

## **FIRST PHASE CONSULTATION OF SOCIAL PARTNERS UNDER ARTICLE 154 TFEU ON A POSSIBLE ACTION ADDRESSING THE CHALLENGES OF ACCESS TO SOCIAL PROTECTION FOR PEOPLE IN ALL FORMS OF EMPLOYMENT IN THE FRAMEWORK OF THE EUROPEAN PILLAR OF SOCIAL RIGHTS**

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*This submission is on behalf of the European Arts and Entertainment Alliance (EAEA), composed of the following European Social Partner organisations: the International Federation of Actors (FIA); the International Federation of Musicians (FIM) and UNI Global Union – Media, Entertainment & Arts (UNI MEI). It answers the 5 main and 2 additional questions posed by the Commission on pages 6 to 9 of the Consultation Document. The EAEA is also supportive of the views and positions expressed in the submissions to this consultation by the ETUC and by our sister federation the European Federation of Journalists (EFJ).*

*The EAEA is a European Sectoral Social Partner sitting in both the Live Performance and Audiovisual European Sectoral Social Dialogue Committees on the trade union side. It is also a European Trade Union Federation, affiliated to the ETUC. Its three member federations FIM, FIA and UNI MEI bring together hundreds of thousands of performers and technical staff across the EU and neighbouring countries.*

The EAEA represents workers in a small but dynamic and influential sector, with the so-called cultural and creative industries seen by policy-makers as an important driver of growth, innovation and cultural capital. However, the Media, Arts and Entertainment sector has also been subject to drastic and ongoing cuts in public funding in many EU countries stretching back to the onset of the financial crisis and the quality and sustainability of work in the sector has seriously declined as a result.

The short-term and project-based nature of much of the work in the sector, combined with the climate of cuts and challenges to business models arising from digitalisation, means that the so-called 'atypical' and 'new' forms of work referred to in the present Consultation Document are already very established in the sector and continue to expand. These include widespread and growing (largely dependent) self-employment; part-time and very short-term contracts; and cumulating a range of employment statuses: all ways of working that are highly prevalent for workers in the sector. There is also a high level of intra-EU mobility in much of the sector due to touring, co-productions and other instances of cross-border working. The challenges faced by these freelance workers, including denial of access to basic rights and to social protection are among the most pressing social and labour priorities in the Media, Arts and Entertainment sector.

It must be clear that reforming social protection systems to make them fairer and more inclusive cannot in fact be separated from a broader, comprehensive approach, which must have the holistic goal of 'quality work' at its core. This means taking account of several policy areas, taking stock of the scenarios and the challenges of the present and the future of work, addressing labour market policies, re-designing employment services, active employment policies and consequently also the framework of social protection. It must be built on the fundamental right to social protection and assistance for all, as set out in the Charter of Fundamental Rights of the European Union and in the ILO instruments, as a founding element of the still valid European social model.

As we highlighted in our response to the Consultation on a possible revision of the Written Statement Directive (Directive 91/533/EEC), work to address the challenges of access to social protection for people in all forms of employment cannot be separated from the wider goal of ensuring access to a minimum floor of rights and the responses to both consultations must be considered in conjunction.

Thus it is clear that addressing the issue of protection for self-employed and workers in other non-typical forms of work – a major priority in our sector - must take into account the long-standing challenges of lack of protection linked to loopholes in full entitlement to trade union rights and collective bargaining coverage, further driven by the rapidly changing labour market. This has been further exacerbated by the highly questionable and problematic application of competition rules in order to overturn certain established collective bargaining relationships on behalf of self-employed freelance workers in our sector. We have thoroughly documented this issue and proposed solutions in our 2016 Publication “Reaching Out to Atypical Workers” compiled on behalf of both the EAEA and EFJ.<sup>1</sup>

### **1. Do you consider that the Commission has correctly and sufficiently identified the issues and the possible areas for further EU action?**

As we also noted in our submission to the consultation on a possible revision of the Written Statement Directive (Directive 91/533/EEC), the EAEA underlines that this work must be guided by the overall aim of the creation of quality jobs and the clear goal of addressing the decent work deficits that have arisen in relation to atypical and new forms of work. Lack of access to social protection is clearly one of the major decent work deficits and one that is highly prevalent in our sector. Therefore, the identified key aspects of insufficient access (gap in access to social protection, lack of transferability of rights as well as lack of transparency about their social protection entitlements) are indeed important challenges to be tackled, but we need to put the emphasis on challenging divergent social rights of people with respect to social protection and employment services.

Following this rationale, and provided the overall challenges outlined above are addressed in coherent and integrated interventions, the EAEA agrees to working on the four possible areas for further EU action:

- a) Ensuring similar social protection rights for similar work: upgrading working conditions and protection coverage for all, in a logic of upward convergence; ensuring solidarity and fairness in social protection also means designing systems to which workers contribute (via taxes or social contributions, depending on the national social security system) proportionally to their capacity and benefit from according to their needs, as for at least minimum provisions (universal social protection and assistance)
- b) Tying social protection rights to individuals and making them transferable (also across accumulated and varied forms of employment): provided that this leads to adaptation to individuals and not to an individualisation of social protection benefits and that the collective dimension remains prominent;

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<sup>1</sup> Reaching Out to Atypical Workers : The Future of Work in the Media, Arts and Entertainment Sector, 2016 : [http://fia-actors.com/no\\_cache/media/news/news-detail/article/atypical-work-project-handbook-the-future-of-work-in-the-media-arts-and-entertainment-sector/](http://fia-actors.com/no_cache/media/news/news-detail/article/atypical-work-project-handbook-the-future-of-work-in-the-media-arts-and-entertainment-sector/)

- c) Making social protection rights and related information transparent: as a matter of consistency among the different initiatives of the Pillar, the EAEA is of the opinion that a minimum floor of workers' rights is needed.  
We strongly support the ETUC and its call for a number of legal initiatives. In the context of the Written Statement Directive, it is essential to include social protection. Therefore, we propose to include in the WSD also information on social security systems and relative entitlements.
- d) Simplifying administrative requirements

On the principles, we agree on the initiative to tackle:

- a) Gaps in access to social protection and employment services
- b) Lack of transferability of entitlements to social protection and employment services
- c) Lack of transparency of entitlements to social protection and employment services

**II. Which branches of social protection and employment services do you consider to be most relevant for an EU initiative covering access for workers in non-standard forms of employment?**

The EAEA strongly promotes an integrated and holistic approach to social protection, notwithstanding the points above about the distinctions between the policy fields, including all branches covered by the ILO convention 102 (and the Regulation on social security coordination). It is difficult to figure on which basis some branches should now be prioritized and which excluded. In principle, all branches are equally important. It is vital to take a comprehensive approach in order to avoid two-tier system, in which atypical workers such as freelance workers in our sector will find themselves subjected to a pared-down system of social protection.

**III. Should all workers in non-standard forms of employment be included in such an initiative?**

Yes. An inclusive approach should be taken to include all non-standard forms of employment. Many contracts in the Media, Arts and Entertainment sector are of a short-term nature and may take various legal forms. This is a growing trend across many sectors and seems likely to continue into the future. Exclusion can only lead to unequal treatment and unfair practices.

**IV. Do you consider that improvements should be made to EU legislation or other EU level instruments to address the identified issues?**

The EAEA has appreciated the EU legislation on atypical work including on part-time, fixed-term work and temporary work. These directives have reproduced framework agreements concluded by European social partners and have since been transposed into national legislation in all EU member states. The general principle of equal treatment has been thereby established, however protection gaps remain.

It is interesting that the European Court of Justice has identified equal treatment as embodying higher legal norms that demand a stricter level of judicial scrutiny.

The implementation at national level has not been always enforced.

**V. Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in point 4 of this consultation?**

The EAEA has ongoing exchanges with its employer counterparts on labour market developments in the sector in the framework of the sectoral social dialogue committees on Live Performance and on Audiovisual - including also their impact on social protection of workers in the sector. We firmly believe that the European Social partners can add value and input to the policy development process and should take up an active role in dialogue with the EU institutions.

On the Trade Union side, we support the ETUC's readiness to start negotiations with employers' organisations at EU level and we would wish to add our sectoral experience in particular, with a view to addressing the particular situation of freelance, self-employed and other 'atypical' workers. However, in the event that the EU social partners do not agree to negotiate, or in case negotiations do not lead to a successful outcome, we urge the European Commission to come up with a concrete legislative proposal.

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*Brussels, 22<sup>nd</sup> June 2017*