

SECOND 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

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). The EAEA is also supportive of the views and positions expressed in the submissions to this consultation by the ETUC and UNI Europa.

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 so-called 'atypical' and 'new' forms of work 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 both the first and second phase consultations of 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.

Thus, it is clear that addressing the issue of protection for self-employed and workers in other atypical 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.¹

The clear and overarching goal relates primarily to 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. We welcome the proposals to comprehensively address it, but it must be situated within the greater context of challenging the divergent social rights of people with respect to social protection and employment services. Equal social protection rights for equal work, for people in all forms of work, in a logic of upward convergence (with a strict non-regression clause) is the baseline for this initiative.

1a. The objectives of coverage, transferability and transparency:

As regards coverage:

We emphasise that an inclusive approach should be taken to include all workers in all forms of employment and work arrangements, including the genuinely self-employed. 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.

We emphasise that the social protection must be adequate, effective and holistic: the EAEA strongly promotes an integrated and holistic approach to social protection, including all branches covered by the ILO convention 102 (and the Regulation on social security coordination). It is vital to take a comprehensive approach in order to avoid two-tier systems, in which certain workers, such as atypical workers and freelance workers in our sector will find themselves subjected to a pared-down system of social protection.

It is important that there be no trade-off between extension of coverage and the current level of protection offered (including future improvements of such protections). Upwards convergence must guide policy making at member state level and a strict non-regression clause must be included.

On transferability:

Tying social protection rights to individuals and making them transferable (also across accumulated and varied forms of employment) is crucial and would enormously benefit workers in the Media, Arts and Entertainment sector. Such transferability must be based on adaptation to individuals and not to an individualisation of social protection benefits and the collective dimension must remain prominent.

¹ 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/

On transparency:

Access to effective social protection is certainly complicated for workers in the Media, Entertainment and Arts by the highly mobile, sometimes cross-border nature of much of the work. The Commission's proposal has the potential to greatly simplify the administrative burden and increase effective coverage, based on better capturing of contributions, but information provision will be key. Member States must provide user-friendly and up-to-date information on how all workers can access their social protection rights, benefits and entitlements as well as fulfil the accompanying obligations, including in a cross-border context.

Equally, the movement between different forms of contracting and work arrangements is common in the sector and often penalising in terms of social protection coverage. Again, there is an opportunity to make substantial improvement as regards these issues. Making these administrative requirements simple, clear and transparent will be an important additional support to workers, especially in the context of the changing world of work.

1b. The options of mandatory or voluntary formal coverage

The EAEA firmly believes that contribution to social security systems must be mandatory and that rates must be equalized to those in force for standard employees (as established by law and/or collective bargaining) for people in all forms of employment and work arrangements.

Differential coverage of social protection and employment related services will leave equal treatment objectives unmet. It maintains a non-level playing field and may incentivize bogus self-employment.

Formal mandatory coverage, together with the alignment of non-wage related costs, guarantees on the one hand that everyone contributes to the system proportionally to their remuneration, capacity and work and on the other, to the sustainability of the system.

1c. Appropriate action to ensure effective coverage

At European level, the EAEA supports the issuing of a European Directive to set binding minimum principles and requirements to ensure all workers have an equal right to access social protection.

Legislative proposals should also be accompanied by appropriate 'flanking measures' to ensure their enforceability and concrete implementation.

At the same time, collectively bargained rights must always take precedence and these minimum requirements must under no circumstances be used to undermine the existing EU social acquis, national collective bargaining systems and agreements, the autonomy of social partners or the subsidiarity principle, nor to lower existing national standards or lead to a downward harmonisation of rights.

Indeed, strengthening and reinforcing social dialogue and collective bargaining at all levels will be important to create a context conducive to driving forward progress on ensuring adequate social protection for all. Social dialogue will be a key mechanism to find adequate and appropriate approaches and solutions at Member State level as they seek to implement future European rules in a logic of upwards convergence.

Should it be necessary to propose the adoption of two Directives, due to the different legal bases in Articles 153 and 352 of the EU Treaty, the mutual coherency of both legal instruments must be ensured, as well as their overall coherency with the European Pillar of Social Rights.

The EAEA welcomes the detailed reflections set out by the ETUC regarding contribution rates and design of contribution obligations.

1d. Minimum requirements appropriate on transparency and transferability

Full portability of social protection rights, benefits and entitlements must be guaranteed across all the different systems and funds, no matter the worker's form of employment or work relationship, with mandatory, equalised and proportional contribution rates.

Up-to-date information on accessing social protection and on benefits, entitlements and contributions must be provided in a full, transparent, easily accessible and user-friendly manner.

2. Regarding the possibility of entering into negotiations under Article 155 TFEU

The EAEA has ongoing exchanges with its employer counterparts on labour market developments in the sector in the framework of the EU 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.

As regards the European Commission's question as to whether we would be willing to enter into a social partner negotiation with a view to concluding an agreement, we refer to the ETUC's response, endorsed by its executive committee and supported by the EAEA. Whilst the trade unions previously affirmed their availability to enter into negotiations, due to the lack of similar commitment from the employers' side, we believe the conditions for formal negotiations no longer exist.

The EAEA joins the wider trade union community in urging the Commission to come up with proposals, before the 2019 European elections, that will improve the situation for all workers across Europe.

Brussels, 21st December 2017