is the case in Ireland.

With regards to the ways in which salaries are guaranteed in the eventuality of the employer becoming bankrupt, such guarantees rarely favour free-lance or casual employees except for example in Finland and France and never benefit non-salaried workers.

### **2.12. Non-employees workers are practically never protected with regards to accidents at workplace.**

Such a situation is all the more disturbing when non-employees workers are considered as being responsible vis-à-vis third parties.

This once again raises the question of inadequate adaptation of the non-employees status for workers who are in reality under subordination.

### **2.13. Unemployment**

Non-salaried workers rarely benefit from mandatory protection for unemployment whereas the very nature of the activities in the artistic sector exposes such workers to regular and unforeseen periods of non-employment.

Solutions are being looked for by unions in the form of a voluntary system of solidarity, as in Denmark or Finland.

Free lance or casual workers rarely themselves benefit from unemployment benefits, including when they pay social contributions to this end, unless they have a very specific and dedicated system as in Denmark, Finland or France.

### **2.14. Taxation**

Taxation can play an important role in the cultural sector by supporting measures like total exemption of income tax for performers and authors in Ireland (!), reduced level of VAT on income from performances in France, or above all by measures for adapting overall rules to meet specific requirements in the cultural sector, such as:

- . smoothing income tax over 3 or 5 years;
- . deduction of all expenses connected with an artistic profession, including travelling expenses, stage clothing, places for rehearsal, professional insurance, musical instruments, and any material required to perform or prepare a show or a film etc.

There is a wide discrepancy between tax norms in Europe, without them being justified by differences in legal traditions or economic situation.

### **3. Overall conclusion**

There is a preponderant and overall feeling of insecurity in the profession except in those countries where legislation affords specific reinforced protection and/or in those countries where very representative unions can obtain such protection via collective agreements. It is particularly worrying to note that the notion of non-employee worker can be imposed on workers despite the existence of a relation of subordination, when the result of such a status is to significantly decrease the level of social protection.

A European approach to these issues should be based on a better level of information and analysis regarding current statuses and on a system which is adapted to social dialogue.

We feel that certain questions, deemed to be less complex, could be dealt with as a matter of priority.

For example :

- . requirement to draw up written agreements;
- . definition of the relation of subordination with regards to the artistic profession;
- . elimination of tax discriminations between employees and non-employees workers with regards to deduction of professional expenses;
- . role of specialised and active work inspectorate;
- . professional training.

With regards to professional training, co-operation and exchanges between EU countries could make it easier to be aware of the requirements of these professions and perhaps lead to a long term improvement in the schemes for employment and social protection.