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(EENC)**

***Artists' mobility and Administrative Practices
related to Social Security and Taxation in the
European Union (EU)***

An analytical report mapping obstacles and good administrative practices

By M. Demartin, M. Le Sourd and E. Di Federico (On TheMove),
with the expert input from A. Debaere and T. Perez (PEARLE*)

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Analytical report prepared as background to the thematic seminar on artists' mobility & social security/taxation organised by the European Commission (19 & 20 June 2014, Brussels) under the Council Work Plan for Culture, Priority Area C "Skills & Mobility" (2011-2014).

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This paper reflects the views only of the EENC authors and the European Commission cannot be held responsible for any use which may be made of the information contained therein.

The EENC was set up in 2010 at the initiative of Directorate-General for Education and Culture of the European Commission (DG EAC), with the aim of contributing to the improvement of policy development in Europe. It provides advice and support to DG EAC in the analysis of cultural policies and their implications at national, regional and European levels. The EENC involves 17 independent experts and is coordinated by Interarts and Culture Action Europe.

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Introduction

Context of the mapping:

Following a request of the European Commission (Directorate-General Education and Culture), the European Expert Network on Culture (EENC) commissioned in mid-September 2013 the cultural mobility information network, *On the Move*, to undertake an analytical report on the issue of intra-EU artists' mobility and related administrative practices with regard to social security and taxation. The report mainly consists of a mapping of obstacles in the fields of social security and taxation, faced by artists and cultural professionals when they are mobile or seek to be mobile in the EU. The mapping introduces a typology of identified obstacles, and includes an analysis of the impact of recent legislative and regulatory developments. It also presents a number of good administrative practice examples, where these could be identified.

Under the Work Plan for Culture 2011-2014, Priority C "Skills and Mobility"¹, the European Commission has been mandated to organise thematic seminars to analyse administrative practices on artists' mobility (including visa, tax, social security).

A first thematic seminar on administrative practices related to artists' mobility and visa was held in Brussels on 23 April 2013.

A second thematic seminar will be held in Brussels on 19 & 20 June 2014 and will analyse administrative practices on artists' mobility and social security / taxation.

The objective of these thematic seminars is to facilitate exchange of information and of good practices with a view to decrease obstacles linked to artists' mobility important for their professional career and EU objectives, including the promotion of cultural diversity.²

On the Move, commissioned by the European Expert Network on Culture (EENC), will participate in the thematic seminar on artists' mobility & social security and taxation issues to present the main findings of this report.

Methodology of the mapping:

On the Move has partnered with PEARLE*- Live Performance Europe which helped to nourish this report with its expertise, experiences and continuous advocacy action in this field.

This mapping is based, on the one hand, on desk research of existing literature (surveys, reports, research documents, and official documents published between 2002 and 2013; see pages 59-61). Most of the sources related to artists' mobility and issues of social security and taxation are available online.

On the other hand, the list of resources has been further completed with three tables that include a selection of key documents and legislation related to social security and taxation, including the Treaty on the Functioning of the European Union (TFEU), the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital, the EU legislation and policy documents on employment and social security, the applicable legislation at the EU level in relation to social security and mobile workers and the EU legislation and case law on taxation (page 47-58).

This report has finally been enriched by first-hand information and experiences by artists and cultural professionals, as well as employers and organisations of the cultural sector supporting and/or

¹ 2010 Council Conclusions Work Plan for Culture 2011-2014, currently implemented by the European Commission in cooperation with EU MS (Open Method of Coordination).

² Article 167 of the TFEU: the Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures. The role of the European Union in the field of culture is to support and complement the actions of its Member States; Resolution of the Council 16/11/2007 on a European Agenda for Culture and its strategic objectives, namely the promotion of cultural diversity and intercultural dialogue; the promotion of culture as a catalyst for creativity; and the promotion of culture as a vital element in the Union's international relations.

financing mobility within the EU. This information was gathered primarily through an online questionnaire coordinated by OTM, made available between 17 October and 20 November 2013. Additional information was collected through direct feedback from the cultural sector thanks to two meetings. One meeting was organised by OTM and its members and associated partners on 7 November 2013. Another meeting was organised by the International Federation of Actors (FIA) for its members on 13 November 2013. Finally, additional interviews were carried out with policy-makers at EU and national levels, experts and other professionals.

More specifically:

a) Two online questionnaires were coordinated by OTM (17 October - 20 November 2013) - one for artists/cultural professionals and one for cultural organisations:

The online questionnaires, available in English and French, were drafted in collaboration with PEARLE* and OTM members (in particular the International Federation of Actors, Kunstenloket, and BAAPE-Bureau d'Accueil des Artistes et des Professionnels étrangers, France). They were distributed through OTM's newsletter (+ 20,000 subscribers) as well as thanks to OTM members and partner-organisations (for instance, Culture Action Europe, IFACCA-International Federation of Arts Council and Cultural Agencies, FEVIS-Fédération des Ensembles Vocaux et Instrumentaux Spécialisés etc.).

147 valid questionnaires were collected: 108 from artists/cultural professionals and 39 from organisations. 18 EU Member States and 29 nationalities are represented among the answers received. The most represented countries are France, Germany, Spain and Italy. However the Northern and Eastern part of the EU are represented as well with interesting examples from Denmark, Finland and Poland. Most respondents are performing artists (actors, musicians, dancers, etc.) but other disciplines such as the visual arts, design or architecture are also covered.

The feedback from these questionnaires is particularly relevant for the questions related to **social security** and the experiences gathered have been used to feed this mapping. They also help to identify the nature of the obstacles faced at different levels by individual artists and cultural professionals in comparison with cultural organisations (ensembles, touring/production companies, theatres, venues).³

b) Two meetings to gather direct feedback from the cultural sector:

- Brainstorming meeting organised by On the Move with its members and associated partners on the question of social security and taxation for mobile artists and cultural professionals on 7 November 2013 in Brussels: this 3-hour session allowed to gather feedback on the very first results of the online questionnaire and concrete obstacles faced by the cultural sector. It helped the research team to consider the topic of in the larger context of workers working across borders in general, and underscore the need to define better the specific features of artistic and cultural work.

- Training organised on 13 November 2013 in Brussels by the International Federation of Actors (FIA) for its members on "Performers' mobility: Frequent problems and practical solutions": the training included presentations by various experts and allowed to collect feedback from 14 FIA members.

Both meetings were especially useful for collecting concrete experiences and knowledge particularly in relation to **taxation**.⁴

c) Additional interviews in relation to social security systems and taxation at EU and national levels:

- Meeting with Jackie Morin and Fleur Veltkamp, DG Employment, Social Affairs, and Inclusion (18 September 2013);

³ Annex 1 (page 35) includes the two questionnaires and the main results of this online survey.

⁴ See Annex 2 (page 44) for the programmes of these meetings.

- Meeting with Claire Damilano, European Citizen Action Service (ECAS) (7 October 2013);
- Participation of OTM and BAAPE as observers in a meeting organised by FEVIS at the Ministry of Economy and Finance, France on the issue of the OECD Article 17 (18 November 2013);
- Email interview with Laure Detaille-Moreau (EURES, Pôle Emploi Spectacles, Paris, France);
- Skype interview with Nicolaj de Fine Licht - Concerto Copenhagens (baroque orchestra), Denmark (FEVIS member).

Limitations of the mapping:

Two of the main challenges for this report were the limited time allocated for the research (October-December 2013)⁵ and the difficulty to analyse and interpret in the best possible manner the data and information collected through the online questionnaires. The issues being often complex, the artists/cultural professionals directly concerned were not always able to express the exact nature of the problems they face. The research team has therefore tried to focus on the most illustrative examples and experiences so as to avoid falling into false interpretation. The number of answers received (147) may not have a statistical significance per se: it has, however, qualitative relevance as the analysis of most of the answers re-confirms the main conclusions of research and reports already carried out on this subject in the past 10 years.

The data collected also highlight recent trends that could be linked to the current economic crisis. Respondents were asked to refer to experiences from the last three years (2010-2013), although the exact year for each case was not directly requested.

Structure of the report:

The choice made to present this report as a series of chart-mappings aims at facilitating the reading and highlighting the most pressing obstacles faced by the artists. At the same time, it presents a number of good and/or relevant administrative practices when these could be identified. These administrative practices were complemented with examples of organisations providing specialised information and/or Internet platforms. Each chart-mapping also attempts a first typology of obstacles based on existing literature and the most recent feedback from the cultural sector.

Working definitions and key terms:

Based on the definition of cultural mobility used as a reference by On the Move, we understand **cultural mobility** as "the temporary cross-border movement of artists and other cultural professionals". Certain forms of mobility relate to the individual (e.g. networking, residencies etc.); others are intrinsically connected to the mobility of works or performances in another country. (...) Mobility is not only understood as occasional movements across national borders that may be useful to gain professional experience required for career advancement, as well as advance artistic endeavour, but more as an integral part of the regular work life of artists and other cultural professionals." (From Ericarts, *Mobility Matters*, 2008)⁶

With reference to several past studies and to the experience of On the Move on this subject, the definitions adopted for the key terms of this study are the following:

Artists: Depending on the disciplines, creators and creative people, play-writers, choreographers, dancers, theatre professionals, film directors, painters, photographers, media artists etc.

Cultural professionals: Any non-artistic professional working in the arts and culture field, from technicians and producers to curators, cultural journalists and critics. The definition encompasses also professionals engaged in the facilitation of arts and cultural programmes and activities, such as festival directors, venue or company managers, secretaries general of cultural networks etc.

⁵ The EC-convened thematic seminar was initially planned in February 2014, December 2013 was first provided as the deadline for this report.

⁶ <http://on-the-move.org/about/mission/culturalmobility>

The report encompasses all **artistic and cultural disciplines**. It should be noted that the double taxation issue concerns mainly the performing arts and the music sector.

Social security: social rights covered (and relevant for the cultural sector) include sickness, maternity and equivalent paternity benefits, old-age pensions, pre-retirement and invalidity benefits, unemployment benefits, family benefits, benefits in respect of accidents at work and occupational diseases.

Taxation: VAT-related issues are not part of this report.

Geographical coverage: the 28 EU Member States as well as Iceland, Liechtenstein, Norway and Switzerland (European Economic Area) are covered.

I. Artists' mobility and social security in the European Union (EU)

1.1. The European coordination of social security systems:

Before mapping relevant obstacles in the field of social security it is important to recall the basic principles that govern the coordination of social security systems in the EU.

The single market aims at the elimination of barriers and a simplification of rules that allows everyone to move freely across 28 Member States of the European Union. The legal foundation of the single market is found in the Article 3 paragraph 3 of the Treaty of the European Union (TEU) and in the articles 21 title I, 26, 28, 29, title IV, title V, articles 114 and 115 of the TFEU (Treaty on the Functioning of the European Union). The cornerstones of the single market are known as the "four freedoms": Free movement of persons (art. 45), free movement of goods (art. 30), free movement of services and free movement of capital (art 63-66).

In order to ensure the free movement of people in the EU, a **coordinated national security system** has been implemented at the EU level. The European social security frameworks governed by Regulation (EC) **No 883/2004** (replacing Regulation (EEC) No 1408/71) and Regulation (EC) No 987/2009 (replacing Regulation (EEC) No 574/72) set out the principles designed to guarantee the social security rights of mobile workers and citizens within the EU without interfering with national legislations.

This regulation aims to rationalise the concepts, rules and procedures concerning the coordination of Member States' social security systems. It stipulates that persons who are subject to the same social security legislation need to fulfil the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that state. Persons moving within the EU, Iceland, Liechtenstein, Norway or Switzerland will always be subject to the legislation of only one country. The social security institutions will assess under which country's legislation they are covered according to EU rules.

<p>The EU rules on social security coordination apply to national legislation on:</p> <ul style="list-style-type: none"> - Sickness, maternity and equivalent paternity benefits - Old-age pensions, pre-retirement and invalidity benefits - Survivors' benefits and death grants - Unemployment benefits - Family benefits - Benefits in respect of accidents at work and occupational diseases - A certain number of special cash benefits which are not based on contributions (special non-contributory benefits) 	<p>They do not cover:</p> <ul style="list-style-type: none"> - Social and medical assistance
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The EU coordinated national security system implies **four fundamental principles**:

1. Determination of the applicable legislation (*Title II of Reg (EC) 883/2004*):

A person is subject, in principle, to the social security law of one country only. In most cases, the applicable legislation is the one of the country where s/he is exercising her/his profession. There are however exceptions for "posted" or "pluri-active" workers (employed or self-employed.)

2. Equality of treatment (art. 4 & 5 of Reg (EC) 883/2004):

This principle guarantees that mobile workers have the same rights and obligations as the nationals of the country to which social security legislation they are subject.

3. Exportability of benefits (Art. 7 of Reg (EC) 883/2004):

A mobile worker cannot lose her/his right to a social security benefit merely because s/he resides in the territory of another Member State. Benefits previously acquired in a Member State are transferred to the Member State of the current residency (except for special non-contributory benefits).

4. Aggregation of periods (Art. 6 of Reg (EC) 883/2004):

In some Member States, the allocation of benefits depends on the completion of a training course (this applies mostly for unemployment benefits). Periods of work insured by social security payments in one Member State have to be taken into account to calculate the entitlement to benefits.

1.2. Determination of the applicable legislation⁷ and consequences for mobile artists and cultural professionals:

Next to the above fundamental principles of coordination, the Regulation (EC) Np 833/2004 (of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems) determines which rules are applicable to mobile workers depending on their activity. The aim is to prevent a mobile person from not being covered by any social security system at all and to avoid competition between two legal systems at the same time. Therefore, a mobile worker should only be subject to the legislation of one Member State (Art 11§1 a.).

As from 1st May 2010, a modernised system of coordination of social security is applicable to the following 2 regulations:

- Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems
- Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004

As a result, the modernised coordination of social security improves the protection of social security rights for the citizens.

The "*lex loci labori*" principle implies that a worker (employed or self-employed) is subject to the legislation of the Member State where s/he works (Article 11.3.a). However, depending on the specific situation, this is subject to different rules. Due to these different rules and to the nature of an artist's mobile career pattern, the applicable rules in the case of mobile artists and cultural professionals are unclear. An additional issue is that, as it is often reported in the cultural sector, there is no common definition of what an artist is or at least no general understanding of the nature of the artists' work scope⁸.

The employment situation of an artist or cultural professional can combine **many features at the same time**: they can vary either in time or geographically or in terms of employment status. Depending on the opportunities, throughout her/his career, one artist may take up a job as an employee for a certain period of time (e.g. be employed by a theatre company for a specific project or during a theatre season) then work as a self-employed person on a specific assignment for a few days or weeks in another EU Member State.

⁷ Katrin Distler & Esser Ger, Guide for mobile European workers, European Trade Union Confederation (ETUC), 2011; Council Regulation (EC) N° 833/04.

⁸ For reference, the UNESCO recommendation on the status of the artist proposes a formal definition for all artists: "*'Artist' is taken to mean any person who creates or gives creative expression to, or re-creates works of art, who considers his [sic] artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not he is bound by any relations of employment or association*". http://portal.unesco.org/en/ev.php-URL_ID=13138&URL_DO=DO_TOPIC&URL_SECTION=201.html
See also the Compendium on Cultural Policies and Trends in Europe: <http://www.culturalpolicies.net/web/status-of-artists.php> and the statistics on employment patterns in the cultural sector: <http://www.culturalpolicies.net/web/statistics.php>

In addition, artists' and cultural professionals' professional patterns feature a high degree of unpredictability: they can develop across different countries, involving different projects and / or residency periods in countries different than their country of residence – inside and outside the EU. They can also combine different employment statuses when working in different EU countries, and their rights and obligations may vary considerably in different EU Member States.

1.2.1 General Rules

<p>Determination of the applicable legislation for an employed artist:</p> <p>An employed artist is subject to the legislation of his country of employment even though:</p> <ul style="list-style-type: none"> - S/he does not reside permanently in this country - Her/his employer is not established in this country 	<p>Determination of the applicable legislation for a self-employed artist:</p> <p>A self-employed artist is subject to the legislation of the country where s/he pursues her/his activity even though:</p> <ul style="list-style-type: none"> - S/he does not reside permanently in this country
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1.2.2 Exceptions: *Posting and Pluri-activity*

The Regulation 883/2004 sets out exceptions to the general rules that could be applicable to employed or self-employed artists⁹.

1.2.2.1 Posting¹⁰

Posting refers to the situations in which a person is sent by an employer to another Member State to perform work there as an **employee**, or in which a **self-employed** person posts him/herself in another country on a **temporary basis** (Art. 12).

<p>As Employed</p> <p><u>Conditionality:</u></p> <p>An artist can be hired by an employer in order to be posted in another Member State but must be subject to the legislation of the employer's country at least 1 month prior to the posting (Art. 14§1 of Reg. 987/2009)¹¹.</p> <p>The rule of the country of normal occupation applies when:</p> <ul style="list-style-type: none"> - The duration of the posting does not exceed 24 months; - There is a direct link between the posting employer and the posted artist; - The employer ordinarily performs substantial activities, other than purely internal management activities, in the territory of the Member State in which it is established (Art. 14§2 of Reg. 987/2009); 	<p>As Self-Employed</p> <p><u>Conditionality:</u></p> <p>A self-employed artist can post him/herself in another Member State as long as s/he pursues a substantial part of her/his activities (more than 25%) in her/his country of establishment, that s/he pursued those activities for at least 2 months prior to posting and that s/he acts so as to carry on those activities at the end of the posting.</p> <p>The rule of the country of normal occupation applies when:</p> <ul style="list-style-type: none"> - The duration of the posting does not exceed 24 months; - The artist is normally self-employed in her/his country of residence; - The artist posts him/herself to carry on a similar activity than in her/his country of residence.
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⁹ You can also refer to the annex 6 page 57: *Mobile workers and applicable legislations at the EU level.*

¹⁰ For more detailed information on posting: European Commission, *Practical guide: The legislation that applies to workers in the European Union (EU), the European Economic Area (EEA) and in Switzerland* <http://ec.europa.eu/social/BlobServlet?docId=4944&langId=en> and European Trade Union Confederation: *Guide for Mobile European Workers* (2011): [http:// etuc.org/IMG/pdf/Mobility_Guide_2011_EN-5.pdf](http://etuc.org/IMG/pdf/Mobility_Guide_2011_EN-5.pdf).

¹¹ This follows from Decision A2 from the Administrative Commission for the Coordination of Social Security Systems, Art 14(1) only requires that the person "is already subject" to the legislation of the sending State.

<p>- The artist is not sent to replace another posted worker.</p> <p><u>Consequences:</u></p> <ul style="list-style-type: none"> - The artist stays in a subordination link towards her/his employer; - Social contributions are paid under the normal regime (in the sending country); - The artist has an A1 (previously E101) form that attests s/he is covered by the social security scheme in the sending country 	<p><u>Consequences:</u></p> <ul style="list-style-type: none"> - Social contribution are paid under the normal regime (in the sending country); - The artist has an A1 (or E101) form that attests s/he is already covered by a social security scheme.
<p>* Posted workers are protected through Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (O.J. L 018 01; 21.01.1997). It guarantees that the rights and working conditions of a posted worker are protected throughout the European Union, and to avoid "social dumping" where foreign service providers can undercut local service providers because their labour standards are lower. The Directive establishes a core of mandatory rules regarding the terms and conditions of employment to be applied to an employee posted to work in another Member State. These rules reflect the standards of local workers in the host Member State. The idea is that where a Member State has certain minimum terms and conditions of employment, these must also apply to workers posted to that State. However, nothing prevents the employer from applying working conditions that are more favourable to workers such as, for instance, those of the sending Member State.</p> <p>The core of mandatory rules on posting workers covers a wide range of issues such as maximum work periods and minimum rest periods, minimum paid annual leave, minimum rates of pay, equal treatment and the conditions of hiring out workers, in particular the supply of workers by temporary employment undertakings.</p>	

1.2.2.2 Pluri-activity (pursuit of activity in two or more Member States)

The term pluri-activity refers to situations in which a person (an artist or cultural professional) pursues simultaneous activities in two or more States (part-time) or permanently alternates between several activities in two or more States¹².

Activities that are **performed simultaneously** covers cases where additional activities in different Member States are carried out simultaneously under the same or different employment contracts¹³. The second or additional activity could be exercised during paid leave, during the weekend or, in the case of part-time work, two different activities for two different employers may be undertaken on the same day. In general, it can be said that coinciding activities are a normal aspect of the working pattern and there is no gap between the activities in one Member State or the other. Many artists carry on simultaneous jobs at the same time or at least on a regular basis.

For instance, an Italian performer may be employed as a teacher in an art school in Belgium while performing in Italy for a theatre company on a regular basis. Many musicians work for different bands/ensembles based in different states at the same time or alternatively. They may be employed by an ensemble while working as freelance for their other activity/ies.

Activities that are **performed in alternation** cover situations where the activities are not carried out simultaneously over the territory of several Member States, but consist of successive work assignments carried out in different Member States, one after another. To determine if the activities are carried out during successive periods, not only must the anticipated duration of periods of activity be considered, but also the nature of the employment in question. It is not relevant how often this

¹² See Article 14(5) of Regulation 987/2009

¹³ Source: Practical guide. The legislation that applies to workers in the EU, EEA and Switzerland. European Commission, DG Employment. December 2013

alternation takes place but some regularity in the activity is required¹⁴.

In practice, pluri-activity covers four different situations that must be assessed by the competent institution in order to determine the applicable legislation:

- **Person employed in two or more states** (Art 13 (1) of Regulation 883/2004):

1. The rules of the state of residence apply if s/he pursues a **substantial part** of her/his activity there (more than 25%) or if s/he is employed by various employers in various states;

2. The rules of the state where the employer has registered her/his office apply if the worker **does not pursue a substantial part** of her/his activity in her/his country of residence.

- **Person who is self-employed in two or more states** (Art 13 (2) of Regulation 883/2004): The rules of the country of residence apply if s/he pursues a **substantial part of her/his activity** there or in the state in which her/his centre of activity is situated.

- **Person who is concurrently employed or self-employed in two or more states** (art 13(3) of Regulation 883/2004): S/he is subject of the legislations of the state where s/he is employed or is covered under §1 of art. 13.

The amendments 2010 to the Applicable legislation: change of rules for working in 2 or more Member State - Article 13 BR and 14(5) and (5b) IR, provide further explanations:

1) A person who "normally pursues an activity as an employed person in two or more Member States" shall refer to a person who:

- simultaneously, or in alternation,
- for the same undertaking or employer,
- or for various undertakings or employers,
- exercises one or more separate activities in two or more Member States".

2) Marginal activities shall be disregarded for the purposes of determining the applicable legislation under Article 13 BR. In this case the rules to work in one Member State apply, as if the person was only working in this particular State.

3) Determining the applicable legislation in relation to defining the substantial activity in the Member State of residence. The criteria of remuneration and of working time are therefore taken into consideration, counting for at least 25% of the working time and remuneration in the country of residence. The period that is taken as a basis is a calendar year.

If that is not the case, then:

- The legislation of the Member State in which the registered office or place of business of the employer is located applies, if only one Member State is involved, or
- The legislation of the Member State of residence if at least two other Member States are involved.

The legislator assumes therefore that a person has **ex ante information on the working time and remuneration** to determine whether the social security legislation of the country of residence applies or the country of employment. In reality this proves to be **very difficult for artists given the high degree of unpredictability of their career**. Even the work pattern of the previous year cannot be taken as a benchmark to determine the applicable legislation.

1.2.3. Obligation of information provision

On 16 April 2014 the European Parliament and the Council adopted a **Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers** (Directive 2014/54/EU)¹⁵. The Directive states (art. 19-21) that in order to ensure a proper use of the rules on posting, the competent institutions in the Member State to whose legislation the

¹⁴ Source: Practical guide. The legislation that applies to workers in the EU, EEA and Switzerland. European Commission, DG Employment. December 2013

¹⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0054>

workers remain subject, must ensure that appropriate information is made available to both employers and posted workers of the conditions which apply to the posting (e.g. via information leaflets, websites), alerting them to the possibility that they may be subject to direct controls designed to check that the conditions which permitted the posting continue to exist.

In the Directive concerning the enforcement of the provision applicable to the posting of workers in the framework of the provision of services COM (2012) 131, one of the aims is to set more ambitious standards to raise the awareness of workers and companies about their rights and obligations as regards the terms and conditions of employment. This implies also ensuring the provision of information.

1.3. Obstacles linked to social security and identification of good administrative practices:

Several relevant studies have already been conducted on obstacles related to social security and taxation systems and their impact on the mobility of artists and cultural professionals within the EU (see pages 59-61). These research documents or studies raise several questions, some of which have already been addressed by recent legal and policy developments. However, artists and cultural professionals, be they employed and/or self-employed, still face a number of challenges that impact on their social rights and, to a further extent, their mobility and employability.

The following section presents obstacles related to social security and taxation taken from studies, reports, surveys of the last 10 years, as well as feedback from the artists and the cultural sector as described in the Introduction. ¹⁶ In addition to the obstacles, examples of good or relevant practices were identified whenever possible. A categorisation of the types of obstacles faced by artists and culture professionals has also been proposed. Finally, feedback and examples from the cultural sector complement the mapping with the most recent and pressing obstacles.

1. Regulatory obstacles
The status and working patterns of the artist
<i>Obstacles</i>
<ul style="list-style-type: none"> ○ Lack of a status of the artists: There is no general definition in EU law of what an artist is or how a person may prove to be one. Artists will often consider themselves as freelancers, which is characterised by their career pattern of subsequent, simultaneous or combined status of employed or self-employed. The fact that there is no harmonised definition of the artist under a single employment status as either employed or self-employed is problematic considering the unpredictability of artists' professional career patterns. It weakens the artist's level of social protection as he/she may be hired as an employed person in one country and as self-employed artist in another for the same type of work. This situation creates a fragmentation of social security regimes and makes it often difficult for the artists to benefit from the entirety of social contributions they have paid under different regimes. There may also be other situations when, for instance, artists may be referred as students when taking part in a workshop or a master-class.
Duration of the posting
<i>Obstacles</i>
<ul style="list-style-type: none"> ○ Very short-term posting: The stay in another EU country can be very short, be it a few days for a touring performer, a couple of weeks for an artist taking part in a project (including rehearsals and performances) or when attending a training workshop, a few weeks or months for artists in residence, etc. In particular in the case of self-posting (self-employed/freelance artists), the period may be too short for an artist to have built up rights and to be entitled to access the local social security system.

¹⁶ See selected references and resources at the end of the report (from page 59).

In some countries, national legislation does not allow an A1 form to be issued to workers who are employed only for a very short period of time and require at least 30 days of working time.

In some cases the host country allows a posting of 5 days but the national administrative procedures are reported as not being sufficiently adapted to this kind of particular situation and are not able to issue an E101/A1 form within such a limited time.

Snapshot on the answers from the questionnaires (from page 39):

More than 40% of the respondents are frequently mobile. During the past three years, 24% worked in another country than their country of residence **more than 10 times** and 18% moved out of their country of residence **between 5 and 10 times**. 60% of the respondents moved to another country for very short periods of time. 34% claim that they stay **between a week and a month** in the host country/country of performance while 26% stay **less than a week** outside of their country of residence.

Conditionality of unemployment and pension benefits

<i>Obstacles</i>	<i>Good Practices</i>
<p>Despite the principle of aggregation of insurance periods, and depending on the country, artists may experience difficulties when calling for access to unemployment schemes or pension, as some countries would still impose a condition of residence to qualify for unemployment insurance and pension contributions and do not only calculate benefits on the basis of working time.</p> <p>Working periods by a non-resident artist in different countries would not be taken into account into the sum of an insurance period.</p> <p>In some countries artists do not fulfil the necessary requirements to qualify for certain benefits. For instance, dancers who retire at 45-47 years of age do not fulfil the length of work criteria to benefit from a full pension.</p>	<p>Luxemburg has set up a system of income-supplement for self-employed artists whose income is below the minimum wage. They can benefit from this scheme for as long as their income does not increase. This assurance is provided for artists working in Luxemburg or abroad for a Luxemburg company, regardless of their nationality.¹⁷</p> <p>In Belgium, the public authorities provide every year to every person who worked in the country, an overview of the number of days worked in view of the rights built up for the pension¹⁸.</p> <p>In Belgium again, the Social Fund for the Performing Arts¹⁹ in Flanders, which is jointly managed by the management and labour of the live performance sector in Flanders, provides a common supplementary pension scheme for all live performance workers who are employed in the Flemish live performance sector in the context of the Joint committee for the performing arts, regardless of their nationality.</p>

Exportability of benefits

<i>Obstacles</i>	<i>Good Practices</i>
<p>Entitlement to social benefits:</p> <p>If an artist is not entitled to social benefits in his/her home country, he/she will not be able to take any benefits made in the host country. This can raise problems for artists and cultural professionals particularly for those coming from Member States most affected by the crisis.</p> <p>While employed workers/artists benefit from a full social security coverage in most EU Member States, self-employed workers are not always</p>	<p>It may be interesting to follow how the question of welfare and social security system is and will be tackled by private foundations (active in the socio-economic sector) particularly in the EU countries most affected by the crisis. See, for example, the case of the Italian Fondazione Cariplo:</p> <p>http://www.fondazionecariplo.it/it/news/istituzional/i/redesigning-welfare-in-the-mediterranean.html</p>

¹⁷ EP, Op. Cit, p. 30

¹⁸ <http://brussels.angloinfo.com/information/money/pensions-wills/pensions/>

¹⁹ <http://www.podiumkunsten.be/Home/overons/overhETFonds/tabid/4611/Default.aspx>

covered or merely benefit from an insufficient minimum coverage and have to voluntarily subscribe to costly private insurance or to acquire a status of employed person.

Moreover, artists who alternate the status of employed and self-employed workers may not benefit from contributions paid as self-employed.

Feedback from the cultural sector²⁰

The status and working patterns of the artist

Luxemburgish musical performer, employee in Germany, lives in Luxembourg: *"I am employed in Germany and work as self-employed in Luxembourg. The Luxembourgish authorities wanted me to pay social security contributions in Luxembourg even though I was legally obliged to pay them in Germany".*

French Orchestra of contemporary music employing European musicians:

"Depending on their status and their country of origin, the social and fiscal rules to be followed change based on their administrative status... we never know if we are following the right rules!!! (...) regarding the French law it is always a problem when the artists are self-employed."

Some organisations (like festivals, venues, touring organisations etc.) also mention the fact that artists have difficulties to explain their job status as they may have a dual status and/or have a job in another sector than the artistic and cultural sector (like working for a private company, a café, etc.).

Limitation to social security coverage

Belgian choreographer, play-writer, director and dancer, lives in the United Kingdom:

"Biggest problems: unemployment benefits and medical insurance. The tax year is different in Belgium (January-January) and in the United Kingdom (April-April). I have medical coverage in Belgium but from time to time they want a paper but they, themselves, are never sure of why and what. I wanted to go back and live in Belgium again where I'm from but had to wait months to receive a U1... once I got it I was refused unemployment benefits because I was self employed in the United Kingdom and as a self employed person in Belgium you have no rights to benefits in this case. But they took 4-5 months to tell me this... whereas I told them since the start this U1 would not feature any paye (pay as you earn) jobs, I was only self employed."

Complexity of the labour situation

Syndicat Français des Artistes-interprètes (member of FIA), France:

"We have a real problem when performers established in France are required by certain foreign (but EU) producers to send a bill for their services, thereby losing the possibility to coordinate with their French social protection rights (...) It is frequently very difficult for the French performers to know in advance what their employment status will be when contracted by a foreign producer. In addition, the French system is complicated, and the artist has troubles figuring out what will be taken into consideration by French authorities."

Finnish dancer and choreographer, mixed status, lives in Finland:

"I'm contracted to work with a company based in Luxembourg for nine days to do a performance in France. The company in Luxembourg is treating it as a "provision of services" rather than employment, so I'll have to need to sort out my social security and taxes back home in Finland. Not a problem. Where it gets complicated is that the French festival wants an A1. (Actually they asked for an E101, so I guess their system is a bit behind the times.) The festival only informed of this two weeks before the performance is to take place. As the National Insurance people here in Finland see the situation, I

²⁰ The feedback from the sector extracted from the online questionnaires or interviews done between October-November 2013 has been edited (grammar and typo errors) only if needed.

should be paying my National Insurance contributions to Luxemburg and because of that also obtain the A1 from there. I don't understand why the French need the A1 in the first place since my contract is with the company rather than the festival. I'm firing off an A1 application in any case, since I work abroad on a regular basis with different types of contracts."

Duration of the posting

Mobility can be a normal aspect of the professional life of artists and cultural professionals, and can last for **very short periods of time** (even just a few days, e.g. in the context of a touring performance, the set up of an exhibition etc.). In addition, their mobility opportunities can be planned in a very short delay (e.g. invitations sent or confirmed only a few weeks before the actual travel) – see for instance the responses to On the Move's online questionnaires (from page 39).

Conditionality of unemployment and pension benefits

Federación de Artistas del Estado Español (FAEE, a member of FIA), Spain:

"(...) It is difficult because at the time of retirement you don't have a single European pension for artists. You have to apply for pension in every country you have worked in your whole career. (...) I was awarded a pension in the United Kingdom and another one in Spain (and outside Europe another one in Argentina). I applied in France where I worked for different periods summing up about a year and a half (...) and it was denied for no reason. I applied in Germany where I worked for nearly six months. It was also denied. In both cases there were different rules for the counting of contributions. (...) In France I didn't accomplish the minimum working days per year, in Germany too."

Exportability of benefits

Portuguese self-employed dancer and choreographer, lives in the Netherlands:

"As I am self-employed in The Netherlands, Portuguese Social Security couldn't tell me my rights to unemployment if I would get a working contract in Portugal with a Dutch address. It took three phone calls and three different answers."

Even if it was not directly the focus of the questionnaire, one shall note that the choice of mobility can, considering the context of economic crisis, be also more and more imposed as an economic necessity hence the level of urgency for people to find the right information concerning their social rights.

2. Administrative obstacles	
Double payment of social contributions	
<i>Obstacles</i>	
Due to the slow release of <i>portable documents</i> ²¹ , artists, their employers, and artistic venues often have to pay contributions to the social system of both the residing and the host country.	
Obtaining portable documents (E/A/S forms)	
<i>Obstacles</i>	<i>Good practices</i>
<p>The need to have separate A1 forms for each job abroad - and sometimes even for each venue where the artist performs - leads to burdensome and time-consuming procedures. This is specially the case for touring artists who have multiple short-term engagements in several countries.</p> <p>In many cases the national administrative procedures are reported as not being sufficiently adapted to very short-term postings and are not able to issue an E101/A1 form in time.</p> <ul style="list-style-type: none"> ○ Cost related to the non-provision of portable documents <p>If the touring company cannot provide these E101/A1 forms, the venue might be obliged – under national legislation – to pay the foreign live performance workers' social security contributions in the host country, which, in some countries, can amount to huge additional costs for the venues and subsequently the touring company concerned.</p> <ul style="list-style-type: none"> ○ Lack of an electronic service <p>To gather information or fill in forms, in some countries the artist still has to present him/herself to the local administration in person or via traditional mail, even if he/she just needs to sign the documents. A transmission via email is not possible in most cases.</p>	<p>At the Mobile.home conference in Helsinki in 2006²², participants from Austria reported that the European Health Insurance Card issued to self-employed workers included an A1 form and that it was not necessary to apply for it on every occasion they worked abroad.</p> <p>In the Netherlands, it is enough to submit an A1 form just once a year for each performing artist who is going on tour with an EU live performance organisation to the Netherlands, even if the organisation leaves the Netherlands after some performances and returns for other performances with the same artists later, during the same year.</p> <p>Electronic Exchange of Social Security Information (EESSI) is an IT system that will help social security bodies across the EU exchange information more rapidly and securely – as required by EU regulations on social security coordination. It is expected to be effective by May 2014: http://ec.europa.eu/social/main.jsp?catId=869</p> <p>The European Commission - DG Social Affairs provides a list of the institutions in charge of delivering the “Portable documents” in each Member State, which may ease access to the relevant administrative authorities, even though it does not solve the e-transmission service issue: http://ec.europa.eu/social/main.jsp?catId=1028&langId=en</p>

²¹ <http://ec.europa.eu/social/main.jsp?catId=868>

²² <http://www.finland.it/public/default.aspx?contentid=121307&nodeid=38419&contentlan=2&culture=en-US>

Goodwill of the national administration	
<i>Obstacles</i>	<i>Good practices</i>
<p>Double payment of social security contributions can be the result of the refusal of the host country's national authorities to recognise the status of a self-employed live performance worker from other EU countries, imposing on foreign live performance workers the prevailing employment status of an employee (e.g. France, Germany).</p> <p>Sometimes, civil servants/administrations are not aware of, refuse to comply with applicable legislation or make it challenging for foreign artists to comply with their obligations.</p>	<p>The ECJ judgement for the Théâtre Royal de la Monnaie²³ case condemned France for its legislation which had automatically imposed the status of an employee (so-called “presumption of wage system”- <i>présomption de salariat</i>) on individual live performance workers from other EU Member States which provide a service in France only on a temporary basis and which can prove that they usually operate under the status of a self-employed person in other EU Member States.</p> <p>The European Commission proposed on 26 April 2013 a Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers: COM (2013) 236 final (see p.55).</p> <p>At the level of EURES and particularly at the level of three national employment agencies, there exists a link between three coordinators in France, Sweden and Germany who deal with artists and cultural professionals. This initiative comes from individuals rather than depending on a EURES policy:</p> <ul style="list-style-type: none"> - Pôle Emploi Spectacles (Paris/France): http://www.pole-emploi.fr/informations/les-pages-spectacle-@/index.jspz?id=80864 (EURES adviser) - Arbetsformedlingen (Sweden): http://www.arbetsformedlingen.se/For-arbetssookande/CV-och-ansokan/For-kulturarbetare/Andra-webbplatser-inom-kulturomradet.html (EURES adviser, focus on mobility) - Bundesagentur für Arbeit, with a special office for artists: Künstlervermittlung (Germany): http://www.arbeitsagentur.de/ (no EURES adviser on these questions). <p>The three organisations share information about the respective changes in legislation in their countries or practical information. Sometimes they organise information sessions for artists and cultural professionals on the administrative questions related to mobility and the conditions of the job markets and regulations in the three countries²⁴. They also organise training and staff exchanges for civil servants working on mobility issues.</p>

²³ European Court of Justice (Section Five), 30 March 2000, Bank and others against Théâtre Royal de la Monnaie and others. <http://www.artistes-etrangers.eu/en/legal-precedents/self-secondment-in-france-of-artists-from-the-european-union.html>

²⁴ A free information session was held in Paris on 12 December 2013 with the three organisations (France, Sweden and Germany).

Feedback from the cultural sector

Double payment of social contributions

Danish Actors' Association (Member of FIA), Denmark:

"Regulation (EC) n°883/2004 of the European Parliament and of the Council of 29 April 2004 (...) often causes problems for singers living in Denmark when they are working abroad, especially in case the singer is not obliged to pay social security in the country he/she is working (...) if a country refuses to return mistakenly paid social security, the singer is left with very few possibilities to claim the payment."

Luxemburgish performer:

"I worked as an employee in Germany but I was also registered as a self-employed artist in Luxemburg. Luxemburg authorities wanted me to pay for contributions in Luxemburg while I was bound by law to pay them in Germany".

French orchestra of contemporary music working with European musicians:

"As an orchestra we always ask for net fees but it is very difficult to obtain. We often have to pay social charges and wait for their reimbursement."

Obtaining portable documents (E/A/S forms)

French street performer, lives in France, worked in the United Kingdom:

"I've worked in England, and I can't obtain the U1 form to claim for my unemployment benefits in France. Result is that my French intermittence du spectacle file is blocked, and I didn't get any allowance for four months because of this problem."

Dutch Theatre - The Netherlands:

"A1 procedure requires some administrative work. It is unbelievable that some countries impose social security contributions without A1, even when it is very clear that we come with our own actors/employees and under the EC Directive 883/2004 do not fall under the social security of the host country. The most characteristic example is France."

Goodwill of the national administration

Zbigniew Raszewski Theatre Institute, Poland (On the Move member):

"Difficulties to get all the papers from the social security office. Many people in this office in Poland do not understand the different situation of the artists (for instance the fact that they don't always have stable jobs). The big problem is also the enormous list of papers you have to submit for each person".

Claire Damilano, European Citizens Action Service (ECAS) during an interview on 17 October 2013 in relation with the mapping:

"For two years, with the regular questions we treat through ECAS, we have noticed that the problem is less on information – people can get more information about their rights and which procedures to follow – but on the lack of compliance of countries/administrations to regulations. Basically with the social security coordination system, everything is theoretically in place for the system to work".

European Health Insurance Card (EHIC)

Out of the 108 individual respondents, 90 benefit from a health care insurance. **However, 39 (43%) of them do not know about the EHIC.** Out of the 18 respondents who do not benefit from a health care insurance, 2 have heard of the EHIC. All the Spanish respondents stated that it was impossible for them to be granted with an EHIC from the Spanish authorities²⁵.

²⁵ According to a recent press release, the Commission expresses concerns about the fact that Spanish hospitals do not recognise the EHIC as a valid document for foreigners to benefit from healthcare in Spain; see http://europa.eu/rapid/press-release_IP-13-474_en.htm

3. Practical obstacles	
<i>Obstacles</i>	<i>Good practices</i>
Language Barrier	
<p>Artists often have difficulties when trying to get information from national authorities in different EU Member States. Legislation and documents are not always available in a language other than the national language.</p> <p>This is critical in particular when an artist falls under the social security system of the country of residence, even when performing abroad, as the touring company has to deal with all the paperwork in the language of the country where the artist is residing. Given the often very limited human resources, it is impossible for cultural organisations to hire external experts as a go-between.</p>	<p>Standardised portable forms are available in 22 languages²⁶ (A1, etc.) but the delivery of those forms has to be further improved.</p>
Information provision for mobile artists and cultural professionals	
<i>Obstacles</i>	<i>Good practices</i>
<p>The Council Conclusions on mobility information services for artists and for culture professionals (2011) state that one of the main obstacles cited by artists and culture professionals seeking to be mobile within the EU is the difficulty of obtaining accurate and comprehensive information and advice on mobility-related issues. A general problem for artists is to get the necessary and specific information on their rights and obligations at the national level. Even employees of the national administration(s) seem sometimes unable to provide precise information.</p>	<p>- "Information Standards for the Mobility of Artists and Culture Professionals" published in 2011 Output of a Commission-convened expert group on Mobility Information Standards.²⁷</p> <p>There are several websites that provide information on social security rights and obligations at the EU Level. To name a few (see also the list of resources from page 61):- Your Europe²⁸: (in 23 EU languages).</p> <p>- Leaflet on pension rights²⁹: Your pension rights explained.</p> <p>- Social security rights country by country.³⁰</p> <p>In some Member States exist free and relevant services or websites for mobile artists, for example, Touring Artists (Germany), Kunstenloket (Belgium) etc.)³¹, but not enough support at a EU level for a systematic coordination between them.</p> <p>Some organisations/ resource centres and networks sometimes organise free information sessions for artists/cultural organisations on this issue like the resource centres in France or Touring Artists in Germany, or create new tools of information like the recent website in</p>

²⁶ <http://ec.europa.eu/social/keyDocuments.jsp?type=0&policyArea=849&subCategory=868&country=0&year=0&advSearchKey=portdoccombined&mode=advancedSubmit&langId=en>

²⁷ http://ec.europa.eu/culture/library/publications/mobility-info-standards_en.pdf

²⁸ <http://europa.eu/youreurope/>

²⁹ <https://ec.europa.eu/eures/main.jsp?lang=en&acro=news&catId=20&parentId=0&function=focusOn&focusOnId=9969&archive=N&limit=12&fromHome=Y>

³⁰ <http://ec.europa.eu/social/main.jsp?catId=858&langId=en>

³¹ <http://www.kunstenloket.be/>, <http://touring-artists.info>

	<p>Sweden by Teater Union (OTM member)³².</p> <p>The European Commission proposed on 26 April 2013 a Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. COM (2013) 236 final (see details at page 55).</p> <p>From 2014, the EC also plans five actions to benefit citizens, growth and employment in the EU for the freedom of movement of people at the EU level, including “an online training module to help staff in local authorities fully understand and apply free movement rights of EU citizens”:</p> <p>http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2006&furtherNews=yes</p> <p>See also the action of some EURES contact points page 18.</p>
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Feedback from the cultural sector

Swiss Stage Artists Union SBKV (member of FIA), Switzerland:

“Administrations are not aware of the legislation or lack of practice. Each single case seems to be new to them, which leads to delay of procedures. Administrative procedures are burdensome for such small arrangements that artists make. Employers are also ill informed about the rules they should follow in order to hire foreign artists willing to pay their contributions in their home country”.

Polish Cultural Manager: *“Basic information is easy to access, but more in depth is usually being discovered step by step with a “so learning by doing” methodology. Officers assume that you know the same they know, and do not take into consideration that rules/habits in your own country can be totally different, so you might not know what to ask for. And usually one discovers extra obligations/benefits/rights when it is too late”.*

Self-employed Portuguese multimedia artist: *“I’ve never had information about social security rights. In Portugal there is not much information about our rights, only about dues. So I don’t even know if I have rights in another country. The information about social rights to freelancers and artists in Portugal is very poor (...)”*

When asked where they usually find information, the respondents named various sources (different from one country to the other): websites of finance and social affairs administrations of their countries or the host countries, networks, Internet platforms, and legal advisers (when they can afford it). However, it appears that there is a need for more accessible, clear, transparent and tailor-made information about legislation and procedures. For many respondents problems happen due to a lack of understanding of their rights and duties. This is because the information they receive can be contradictory, and the artists may not have the time or the money to seek tailor-made professional legal advice. According to the results of the questionnaire, the language barrier seems to be a less pressing issue, even if though it can lead to misinterpretation of legal terms or a erroneous translation of concepts from one language to another.

³² <http://teaterunionen.se>

Some useful online resources were highlighted by the respondents:

- <http://www.cleiss.fr>; www.artistes-étrangers.eu (the second one is not supported anymore by the French Ministry of Culture and Communication)
- www.fevis.com; / <http://www.pearle.ws>
- www.youreurope.eu
- <http://www.iamaworld.com> (International Artists Manager Association: membership required to access information)

Some of the listed organisations are not information providers per se, which shows the limited information some artists/cultural professionals have about where to find the most relevant information related to social security or taxation.

II. Artists' mobility and taxation in the European Union (EU)

2.1. Principles of double taxation treaties according to Art 17 of the OECD Model Tax Treaty³³

The Treaty on the Functioning of the European Union (TFEU) provides the freedom to reside, work and provide services in the Member States of the European Union (Articles 45 & 56 TFEU). Therefore, performing artists and companies have the freedom to perform in any country across the EU. The EU has no competence on tax harmonisation, which means that each Member State has full competence on taxation. In cross border situations countries operate according to double tax treaties.

The special rules for artists (and sportsmen) have their historical origins in 1939 with the Tax Treaty USA-Sweden and the German Tax treaties created in the 1950s that aimed to avoid double taxation. In 1963, the OECD introduced Article 17 in its Model Convention on DTT (Double Tax Treaty) due to the "practical difficulties" in relation to the taxation of international performing artists: it was introduced as a measure to counteract tax avoidance and non-compliance. The view of the OECD is that taxation at source in the case of artists (and sportsmen) constitutes the best way to ensure that they would pay the tax.

Many countries have included this provision within their bilateral income tax treaties and the OECD Model Convention is the common framework for bilateral DTT within the EU in relation to artists and sportsmen. The OECD Model Convention and its commentary create a non-binding legal obligation for Member States of the OECD on how to conclude DTT. In case of a conflict between the recommendation in the OECD Model Convention and EU Law, the latter will prevail.

The first paragraph of Article 17 provides³⁴ that when an artist or sportsman performs outside of her/his residence country, the income may be levied by a withholding tax in the country of the performance. In 1977, a second paragraph was added in order to counteract tax avoidance schemes by the use of "loan-out" or "star" companies and it states that when another person who is not the artist or the sportsman himself receives the performance income, this may be taxed in the source country³⁵. In addition, the OECD issued in 1987 a report³⁶ where it recommended that the scope of Article 17(2) should be extended to all third parties that could receive fees for artistic and sports performances. The optional Article 17(3) constitutes an exception to the rules provided on Article 17 and it is described in Section 14 of the Commentary on Article 17 of the OECD Model. It allows countries to exclude events that are supported by public funds from the application of Article 17. Many countries (such as Belgium and the Netherlands) have inserted Optional Article 17(3) in their legislations. However, in practice Article 17 (3) may occur to be in conflict with the EU Law principles, especially with provisions on equal treatment, free movement of workers and freedom of services³⁷.

It is important to note that **Article 17 only applies to professional performing artists ("entertainers") (and sportsmen) and does not apply to professionals that do not appear on stage (even if they work for a touring company) or artists working in other disciplines.** For them, the normal regime applies, or they continue to be subject to taxation in their residence country according to Articles 7 or 15 from the OECD Model.

Following the OECD Model Tax Treaty, all EU countries have signed bilateral treaties, which authorise to levy a withholding tax on the fee of foreign, non-resident live performance companies and artists when performing in their countries on a temporary basis. The national rules on withholding taxes apply

³³ See Annex 4, *OECD Model Tax Convention on Income and on Capital*, page 52.

³⁴ 1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

³⁵ Molenaar, D., Grams, H. (2011) *The Critical Need for Reform of Article 17 (Artistes and Sportsmen) of the OECD Model Tax Treaty*, Tax Management International Journal 40(2), p. 3.

³⁶ "Taxation of Entertainers, Artistes and Sportsmen" in *Issues in International Taxation*, No. 2 (1987)

³⁷ Molenaar, D., Grams, H. "Article 17 (3) for Artistes and sportsmen: much more than an exception" Retrieved from <http://www.allarts.nl/filelib/file/article173-intertax-april2012.pdf>. According to the authors, Art17 (3) is being used in 66% of bilateral tax treaties worldwide. (see graph p. 273)

regardless of whether the foreign artist is self-employed or an employee. Therefore, mobile non-resident live performance organisations and artists from the EU may be asked to pay withholding taxes to the tax authorities of the hosting EU country when they perform abroad.

However, in the EU country of residence, live performance organisations and artists have to deal with their national tax authorities, which might also levy taxes on the same income acquired abroad. According to bilateral tax treaties, this "double taxation" should normally be avoided and a live performance company or artist who has already paid taxes abroad should receive financial compensation in his/her home country in the form of a tax credit or a tax exemption. A common problem is that the mobile live performance organisations and artists still have to complete all the formalities in order to clear the tax situation with the residence country's tax authorities in order to avoid excessive "double" taxation. Furthermore, sometimes tax credit cannot be obtained due to the incomprehensible or missing tax certificates.

The OECD has acknowledged that the tax treatment for artists (and sportsmen) under Article 17 is difficult. These problems are related to the differential treatment for resident and non-resident artists and sportsmen. In *The Critical Need for Reform of article 17 (Artistes and Sportsmen) of the OECD Model Tax Treaty*, the authors, Molenaar and Grams propose the following solutions to the current system:

- a) A short-term solution would be to add Article 17(3) to the official text of the OECD Model Tax Convention in order to no longer make it an optional basis
- b) Based on the US Treaty Model, a *de minimis* threshold for the income earned abroad per artist per year could be set;
- c) The optimal alternative would be to eliminate Article 17 from all bilateral income tax treaties. For performances, apply the general rules for companies, self-employed and employees. For non-resident artists and sportsmen keep a source tax in order to counteract tax avoidance behaviour.

- The European Union has no direct influence on artists and sportsmen taxation, but it has an indirect influence through the basic freedoms contained in the EC Treaty. It is in this framework that the European Court of Justice issued the following rulings: *Arnoud Gerritse v FinanzamtNeukölln-Nord*, *Scorpio Konzertproduktionen GmbH v. Finanzamt Hamburg-Eimsbüttel*; *Centro Equestre de Leziria Grande Lda case v Bundesamt für Finanzen (C345/04)*.

As far as administrative cooperation on direct taxation is concerned, the European Commission has recognised that cooperation between Member States in the field of taxation is the only way to ensure the assessment of taxes and to combat tax fraud and evasion. In order to provide Member States with a system that allows them to develop a more efficient and faster administrative cooperation on taxation, the European Commission has adopted the Council Directive 2011/16 EU on administrative cooperation.

The Directive establishes the procedures for the exchange of information: its scope covers all taxes of any kind except VAT. The Directive:

- introduces mechanisms for the feedback between the Member States that have received information regarding taxation;
- introduces the automatic exchange of information from the 1st of January of 2015 on five categories: income from employment, director's fees, life insurance products not covered by other Directives, pensions, ownership of and income from immovable property;
- ensures the existent mechanisms for the exchange of information by the introduction of deadlines (both for exchange of information on request and spontaneously);
- contains a most-favoured nation clause, which means that if a Member State provides a wider degree of cooperation to another Member State it shall also provide it to the others.

In addition, the Commission has laid the detailed rules for the implementation of Council Directive 2011/16 through the **Commission Implementing Regulation 1156/2012**, which includes provisions on the standard forms and the means of communication that can be used by the tax authorities of Member States in order to exchange information.

In the *Guide for artists and cultural operators in Europe* (2004, revised in 2007), Judith Staines concluded on the basis of previous studies³⁸ that taxation was “the most serious obstacle” to artists’ mobility as the double taxation system may stop many companies and artists to tour or to reduce the number of their performances abroad. This has, of course, a negative economic impact. As some groups and companies may choose not to perform in another EU country because of this double taxation issue, it is clear that the existing legal framework impacts negatively on the nurturing of cultural diversity and supporting the EU 2020 objectives on jobs and growth.

2.2. Obstacles linked to taxation and identification of good administrative practices:

The following section presents obstacles to artists’ mobility linked to taxation issues. As in the case of social security issues, the obstacles were mapped on the basis of studies, reports and surveys of the last 10 years. Feedback from the cultural sector has also been provided, in addition to a few good practice examples were they could be identified.

1. Regulatory obstacles	
Non-deductibility of expenses	
<i>Obstacles</i>	<i>Good practices</i>
<p>In many countries, artists performing abroad, cannot deduct expenses from their gross earnings. This results in excessive taxation and discrimination compared to other foreign professionals and national artists who can deduct expenses before being taxed.</p> <p>Foreign artists are therefore less competitive than local artists since they have to raise their fees in order to cover the costs of withholding taxes on their expenses.</p>	<p>In 2007 the United Kingdom, Netherlands, Norway, Hungary and Switzerland allowed deduction of expenses.</p> <p>Member States such as Belgium, United Kingdom and Germany adopted <u>income limit or threshold</u> for the application of their rules on taxation of non-resident artists and live performance organisations with a relatively small income generated abroad.</p>

³⁸ Richard Polacek, Op. Cit., Olivier Audeoud, Op.Cit.

Focus on the decisions by the European Court of Justice (ECJ)

Despite the fact that the conclusion of a DTT (Double Tax Treaty) is left to the discretion of EU Member States, they must still abide by the principles and freedoms of EU Law. Double taxation has been said by the Court to be the result of the coexistence of two applicable tax systems, which have led to a mismatch between them. However, this is not considered to constitute a breach of the Treaty provisions. There are three main rulings by the ECJ concerning the taxation of European artists: *Gerritse*, *Scorpio* and *Centro Equestre*³⁹.

Arnoud Gerritse v Finanzamt Neukölln-Nord (C-234-01), 12 June 2003

The case addressed the question of whether it is permissible to withhold tax at 25% from the gross fee without deducting expenses and whether it is allowed that a foreign artist cannot file a tax income return application for a tax reform. The ECJ ruled that: a) Performing artists that are nationals and with a residence in a EU Member State may choose to have their expenses taken into account at the time of the retention. B) A flat withholding tax is not in violation of Article 56 TFEU if the applied rate is not higher than the tax rate applied to nationals.

Scorpio Konzertproduktionen GmbH v. Finanzamt Hamburg-Eimsbüttel (C-290/04). ECJ, 3 October 2006

The question referred to the ECJ addressed whether the expenses for non-resident artists and sportsmen that are directly linked to the performances should be deducted when withholding tax. The Court answered that gross taxation is in breach of the EC treaty as non-residents have a disadvantaged position in the market. Therefore, taxation should be on the net performance income, after the deduction of the expenses directly linked with the activity has been made.

Withholding tax for non-resident service providers: The Court ruled that the gross taxation is in breach of the freedoms in the EC Treaty because it restricts the entrance into the market of another Member State. This happens as the residents of that Member State are taxed on their net income whereas non-residents have a stricter taxation. However, the Court stated that the measure was justified by the need to collect the withholding tax as it is an appropriate means to ensure that the income does not escape taxation. The effective use of a Treaty exemption: The Court considered that treaty exemptions cannot be used if the tax authorities have not given an exemption certificate. The answers of the ruling apply only to EU residents, and therefore tax treatment to non-EU residents cannot make use of EU tax freedoms.

Centro Equestre de Leziria Grande Lda case v Bundesamt für Finanzen (C345/04), 15 February 2007

In this case, the ECJ confirmed its judgments in the *Gerritse* and the *Scorpio* case wherein it stated that where a Member State exercises its taxation right on the income generated in its territory by non-residents, it must allow a deduction of the costs directly connected to the activity that generated this income, if it grants such deduction to residents. The discussion concerned whether indirect expenses were also deductible and the extra administrative measures for the tax refund procedure.

Consequences: The rulings of the ECJ have helped to clarify the parts of the artists' income subject to taxation. In the *Gerritse* and *Scorpio* cases the ECJ determined that expenses in respect of a performance should be deductible before the withholding tax is calculated.

Since 2007, following the *Scorpio* case, **the Netherlands** decided to go even further than the ruling by allowing non-resident self-employed artists (and sportsmen) performing in the Netherlands to deduct their expenses at the withholding stage, to file their income tax return at the end of the relevant year and to use directly Treaty exemptions without any written confirmation from tax authorities.

³⁹ See website references page 58.

This was done based on a calculation, which determined that the administrative expenses linked to the taxation of foreign artists were relatively high in comparison to the tax revenue.

After the three major judgments (Gerritse, Scorpio and Centro Equestre), **Germany** changed in 2009 the taxation regime for foreign artists (and sportsmen) and is in conformity with EU law. Some examples of the good practices are as follows:

- Special tax rules apply only to: artistic, entertainment and sporting activities; from performances in Germany; from self-employed activities;
- This allows the deduction of expenses residents of EU/EFTA (European Free Trade Association) countries to deduct expenses that are directly concerned to German performances;
- Travel, drinks, accommodation and food expenses, which are paid directly by the promoter are not taxable.

Complexity and non-uniformity of rules	
<i>Obstacles</i>	<i>Good practices</i>
<p>Tax certificates are not standardised across the EU and are often only available in the national language of the country of performance.</p> <p>Many companies employ artists from different nationalities on the same project (e.g. orchestra or dance company). Applicable rules are extremely difficult to identify and constitute a heavy workload for the company that has to deal with the authorities.</p> <p>Withholding taxes vary from one country to another from 10% to 30% of the profit⁴⁰.</p>	<p>In Slovenia, self-employed creative professionals benefit from a tax relief on their income. Registration for independent status is not linked to citizenship.⁴¹</p>
Inconsistent application of OECD Art. 17(3) and unequal treatment	
<i>Obstacles</i>	
<p>Art 17(3) is an exception to the general rules of Art 17(1) and (2). It allows tax exemption for artists / companies mainly supported by public funds or having a non-profit activity. However, most tax treaties use rather vague criteria that are subject to interpretation and might lead to double taxation.</p> <p>The use of Art 17(3) in tax treaties also increases the risks of unequal treatment between artists who fall under the provision and others who cannot make use of the exemption rule.</p>	

⁴⁰ For instance, in France the tax withheld varies from 0 to 25% (www.artistes-etrangers.eu/en/foreign-artists/taxes-withheld-from-artistic-performances.html) while in Spain the average tax rate is 25% (http://www.agenciatributaria.es/AEAT/Contenidos/Comunes/No_residentes/Tributacion_de_no_residentes/Folletos_divulgativos/irringles.pdf) and in Finland the tax rate equals 15% (http://www.vero.fi/en-US/Precise_information/International_tax_situations/Employers/Taxation_of_employees_from_other_countries%2814371%29#2.2_Sportsmen,%20athletes%20and%20performing%20artists).

⁴¹ EP, Op. Cit., p. 40

Feedback from the cultural sector

Non-deductibility of expenses

Following the decisions of the ECJ, this issue seems to have been tackled in most EU countries. However, several countries still do not voluntarily comply with the European legislation and are under the pressure of the Commission which launched several infringement procedures against them. The Commission respectively requested for Belgium (IP/08/337), Czech Republic (IP/09/291) and Finland (IP/09/292) to end discriminatory taxation of non-resident artists and sportsmen. The countries have now adapted their legislation.

Complexity and non-uniformity of rules

Dutch Theatre, The Netherlands:

"Withholding tax on performance fees in all the countries, because we are just for 10 - 20% subsidized and therefore almost no exemptions are possible. It is problematic to get tax credits in the Netherlands. The result is that very often the artist tax is a loss for our company as we cannot deduct it, such as it would be the case for other subsidized companies that fall under the exemption rule."

Unequal treatment due to the fact that not all countries have article 17 (3) in their DTT

French classical orchestra (from FEPS – June 2013):

"In Spain, tax authorities do not comply with the bilateral tax treaty that links them to France and systemically tax French ensembles touring in Spain, even though it is stipulated in Art. 17.3 of the treaty that artists (or artist companies) mainly financed by public funds are exempted from withholding tax in the country of performance. Spanish tax authorities consider that the term "mainly financed by public funds" is too vague and apply therefore a withholding tax of 25% to any French ensemble. It gets harder and harder to perform in Spain since they have to adapt their fees and become too costly".

Stichting Rotterdams Philharmonisch Orkest (RPhO) - The Netherlands (from PEARLE*, 23 November 2012)

"In some countries Art.17(3), which is concluded in 50% of the Dutch tax treaties, can be used because the RPhO is subsidised for approx. 70% (e.g. Slovenia, Belgium, Switzerland), while in other countries the conditions for Art 17(3) are non-profit status (Austria) or performing artists are not being shareholders of the orchestra (France, UK).

The exemption for employees working with their employer in the country of performance still applies for Germany, but will be changed into a "subsidised"-Art. 17(3) provision from 2014 onwards. Applications have to be made in every country and cause relatively high administrative expenses. Although the administrative burdens and expenses, the application and existence of article 17(3) allows to avoid double taxation. In other countries no exemption for source taxation is possible, because 50% of the Dutch tax treaties follow Art 17 (1) & 17(2) (...), which means that in the case of a performance the taxing right is to the country of performance. In other words the result from the concerts in these countries is double taxation."

2. Administrative obstacles
Burdensome and time-consuming procedures
<i>Obstacles</i>
<ul style="list-style-type: none"> ○ Lack of multi-lingual forms The tax certificate necessary to avoid paying taxes in the country of residence for performances already paid in the host country (due to Art. 17 of the Model Tax Convention), is usually written in the language of the host country. Presenting the foreign documents to the national authorities often leads to high administrative expenses, time-consuming procedures or double taxation. ○ Burdensome procedures The procedure to obtain tax exemptions may require several months of process (in advance of the performance). If the artist/company does not act in time and with all required forms, they lose the right to claim an exemption. The documents requested in order to be able to obtain a tax credit demand major and long administrative procedures both for the venue programming a foreign touring company as well as for the touring company itself. ○ Difficulty for employed artists to obtain a tax certificate Usually tax certificates are provided to the company as a whole, which then needs to recalculate the total based on the individual artists who are employed and according to a daily rate; this can be done at the earliest after a quarterly certification of the social insurance. As the company pays on the basis of a monthly wage, a complex calculation has to take place in relation to the rehearsals, the performance itself and possible other elements (travelling time, or others). The company will also have to consider how to deduct the costs made in relation to the production (travel costs, hotel, etc.) and the wages paid to the non-artistic staff. The complexity of doing these calculations makes it extremely difficult for the amount on the tax certificate to be correct. The tax certificate may also be given to the individual artist, but in this case, the company cannot claim for a tax credit or exemption. Either the individual artist or the company will be subject to double taxation.

Feedback from the cultural sector

English music ensemble (conveyed by PEARLE*)

The case of an English ensemble that played 3 concerts in Sweden during the summer of 2012 illustrates several of the administrative issues linked to double taxation: *"In December 2011 the ensemble received a draft contract stating that 15% withholding tax would be deducted. Asking whether this could be avoided, the promoter of the event advised the ensemble to send them a tax residency certificate. As most promoters don't accept tax residency certificates referring to the previous year, but request that the tax certificate delivered corresponds to the year that the concert takes place, the ensemble waited until the new year to apply for one from HMRC (the tax authority in England). This took a while, because in the meantime the ensemble moved offices and needed first to register the charity change of address with HMRC. As a result the certificate finally arrived at the beginning of June. The Swedish promoter then sent the certificate to the Swedish IRS to check if it would waive the tax deduction.*

On the 31 July 2012, the ensemble was told by the Swedish promoter that the Swedish IRS (Internal Revenue Service) still required the ensemble to pay 15% withholding tax in Sweden and that the tax residency certificate provided was not accepted. According to the promoter there are formulations in the tax treaty between Sweden and England implying that tax should not be levied. The ensemble was asked whether it could help with more information to strengthen the case.

The ensemble then contacted HMRC for further advice. It was answered that the only document that could be provided by the English authorities was the tax residency certificate. The ensemble manager looked for more information on the Internet but could not find clear notes on the subject. The only advisors who could help him were willing to charge money for the advice. It was also difficult for him to

understand clearly the reach and content of the double taxation treaty.

*On 31 August Swedish authorities informed the ensemble that they could not avoid the withholding tax but that they could still declare it in the UK. The promoter of the event then informed the ensemble that it could deduct expenses and that the tax would only apply to the fee in itself. In order to do so, the festival offered to issue **23 individual withholding tax certificates** for each musician and the ensemble had to breakdown to total fee in order for the musicians to put together their tax certificate.*

It resulted in extra paperwork for the venue and the ensemble and the obligation for the musicians to apply individually for tax credit in the UK even if it concerns UK residents paying their taxes in the UK."

French Classical Music Ensemble (From FEPS – June 2013):

"A French classical music ensemble faces difficulties linked to withholding tax paid in several European Member States: Austria, UK (since 2009), Germany, Italy and Spain. Withholding taxes apply to a global fee (including travel expenses, travel costs, food etc.) paid by the promoter to a touring company: this means that the foreign tax office (or the promoter) issues a tax certificate to the touring company for the fee received.

The touring company employs each musician through an individual contract with the ensemble. As the musicians are on the payroll of the music ensemble there is no direct contract between the musician and the promoter abroad, and consequently the individual musician does not receive a tax certificate. When the musician declares her/his revenues in France, it is impossible for the ensemble to give a tax certificate to each of those musicians since it does not dispose of documents from foreign tax authorities which states the amount it can deduct from their tax declaration. The DTT between France and Germany allows tax exemption for self-employed workers (art.12) specifically excluding artists. Art. 13 allows exemption for employed workers (...) The musicians are employed by the ensemble in France but the German tax authorities treat them as depending on Art. 12. The artists will have to pay tax on the revenues earned abroad while the ensemble will have to pay a withholding tax of sometimes 25% on a global net fee without being able to receive a tax certificate."

3. Practical obstacles
Lack of easily accessible information on applicable rules
It is difficult to obtain relevant information from authorities. Getting information for artists and companies becomes costly since they have to call on legal experts ⁴² .
Foreign artists / companies become less competitive
Foreign companies often negotiate a "net fee" with local promoters/venues that take care of paying the withholding taxes. Because they negotiate a net fee, they often "forget" that the local promoter pays on top of the fee that they receive the withholding taxes that are due. As a result there is a situation of double taxation, whilst the performer or touring company is not always aware that actually they did pay withholding taxes in the country of performance. This also means that they did not ask for a tax certificate for tax deduction in the country of residence.
The non-deductibility of expenses leads artists/companies to raise their fees. "Procedures' avoidance" behaviour ("net fee") from artist/companies leads to the costs being supported by local venues.
Foreign artists/companies become therefore less competitive compared to local artists. This situation goes against the rights of free movement and to provide services in all EU countries held in the EU treaties.

⁴² See, for instance, the paper from Fédération Nationale des Employeurs du Spectacle Vivant Public et Privé (FEPS), *Spectacle vivant: limiter les freins à la mobilité internationale des artistes et des techniciens*, 2013 (page 72).

Feedback from the cultural sector

Lack of easily accessible information on applicable rules

Belgian production and artists' management company:

"In each country there is a different system and if you work with a musician from abroad you always have to find out what is the best legal system for them. So it's always a matter of informing yourself about local or regional 'habits' and finding the right solution so you don't get into trouble with your own production structure. It takes quite some time to find out all this information that is different for each country."

Invisible excessive taxation

Concerto Copenhagens (baroque orchestra), Denmark, FEVIS member (Skype interview):

"The ensemble is a non-profit organisation and benefits from 15-20% of public funds. It is exempted from taxation in Denmark. The ensemble employs 20 to 30 musicians from diverse nationalities (Danish, Swedish, Norwegian, English, German, Dutch, Australian, French, Italian, Irish etc.) and mainly performs in neighbouring countries such as Germany or the Nordic Countries. In order to limit burdensome and costly procedures to avoid the situation of double taxation, the ensemble always negotiates a net fee with the foreign venues. It is then to the respective venue to pay the additional taxes to the tax authorities of their countries. So taxes are then paid in the country of performance by the respective organiser (venue) and in the country of residence, which is a de facto situation of double taxation. The consequence is that the gross fee is higher compared to a local ensemble where the venue has no additional tax on the net fee. This difference makes the ensemble is less competitive compared to local ensembles".

III. Main outcomes of the report and inputs for discussion

Building on previous studies and on the inputs of recent *ad hoc* questionnaires, this report allows to point out a number of challenges for mobile artists and cultural professionals which can have a negative impact on their professional development, their employability and the internationalisation of their careers (thus going against the EU 2020 objectives), as well as on cultural diversity and audience development at the EU and international levels. The following two pages summarise such key challenges and are meant as possible starting points for the discussion during the thematic seminar on social security and taxation on 19-20 June 2014 in Brussels.

> Information challenges for mobile artists and cultural professionals with regard to social security and taxation:

- It is often difficult for artists and culture professionals to **know their status** and what their particular situation implies in different countries (e.g. their job status may evolve over time and between countries; their career has a high degree of unpredictability; the jobs each artist undertakes are not necessarily in the same sector; in some countries artists may benefit from special conditions - sometimes referred to as "the status of the artist" - alongside the normal labour law provisions applicable across Europe; artists and cultural professionals cannot always choose to be employed or self-employed depending on the opportunities that arise, etc.). Mobile artists may be, therefore, uncertain about their **rights and obligations**.
- Online and offline **organisations and platforms providing information** that are accurate, up-to-date and free are still limited. There is also a need for more in-depth and tailor-made answers to specific questions related to the particular working conditions and mobility patterns of artists and cultural professionals.
- **Easily accessible information is limited** and can be hard to find, while timing is a crucial issue for mobile artists and cultural professionals since opportunities for touring, training, working in another EU country may arise with short delay and have to be seized quickly. The current economic context makes timing an even more important issue.
- National/regional administrations sometimes provide **contradictory information** and/or **have little expertise** on the issues concerning mobile artists.
- There is a need for better and more sustainable **coordination between information providers** (either physical or online) at EU level.
- At the national level, there are still few websites & portals that provide **information in different EU languages**.

> Collaboration of the administrations with the artists/cultural professionals: limited coordination between national/regional authorities on Social Security and Taxation

- There is inadequate coordination between administrative services and compliance with the most recent legislations / regulations.

> Specific questions related to social security and taxation:

- Social security and administrative practices

- Regulatory issues: status of artists and cultural professionals, duration and frequency of posting, conditions of unemployment, questions on pensions benefits (question of country of residency, length of the working period etc.), differences of labour systems (French example often recurrent), exportability of benefits (particularly for self-employed persons).
- Administrative issues: widely available portable documents, goodwill of the national administration, double payment of social benefits.

- There are problems with the implementation of the social security coordination system at the national level.

- Taxation and administrative practices

- Regulatory issues: non deductibility of expenses (mostly tackled by the ECJ and the European Commission); complexity and non-uniformity of rules (differences in the procedures to obtain tax exemption or tax credit across Europe, lack of uniform tax certificates); inconsistent application in bilateral tax treaties of Article 17(3) of the OECD tax convention model due to a lack of clear terminology and variety of interpretations of its reach and content resulting in unequal treatment between national and foreign performers.
- Administrative issues: burdensome and time-consuming procedure (with an increased risk of losing time to obtain a tax exemption/ credit).
- Practical issues: invisible double taxation system when working under a system of net fee. Principle of the "global net fee": foreign artists/companies become less competitive compared to local artists and employed artists of a company/ ensemble risk being taxed twice.
- Based on the decisions of the ECJ: relevant administrative practice of the Netherlands for instance related to the question of double taxation is a good practice at EU level.
- In relation to Article 17 OECD: it is important to notice the advocacy actions done at national, EU and international level (for example by PEARLE⁴³) and recent encouraging advancements⁴⁴.

⁴³ www.pearle.ws/cms/files/file_sys_PDF_Papers_Document_56.pdf

⁴⁴ <http://www.fevis-europe.eu/change-income-tax-abroad/>

Annexes

Annex 1: Main results of the online questionnaires (17 October-20 November 2013)

Annex 2: On the Move brainstorming meeting (7 November 2013) and EURO-FIA training (13 November 2013)

Annex 3: Treaty of the Functioning of the European Union: Provisions on social security and taxation

Annex 4: OECD Model Tax Convention on Income and on Capital

Annex 5: EU Legislation and policy documents on Employment and Social Security

Annex 6: Mobile workers and applicable legislation at the EU level in relation to social security

Annex 7: EU Legislation and Case law on Taxation

Annex 1: Main results of the online questionnaires (17 October-20 November 2013)

- Questionnaires for individual artists

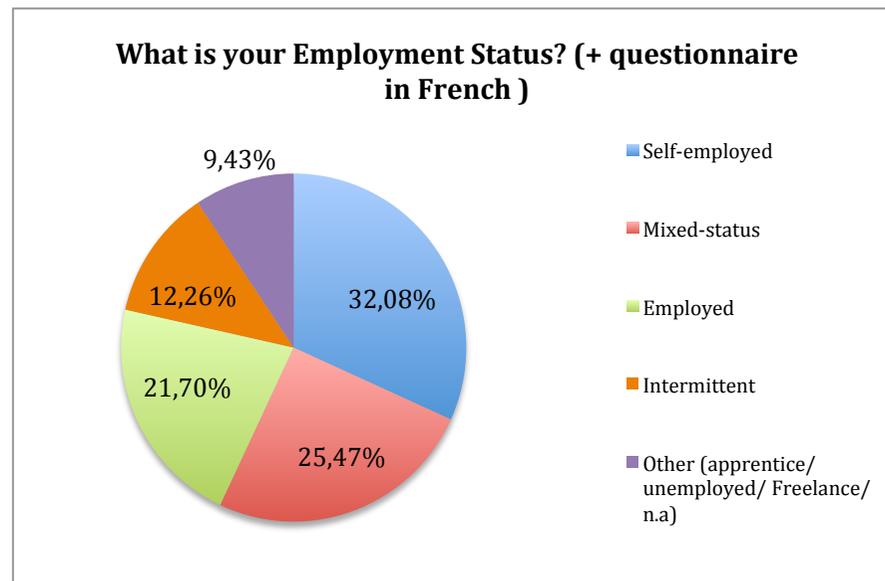
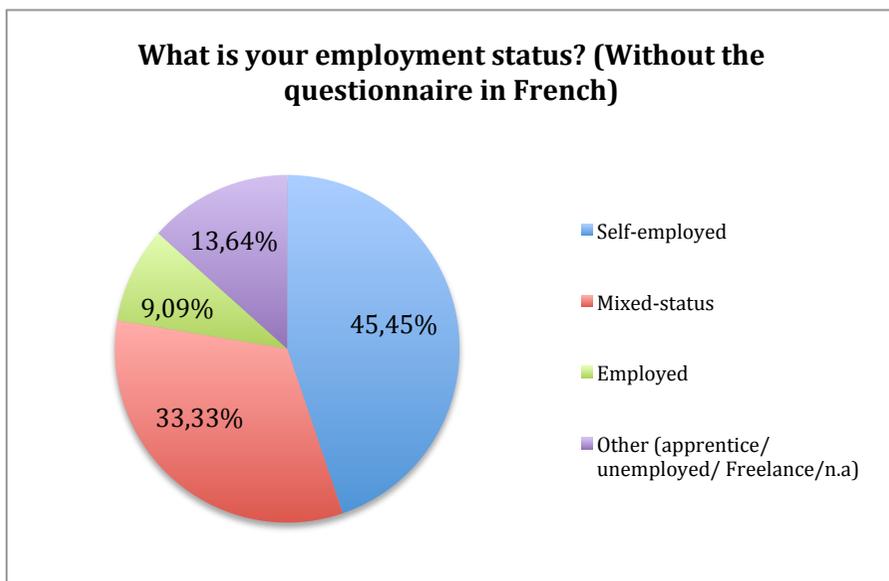
Questionnaire for artists and cultural professionals (EN):

<https://docs.google.com/forms/d/1fT9HwPagnX3GO1AbFdbDu2d3xAcZHv33-a3MgFL1Rvw/viewform>

Questionnaire pour les artistes et les professionnels de la culture (FR):

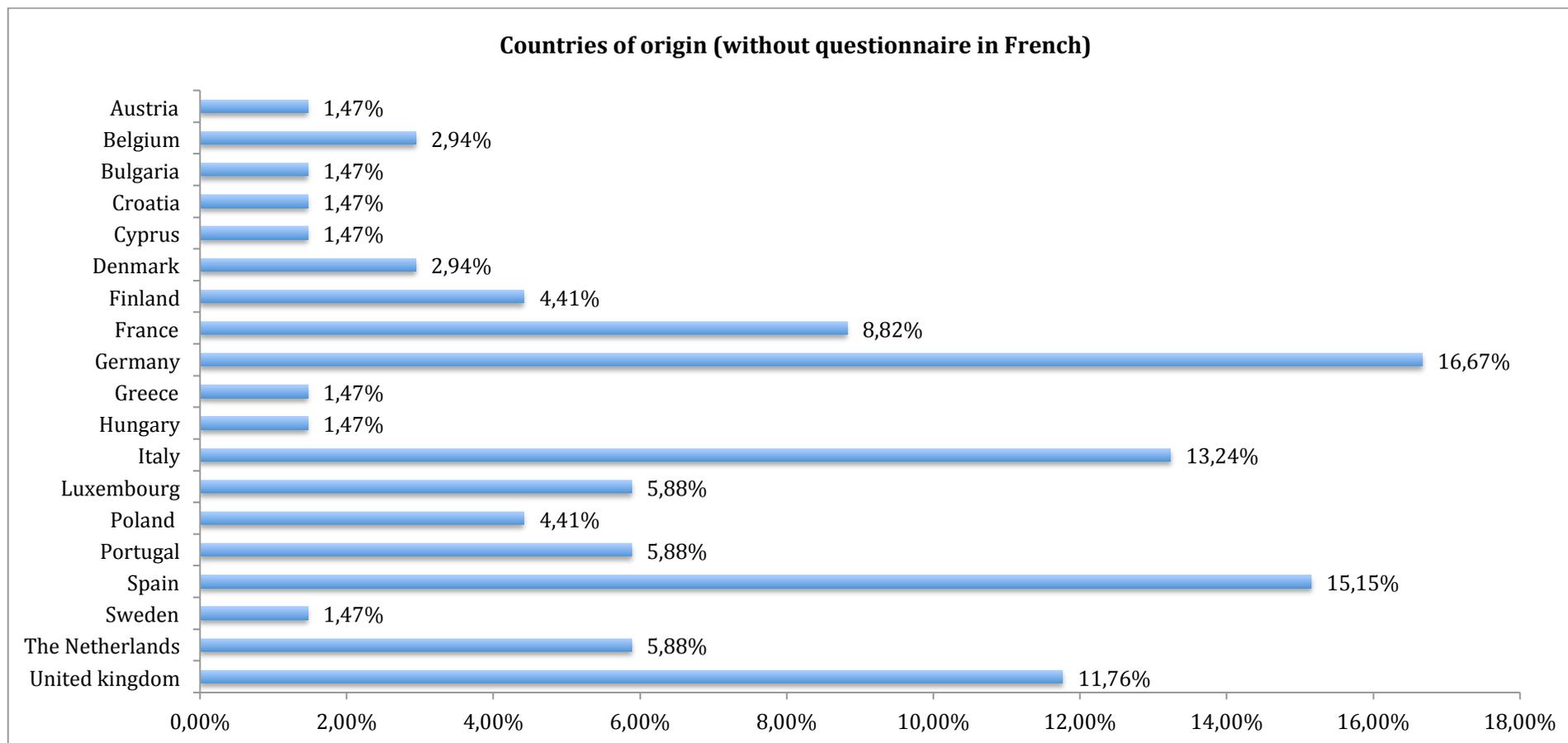
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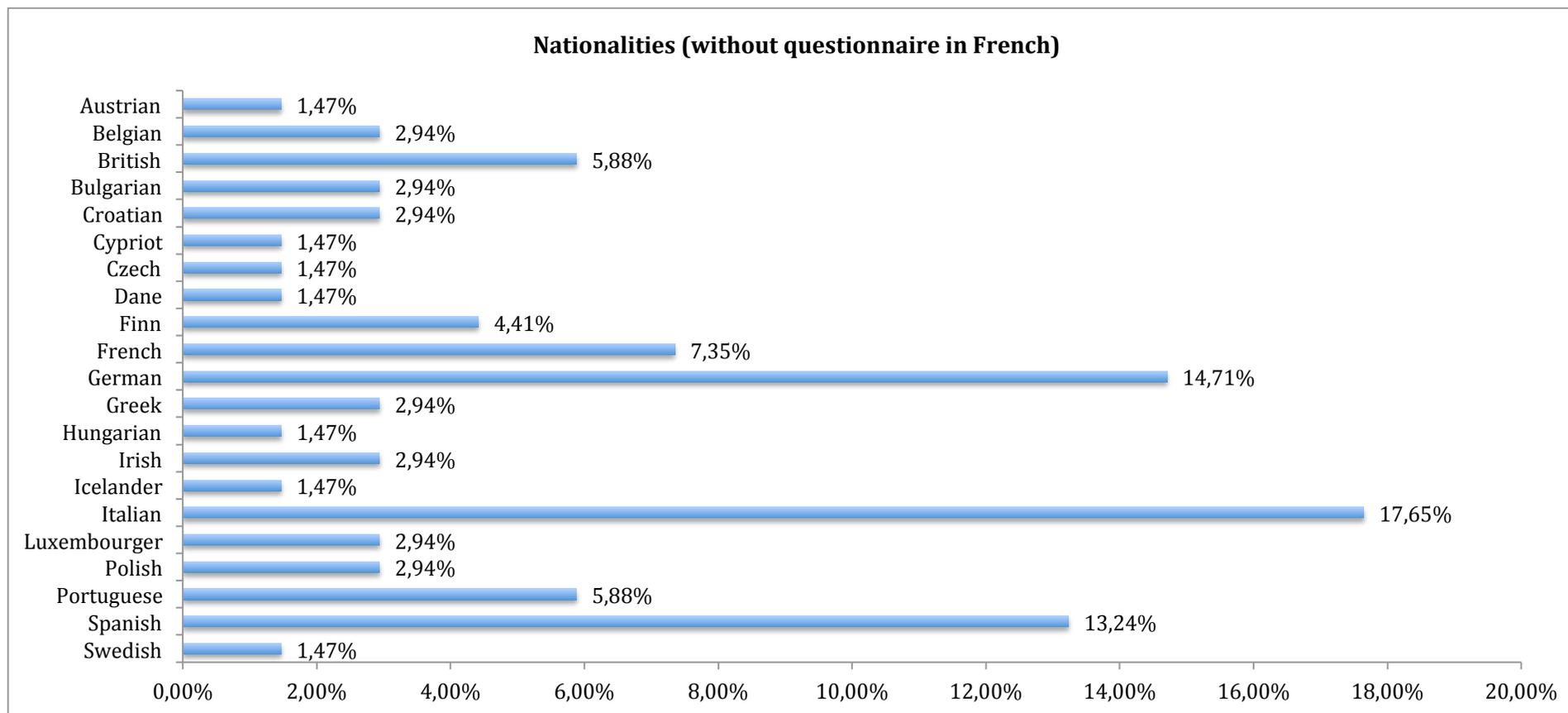
1. Status of the respondents (108 valid questionnaires)



2.

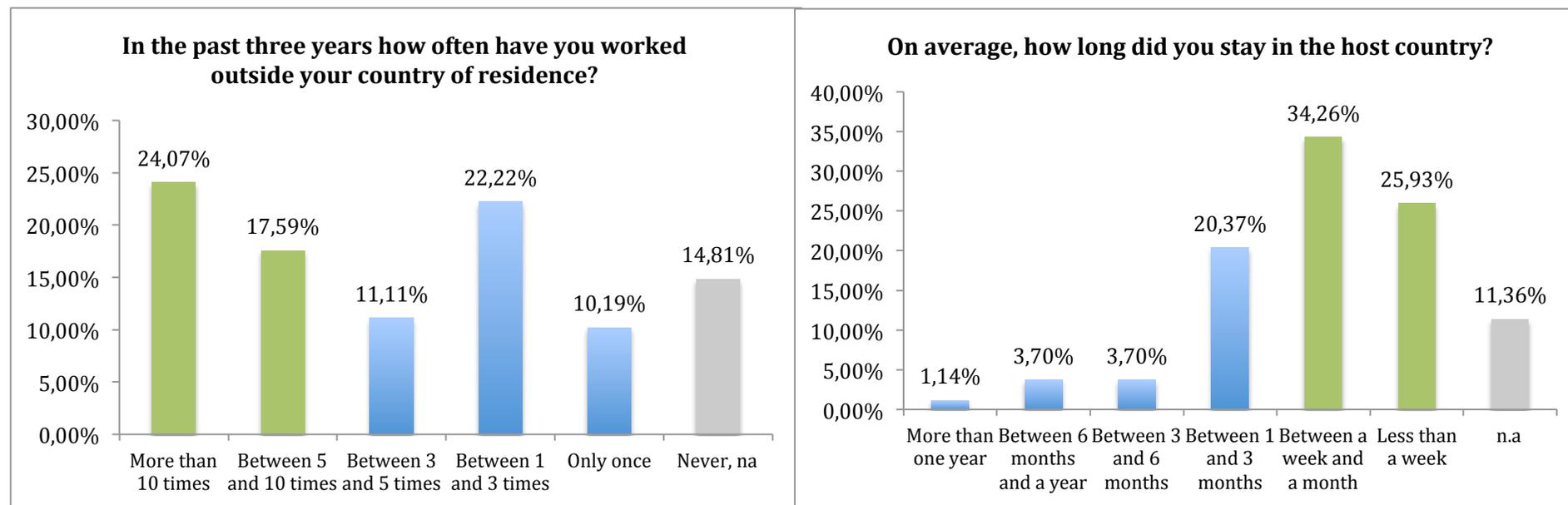
Countries of origins and nationalities of the respondents:





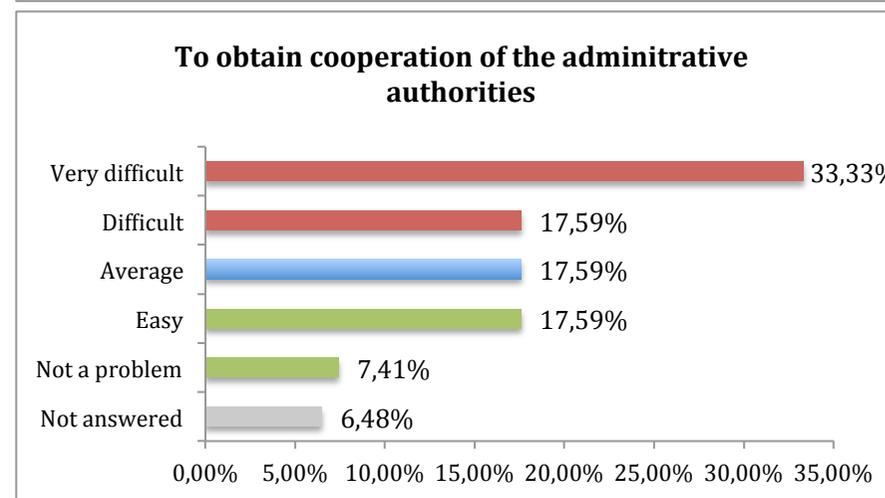
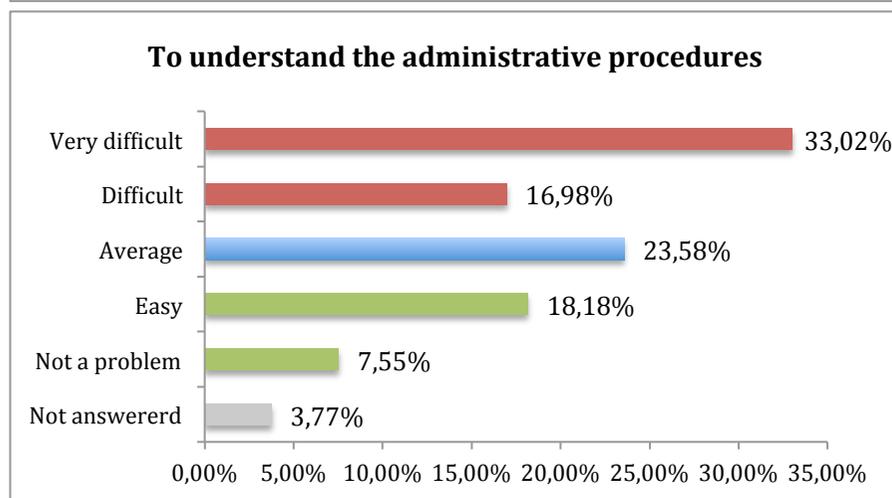
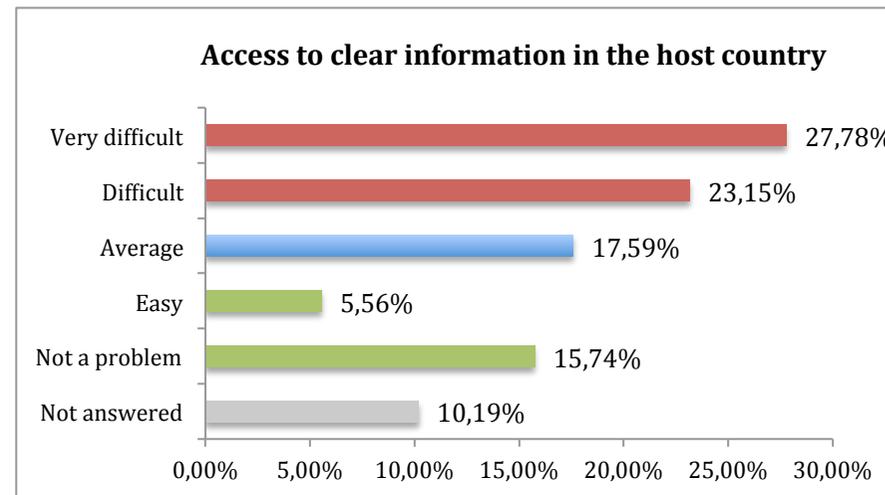
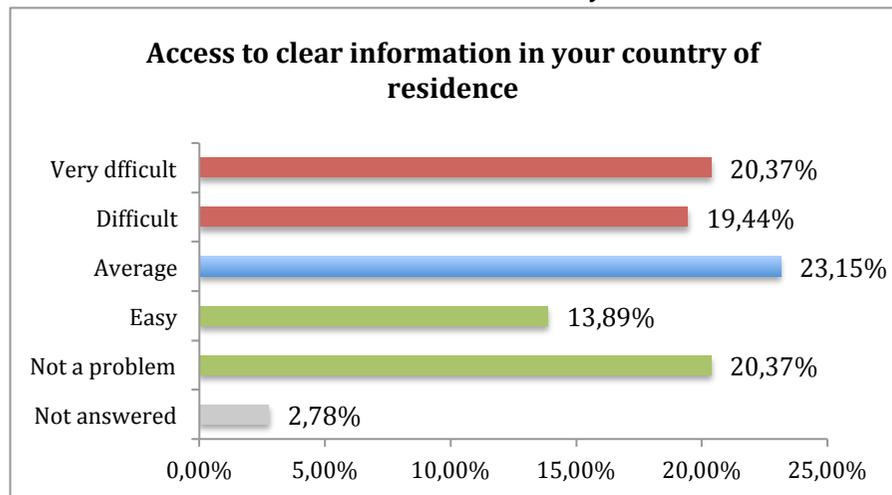
The results from the questionnaire in French are not directly included for the following reasons: out of 40 respondents, 33 live in France, 3 live in Luxembourg, 3 live in Belgium and 1 lives in Germany. 34 of them are French (out of who 3 also have the Swiss nationality), 2 are Spanish, 2 are Belgians and 2 are Luxembourger. The bias comes from the fact that the questionnaire was in French and therefore essentially attracted French-speaking respondents. Moreover the high amount of respondents originating from France would result of the same bias. Adding the answers of the questionnaires in French to the above charts on origins and nationalities result in having 42,05% respondents residing in France and 40,91% of the respondents having the French nationality. Due to limited time and resources the researchers could not afford to translate the questionnaire in more EU languages. Regarding the origins and nationalities of the respondents, the data of the questionnaire in English are therefore more representative but of course, the comments, feedbacks and specificities of the French cultural sector and regulations have fully been taken into account in the mapping as the numerous examples illustrate it.

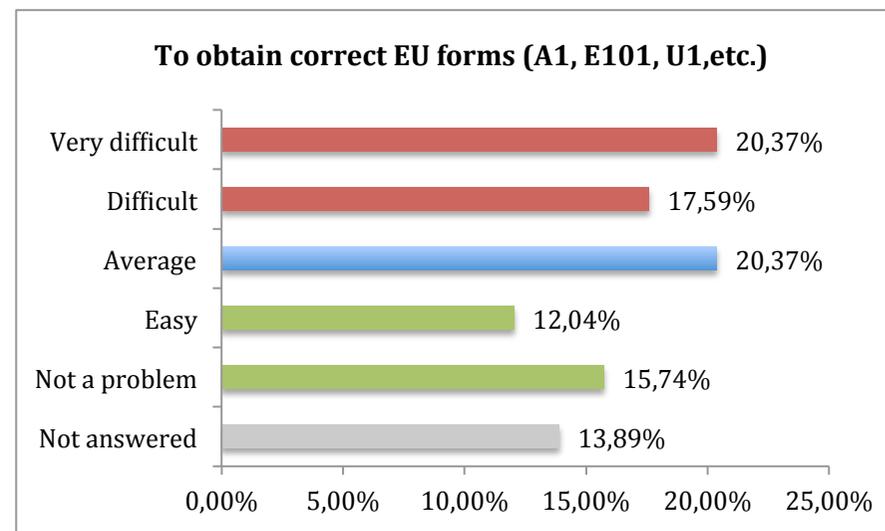
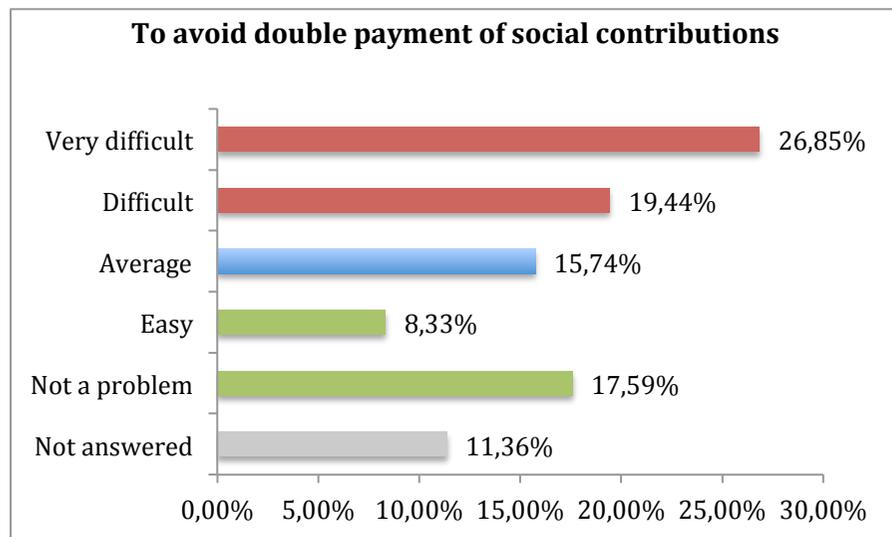
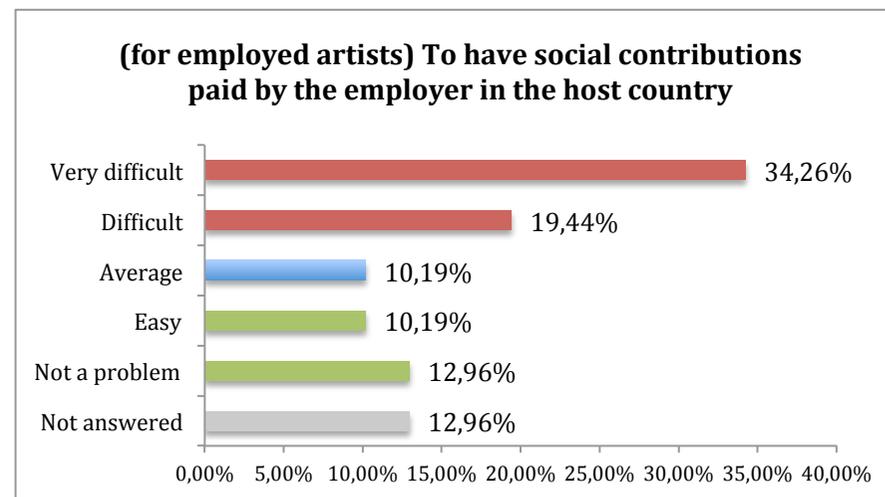
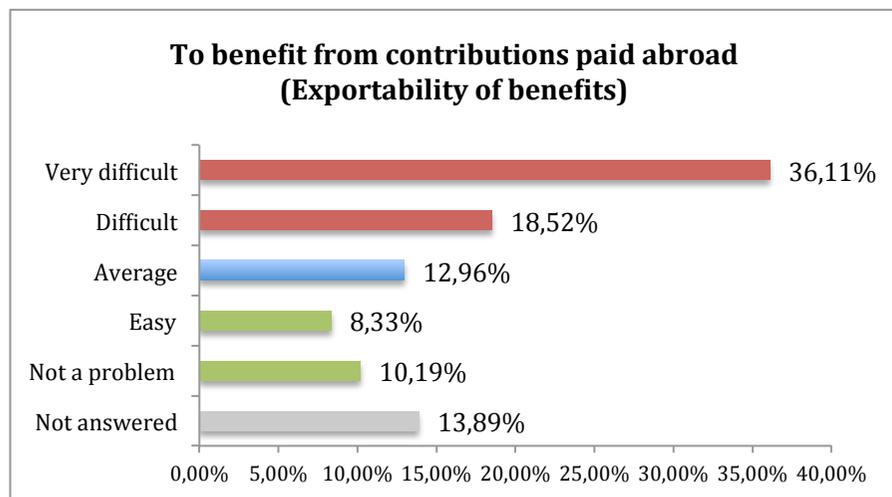
3. Mobility patterns



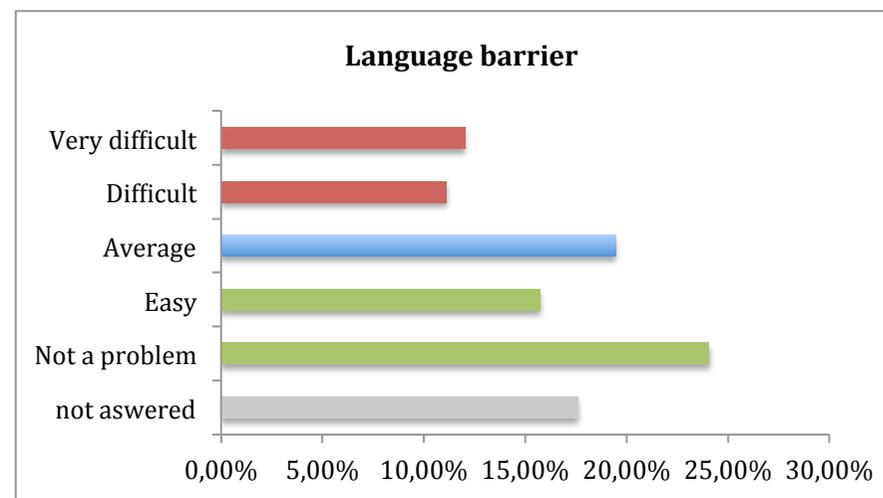
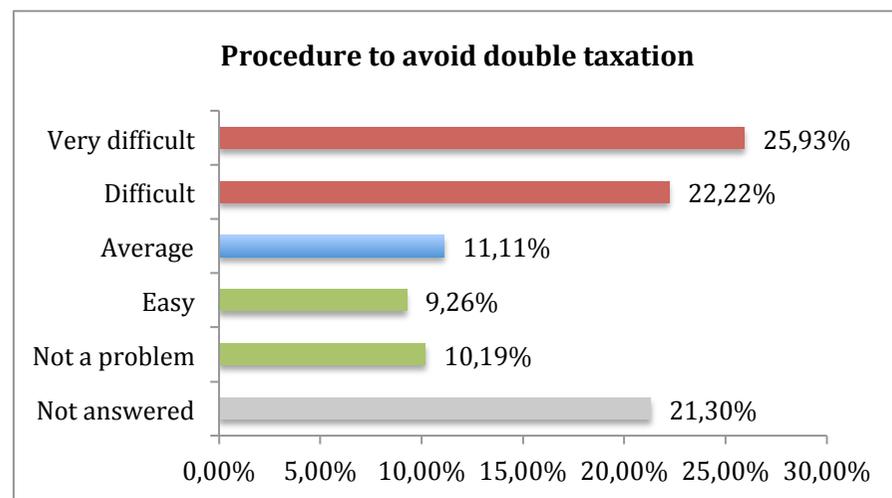
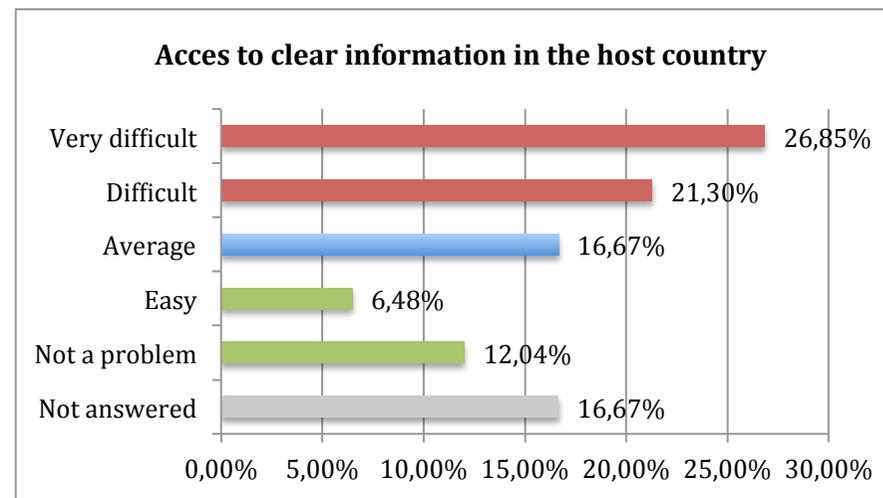
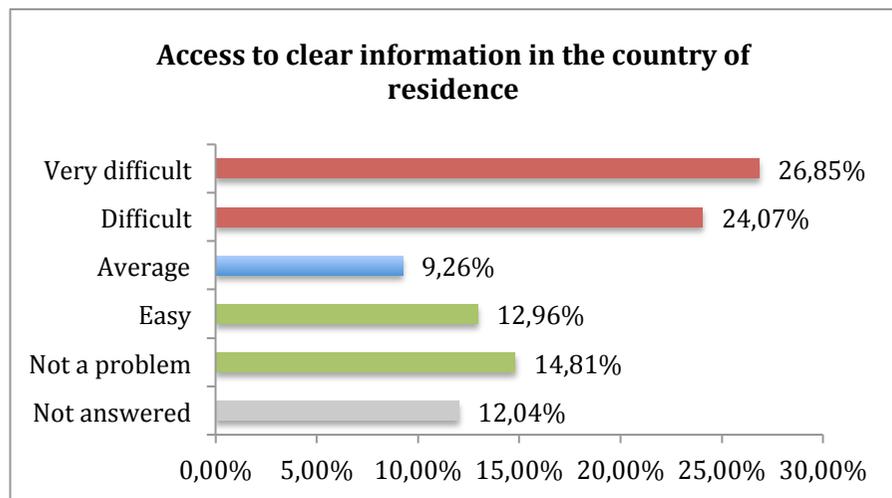
4. Overview of the obstacles:

4.1. Obstacles linked to social security:





4.2. Obstacles linked to taxation



- Questionnaires for organisations (39 valid questionnaires)

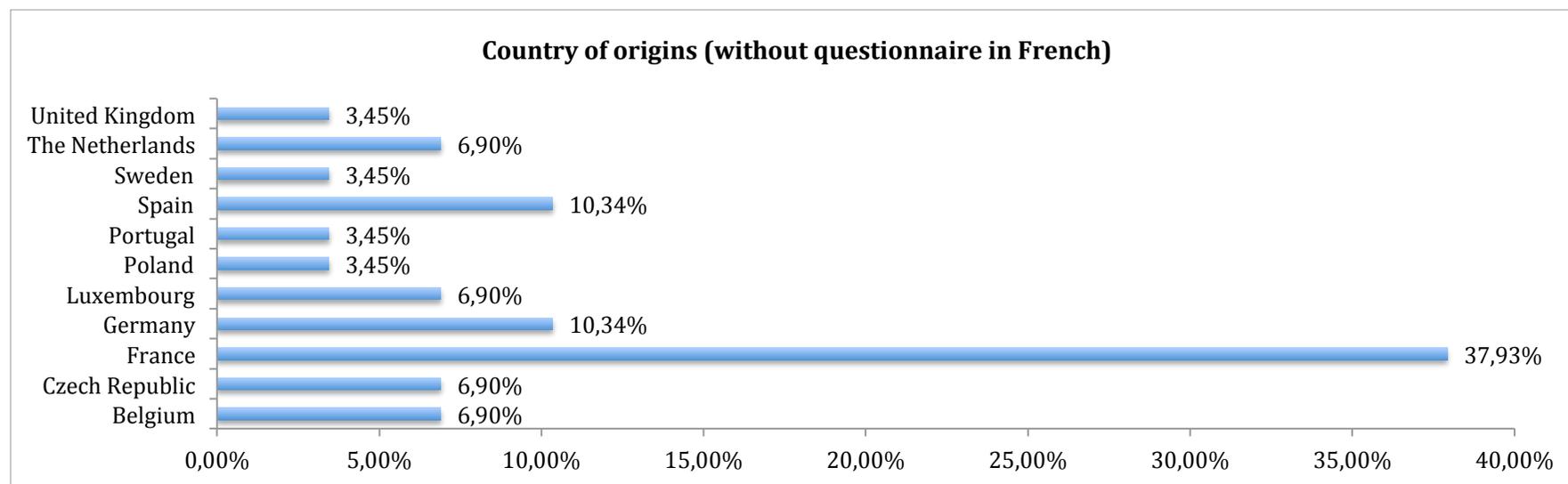
Questionnaires for cultural organisations and employers:

<https://docs.google.com/forms/d/1Hm3nL2JU5dw66wA0NYDntuqGozSAJB1KgtBvQ9iQf8/viewform>

Questionnaire pour les employeurs et organisations du secteur culturel:

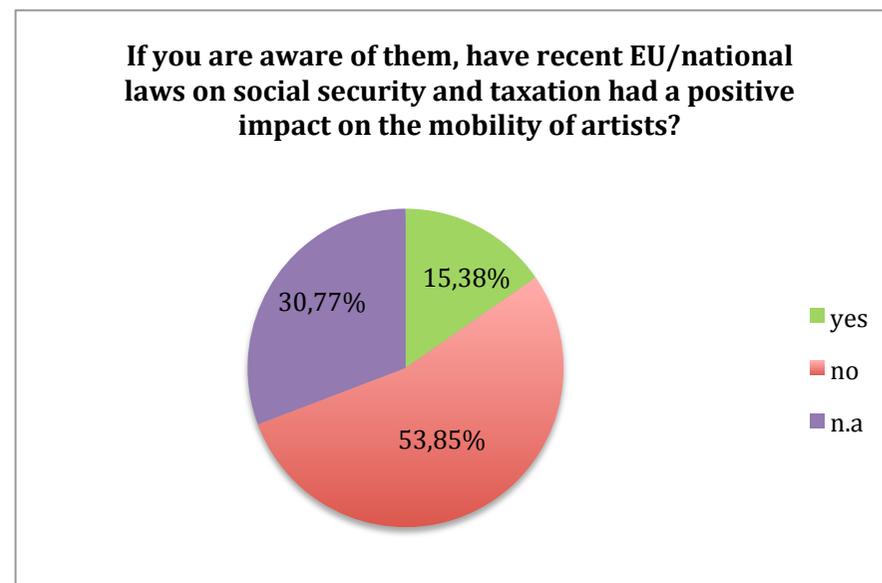
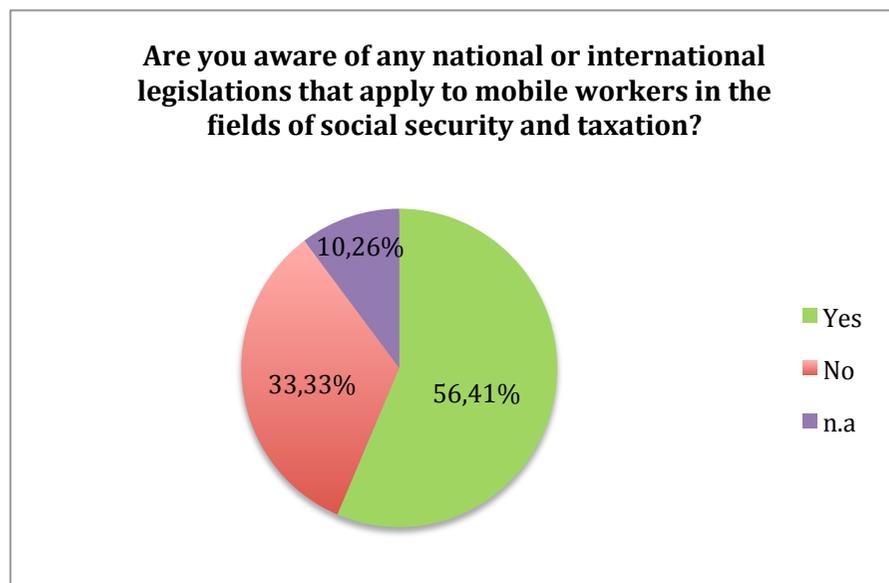
<https://docs.google.com/forms/d/1st8rOSXX7IF3Ch3lpVNirOkK60IloJkjcJfuCqq4qTY/viewform>

Countries of origins



Same remark as for the questionnaires for individual artists, 10 more answers were received from organisations through a questionnaire in French. Out of the 10 respondents, 8 are based in France, 1 in Luxembourg and one didn't specify her/his origin. If we add those answers to the above graph, France is even more represented with almost 50% of answers.

The questionnaire aimed at employers and organisations differ from the one aimed at individual artists. The results and data collected are more relevant on a qualitative (see the feedback from the sector in section I and section II) than on a quantitative basis. Yet the two charts below tend to show that employers and organisations are mostly (56.41%) aware of the legislations that govern social security and taxation despite, as stressed in this document, encountering different types of obstacles be they of regulative, administrative or practical nature.



Annex 2: On the Move brainstorming meeting (7 November 2013) and EURO-FIA training (13 November 2013)

OTM Brainstorming meeting
Intra-EU cultural mobility– Social security and taxation issues

Background of this meeting:

- Based on OTM's three years' action plan and advocacy mission to contribute to improve the conditions of mobile artists and cultural professionals (articulated around the OTM Charter), OTM has planned to focus on the questions of social security and taxation for mobile artists and cultural professionals through two meetings at the end of 2013:
 - >>> A brainstorming meeting with OTM members and associated partners in Brussels on 7 November 2013;
 - >>> A contribution to FIA members' meeting in Brussels on 13 November 2013 (on the issues of contracts, double taxation and social security systems within the EU).

Objectives of the brainstorming meeting:

- Share and exchange on the main first results of the online questionnaires launched by On the Move on 17 October 2013;
- Discuss potential ideas for future recommendations around two subjects: the question of double taxation and the issue of unemployment rights for mobile artists within the EU (this second subject can evolve according to the results of the questionnaire and the participants' requests);
- Start an internal discussion and sharing process among cultural mobility administrative information provision organisations (OTM members).

Programme:

Place: Brussels, Belgium

Dates: Thursday 7 November 2013

9.15-12.30:

Venue: Mundo-B – Fairtrade room, Rue d'Edimbourg 26, 1050 Bruxelles (Metro: Porte de Namur. Map of public transport: <http://www.mundo-b.org/en/Contact.html>)

9.15-10.00: Introduction to the meeting and preliminary results of the online survey

10.00-10.20: Q&A

10.20-11.10: Discussion around **the question of double taxation**

11.10-11.20: Coffee break

11.20-12.00: Discussion related to the **unemployment rights of mobile EU artists** (the subject can evolve based on the participants' request and/or questionnaires' results)

12.00-12.20: Questions related to **challenges faced by cultural mobility information providers**

12.20-12.30: Final words by Maria Tuerlings (President of OTM Board) and follow-ups

12.30-13.30: Lunch at Mundo-B covered by On the Move

Participants

OTM members:

Maria Tuerlings, Director, Trans Artists, The Netherlands

Anais Lukacs, Coordinator, BAAPE, France

Dearbhal Murphy, FIA, Belgium

Stanislas Ide, FIA, Belgium

Tobias van Royen, Kunstenloket, Belgium

Elisabeth Mayerhofer, IG-Kultur, Austria

Alvaro De Salvo, RES ARTIS, The Netherlands
Laëtitia van de Valle, IETM, Belgium

Associated partners:

Luca Bergamo and Julia Pouply, Culture Action Europe
Anita Debaere, PEARLE* and Társila Pérez, legal expert
Claire Damilano, European Citizens' Action Service (apologies)
Marie Hédin and Andreas Richter, FEVIS, France and Andreas Richter, FEVIS partner, Germany
Christoph Jankowski, Manager, EU Cultural Contact Point in the UK (apologies)
Evelyne Esterzon, Afschrift Lawyers, Belgium

OTM staff: Marie Le Sourd and Maxime Demartin

Annex 3: Treaty of the Functioning of the European Union: Provisions on social security and taxation

When referring to EU legislation or EU initiatives it is important to be aware of the legal basis upon which the EU can draft legislation. It is important to know about the different types of competence of the EU, in order to understand in which areas and how the Union can take action., which are **Exclusive competence, shared competence and supporting competence**. In the fields of **exclusive competence**, only the Union has the right to legislate. **Shared competence** means that the Union and Member States are both able to act. In policy areas of shared competence, the **principle of subsidiarity** applies, which means that the Union does not take action, unless it is more effective than action taken at national, regional or local level. In a third category of policy areas, the Union has the competence to carry out actions to **support, coordinate or supplement actions** of the Member States. Action by the Union in this field of supporting competence may include adopting incentive measures and making recommendations but shall not entail harmonisation of national laws (Article 2(5) TFEU).

In the articles listed below are highlighted the relevant parts which help to understand and clarify the issues raised through the examples and situations quoted in this report.

A) Social security

Article TFEU	Legal Provisions
Article 3	<p>1. The Union's aim is to promote peace, its values and the well-being of its peoples.</p> <p>2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.</p> <p>3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.</p> <p>4. The Union shall establish an economic and monetary union whose currency is the euro.</p> <p>5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.</p> <p>6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.</p>
Article 9	<p>In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and</p>

	not replace national citizenship.
Article 19	<p>1. The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed. Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.</p> <p>2. The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General. The General Court shall include at least one judge per Member State. The Judges and the Advocates-General of the Court of Justice and the Judges of the General Court shall be chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Articles 253 and 254 of the Treaty on the Functioning of the European Union. They shall be appointed by common accord of the governments of the Member States for six years. Retiring Judges and Advocates-General may be reappointed.</p> <p>3. The Court of Justice of the European Union shall, in accordance with the Treaties:</p> <ul style="list-style-type: none"> (a) rule on actions brought by a Member State, an institution or a natural or legal person; (b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions; (c) rule in other cases provided for in the Treaties.
Article 45	<p>1. Freedom of movement for workers shall be secured within the Union.</p> <p>2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.</p> <p>3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:</p> <ul style="list-style-type: none"> (a) to accept offers of employment actually made; (b) to move freely within the territory of Member States for this purpose; (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission. <p>4. The provisions of this Article shall not apply to employment in the public service.</p>
Article 46	<p>The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in Article 45, in particular:</p> <ul style="list-style-type: none"> (a) by ensuring close cooperation between national employment services; (b) by abolishing those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers; (c) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under agreements

	<p>previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;</p> <p>(d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.</p>
Article 47	Member States shall, within the framework of a joint programme, encourage the exchange of young workers.
Article 48	<p>The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, they shall make arrangements to secure for employed and self-employed migrant workers and their dependants:</p> <p>(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;</p> <p>(b) payment of benefits to persons resident in the territories of Member States.</p> <p>Where a member of the Council declares that a draft legislative act referred to in the first subparagraph would affect important aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system, it may request that the matter be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, the European Council shall, within four months of this suspension, either:</p> <p>(a) refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure; or</p> <p>(b) take no action or request the Commission to submit a new proposal; in that case, the act originally proposed shall be deemed not to have been adopted.</p>
Article 145	Member States and the Union shall, in accordance with this Title, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article 3 of the Treaty on European Union.
Article 146	<p>1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article 145 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Union adopted pursuant to Article 121(2).</p> <p>2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of Article 148.</p>
Article 147	<p>1. The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.</p> <p>2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities.</p>
Article 148	<p>1. The European Council shall each year consider the employment situation in the Union and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.</p> <p>2. On the basis of the conclusions of the European Council, the Council, on a proposal from the Commission and after consulting the European</p>

	<p>Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 150, shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 121(2).</p> <p>3. Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.</p> <p>4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, on a recommendation from the Commission, may, if it considers it appropriate in the light of that examination, make recommendations to Member States.</p> <p>5. On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Union and on the implementation of the guidelines for employment.</p>
Article 149	<p>The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects.</p> <p>Those measures shall not include harmonisation of the laws and regulations of the Member States.</p>
Article 150	<p>The Council, acting by a simple majority after consulting the European Parliament, shall establish an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. The tasks of the Committee shall be:</p> <ul style="list-style-type: none"> - to monitor the employment situation and employment policies in the Member States and the Union, - without prejudice to Article 240, to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in Article 148. <p>In fulfilling its mandate, the Committee shall consult management and labour.</p> <p>Each Member State and the Commission shall appoint two members of the Committee.</p>
Article 151	<p>The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.</p> <p>To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.</p> <p>They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action.</p>

B) Direct Tax

The EU has no legislative power in the field of direct taxation. It is up to national governments of the Member States to make decisions regarding tax. There is no specific provision in the Treaty allowing for taxation coordination at EU level. Direct Taxation is only indirectly taken into account by the EC Treaty. However, nearly all EU Member States apply the OECD Model tax treaty.

Article TFEU	Legal Provision
Article 115	The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment of functioning of the internal market

Annex 4: OECD Model Tax Convention on Income and on Capital

Article	Legal Provision
Article 7	<p>Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on businesses in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.</p> <p>For the purposes of this Article and Article [23 A] [23B], the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.</p> <p>Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other.</p> <p>Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.</p>
Article 12	<p>Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.</p> <p>The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.</p> <p>The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.</p> <p>Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.</p>

Article 15	<p>Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:</p> <p>the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and</p> <p>the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and c) the remuneration is not borne by a permanent establishment which the employer has in the other State.</p> <p>Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.</p>
Article 17	<p>Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.</p> <p>Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.</p>
Commentary on Article 17 Optional Article 17(3)	<p>Some countries may consider it appropriate to exclude from the scope of the Article events supported from public funds. Such countries are free to include a provision to achieve this but the exemptions should be based on clearly definable and objective criteria to ensure that they are given only where intended. Such a provision might read as follows:</p> <p>The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers artistes or sportsmen if the visit to that State is wholly or mainly supported by public funds of one or both of the Contracting States or political subdivisions or local authorities thereof. In such a case, the income is taxable only in the Contracting State in which the entertainer artiste or the sportsman is a resident.</p>

Annex 5: EU Legislation and policy documents on Employment and Social Security

Directive/Communication/Proposal/Resolution/Regulation	Description
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 27 June 2007, entitled Towards Common Principles of Flexicurity: More and better jobs through flexibility and security	The flexicurity strategy has three objectives: achieving full employment, increasing productivity and quality at work and promoting cohesion. Flexicurity is about striking the right balance between flexible job arrangements and secure transitions between jobs, so that more and better jobs can be created.
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Renewed social agenda: Opportunities, access and solidarity in 21st century Europe COM (2008) 0412 final	The European Commission adopted an ambitious agenda, aiming to respond effectively to today's economic and social challenges. The renewed social agenda brings together a range of EU policies in order to support action in seven priority areas: children and youth; investing in people: more and better jobs, new skills; mobility
Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services O.J. L 018 01; 21.01.1997 (Implementation > 17 December 1999)	To guarantee that the rights and working conditions of a posted worker are protected throughout the European Union, and to avoid "social dumping" where foreign service providers can undercut local service providers because their labour standards are lower, this Directive establishes a core of mandatory rules regarding the terms and conditions of employment to be applied to an employee posted to work in another Member State. These rules reflect the standards of local workers in the host Member State. The idea is that where a Member State has certain minimum terms and conditions of employment, these must also apply to workers posted to that State. However, there is nothing to stop the employer applying working conditions that are more favourable to workers such as, for instance, those of the sending Member State.
Proposal for Directive concerning the enforcement of the provision applicable to the posting of workers in the framework of the provision of services COM (2012) 131	The Enforcement Directive intends to improve the application of the 1996 Directive as it will set more ambitious standards for the information of workers and companies on their rights and obligations; it will clarify the elements of the notion of posting in order to avoid companies to circumvent the law; it will establish rules for cooperation between national authorities in charge of posting amongst other rules. The Directive is composed by a balanced package of measures, which include the following: awareness raising (better information); state enforcement mechanisms and private law enforcement mechanisms.
Directive 91/533/EEC of 14 October 1991 on an employer's	In view of the number of types of employment relationship, this Directive aims to provide

obligation to inform employees of the conditions applicable to the contract or employment relationship O.J. L 288 32; 18.10.1991 (Implementation > 30 June 1993)	employees with improved protection of their rights and to create greater transparency on the labour market.
Proposal for a Directive of the European Parliament and of the Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. COM (2013) 236 final; 26.04.2013	It requires Member States to develop measures that ensure a better application and enforcement of the free movement of workers by creating national bodies to inform migrant workers about their rights, the provision of redress mechanisms at national level, and the possibility for civil society organizations to engage in administrative or judicial procedures on behalf of individual workers in cases of discrimination.
Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC O.J. L 14 20.01.1998 (Implementation > 20/01/2000)	In the framework agreement Social Partners consider the impact of part-time work on employment and set out general principles and minimum requirements relating to it, asking Member States to ensure equal treatment, to eliminate legal obstacles and fully develop the potential for part-time work.
Council Directive 94/33 of 22 June 1994 on the protection of young people at work O.J. L 216 12; 20.08.1994 (Implementation > 22 June 1996)	The Directive applies to all young people under the age of 18 who have an employment contract or an employment relationship.
Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation O.J. L 204 23; 26/07/2006 (Implementation by 15 August 2008 - review by 15 February 2013) (Consolidation of Directive 75/117/EEC; 76/207/CEE; 86/378/EEC; 97/80/EC)	To ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, this Directive contains provisions in relation to access to recruitment, access to employment and self-employment, promotion and vocational training. In relation to social protection, they are treated equally under occupational social security schemes such as the contributions, the calculation of benefits, the conditions governing the duration and retention of entitlement, amongst others.
Directive 2003/88/EC of the European Parliament and the Council of 4 November 2003 concerning certain aspects of the organisation of working time O.J. L 299; 18.11.2003 (Implementation > 2 August 2004)	This Directive lays down minimum safety and health requirements for the organisation of working time. Also optional derogations regarding specific sectors or on agreement in collective agreements can be implemented by Member States. e.g.: derogation from minimum rest periods in case of activities involving the need for continuity of service or production as in cinematographic production.
Directive 2008/104/EC of the European Parliament and the Council of 19 November 2008 on temporary agency work OJ L 327; 5.12.2008 (Implementation by 5 December 2011)	This Directive aims at ensuring the protection of temporary agency workers and improving the quality of temporary agency work by ensuring the principle of equal treatment.

<p>European Parliament resolution of 6 July 2010 on atypical contracts, secured professional paths, and new forms of social dialogue (2009/2220(INI))</p>	<p>Parliament draws particular attention to the special position of independent freelance workers because this form of activity can represent a 'way in' or an alternative to the labour market. Given the growing popularity of this activity, Members call for measures to be taken to minimise the burden of regulation and to encourage and support independent freelancers in launching/growing independent freelance businesses and to promote lifelong learning for this group.</p>
<p>Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community O.J. L 209; 25.7.1998 (Implementation > 29 June 2001)</p>	<p>This Directive sets out certain rights and obligations for members of supplementary pension schemes and constitutes a first step on removing obstacles to free movement relating to supplementary pensions</p>
<p>Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems O.J. L 200 1; 07.06.2004 (Application > 27 July 2009 – latest modifications > 1 May 2010)</p>	<p>This regulation aims to rationalise the concepts, rules and procedures concerning the coordination of the member states' social security systems. It stipulates that all persons residing in the territory of a member state are subject to the same obligations and enjoy the same benefits under the legislation of any member state as the nationals of that state.</p>
<p>Regulation 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation 883/2004 on the coordination of social security systems O.J. L 284 1; 30.10.2009 (APPLICATION > 1 MAY 2010)</p>	<p>The implementation of the Regulation on the coordination of social security systems is formalised in order to insure unique procedures all over Europe. The Regulation contains rules concerning cooperation and exchange of data; the determination of the applicable legislation; the calculation of the different benefits and some transitional rules.</p>
<p>Regulation No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality O.J. L 344; 29.12.2010 (Application > 1 January 2011)</p>	<p>As from 1 May 2010 the applicable social security scheme for nationals of EU member states is determined in the EU by the Regulations No 883/2004 and 987/2009. Modernized coordination is applicable to Members of the European Economic Area EEA Norway, Iceland, Lichtenstein by Decision 76/2011 of the EEA Joint Committee and; it is applicable to Switzerland as from April of 2012 by Decision 1/2012.</p>

Annex 6: Mobile workers and applicable legislation at the EU level in relation to social security

If a person works in two or more Member States, the applicable legislation on the coordination of social security operates as follows:

Condition	Applicable legislation
Employed person, with an activity in 2 or more Member States and does not pursue a substantial part of her/his activities in the Member State of Residence. (*)	→ Covered by the legislation of the Member State in which the person employing him/her is situated
Employed person, with an activity in 2 or more Member States and pursues a substantial part of his activity in that Member State or is employed by various employers whose registered office or place of business is in different Member States (*)	→ Covered by the legislation of the Member State of residence
Self-employed person with an activity in two or more Member States if s/he pursues a substantial part of his /her activity in the Member State of Residence	→ Covered by the legislation of the Member State of Residence
Self-employed person with an activity in two or more Member States if s/he does not reside in one of the Member States in which s/he pursues a substantial part of her/his activity	→ Covered by the legislation of the Member State in which the centre of interest of her/his activities is situated
Pursues an employed and a self-employed activity in different Member States	→ Covered by the legislation in which s/he pursues an activity as an employed person (if s/he pursues such activity in two or more Member States, the conditions marked as (*) apply)

The determination on the institution of the State in which the worker is affiliated is very important for several reasons such as:

- Benefits at work and occupational diseases. For example, the institution of the State in which the worker is affiliated will bear the costs of transporting the person towards its place of residence.
- Old-age pensions. The calculation will take into consideration the periods completed in another Member State, or also if it is entitled to benefits in several Member States. In this case, the total amount of the benefits shall never be less than the minimum that is provided in the legislation of the Member State where the person resides.

Annex 7: EU Legislation and Case law on Taxation

Directive/Communication/Proposal/Resolution/Regulation	Description
Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC; O.J. L 64/1; 11.3.2011.	The Directive introduces an enhanced cooperation in order to ensure a correct assessment of taxes and to combat tax fraud and tax evasion. It introduces the exchange of information on five categories of income and it ensures that the existing mechanisms are improved by introducing deadlines for exchange of information on request and spontaneous exchange of information. The scope of the Directive covers all taxes except those that are dealt under specific Community legislation.
Commission Implementing Regulation (EU) No 1156/2012 of 6 December 2012 laying down detailed rules for implementing certain provisions of Council Directive 2011/16/EU on administrative cooperation in the field of taxation. O.J. L 335/42; 7.12.2012	The Implementing Regulation includes provisions on standard forms and means of communication for Member States when exchanging information.
Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee. Removing cross-border tax obstacles for EU Citizens. COM (2010)	Rules on taxation on pensions may differ between Member States as there is no EU law that states how persons moving from one Member State to another one should be taxed. The specific areas of actions taken by the Communication are double taxation of income and capital; inheritance tax; taxation of dividends paid across borders; vehicle registration and circulation taxes and e-commerce.

Case Law from the European Court of Justice (see page 25 for the description of these rulings)

1) Arnoud Gerritse v Finanzamt Neukölln-Nord (C-234-01), 12 June 2003:

<http://curia.europa.eu/juris/liste.jsf?language=en&num=c-234/01>

2) Scorpio Konzertproduktionen GmbH v. Finanzamt Hamburg-Eimsbüttel (C-290/04). ECJ, 3 October 2006:

<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-290/04>

3) Centro Equestre de Leziria Grande Lda case v Bundesamt für Finanzen (C345/04), 15 February 2007:

<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-345/04>

Selected references and resources

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- PEARLE*, Resolution 24 November 2012, 44th General Assembly - *Double taxation should be removed*.
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http://www.fia-actors.com/en/policy_The%20Status%20of%20the%20Artist.html
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http://ec.europa.eu/culture/policy/cultural-creative-industries/documents/cultural-mobility_en.pdf
- Fédération Nationale des Employeurs du Spectacle Vivant Public et Privé (FEPS), Consultation sur l'application de l'article 17 du Modèle de Convention fiscale de l'OCDE Contribution FEPS (France): Exemples concrets et propositions, 2010
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- Richard Poláček & Judith Staines, *In transit: a study on international law and the mobility of artists, art works, cultural goods and services* (2009)
<http://on-the-move.org/library/article/14492/in-transit-a-study-on-international-law-and-the/>
- ECOTEC Research & Consulting Ltd for the European Commission: Feasibility study for a European wide system of information on the different legal, regulatory, procedural and financial aspects to mobility in the cultural sector (2009)
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2. Information portals and websites

2.1. EU-level Information portals and resources

Below is a non-exhaustive list of information-provision websites and services provided by the European Commission to inform about the mobility of workers, including artists and cultural professionals. Although the list focuses on information related to social security and taxation, most of the resources also address other topics (e.g. employment & work legislation, visas, etc.)

- **Your Europe:**

Your Europe Advice: <http://europa.eu/youreurope/advice/index.htm> (available in all EU languages)

Your Europe Advice is an EU **advice service for the public**, currently provided by legal experts from the **European Citizen Action Service (ECAS)** operating under a contract with the European Commission. It consists of a **team of lawyers** who cover **all EU official languages** and are familiar both with EU law and national laws in all EU countries.

Your Europe Citizens and Businesses: http://europa.eu/youreurope/citizens/index_en.htm (available in 22 languages for citizens and 23 for enterprises)

Information service on **the rights and obligations** of mobile citizens and businesses in Europe, and **practical tips** to help them move around the EU.

- **SOLVIT:** http://ec.europa.eu/solvit/site/index_en.htm (available in 24 EU languages as well as Icelandic and Norwegian)

SOLVIT is an on-line problem solving network in which EU Member States work together to solve - without legal proceedings - problems caused by the misapplication of Internal Market law by public authorities. There is a SOLVIT centre in every European Union Member State, as well as in Norway, Iceland and Liechtenstein. SOLVIT Centres can help with handling complains from both citizens and businesses. They are part of the national administration and are committed to provide real solutions to problems within ten weeks. Using SOLVIT is free of charge.

- **Social Security Coordination and Social Security Rights For EU Citizens moving inside the EU:** <http://ec.europa.eu/social/main.jsp?catId=849&langId=en>
Provides detailed information about the social security benefits of EU citizens who work or are on holidays in another EU country or who have worked in more than one EU country.
The website also offers a detailed description of social security rights within each EU Member State:
http://ec.europa.eu/employment_social/social_security_schemes/national_schemes_summaries/bel/1_general_en.htm
- **EURES:** <https://ec.europa.eu/eures/home.jsp?lang=en>
(Available in the 23 EU official languages)
The purpose of EURES is to provide information, advice and recruitment/placement (job-matching) services for the benefit of workers and employers as well as any citizen wishing to benefit from the principle of the free movement of persons.
- **European Health Insurance Card:** <http://ec.europa.eu/social/main.jsp?langId=en&catId=509>
(Available in the 23 EU official languages)
The European Health Insurance Card makes it easier for people from the European Union's 28 Member States plus Iceland, Liechtenstein, Norway and Switzerland to access health care services during temporary visits abroad. The card is available free of charge through local health authorities.
- **Missoc – Mutual Information System on Social Protection:** <http://ec.europa.eu/social/main.jsp?catId=815&langId=en>
(Available in English, French, and German)
It provides detailed, comparable and regularly updated information about national social protection systems in all 28 Member States, the three countries of the European Economic Area - Iceland, Liechtenstein and Norway - as well as Switzerland.
- **Electronic Exchange of Social Security Information (EESSI):** <http://ec.europa.eu/social/main.jsp?catId=869&langId=en>
EESSI is an IT system that will help social security bodies across the EU exchange information more rapidly and securely – as required by EU regulations on social security coordination.
- **European Commission: Taxation and Customs Union:** http://ec.europa.eu/taxation_customs/index_en.htm
This website includes as well links to tax and custom sites in EU member states and publications.

2.2 Information portals and resources at a European and/or international level

Below is a list of organisations, institutions, networks, and information pools and services across Europe focusing on artists' mobility. For the purpose of this list the focus lies on portals of information and services in the field of social security and taxation.

- **CLEISS, Centre des Liaisons Européennes et Internationales de Sécurité Sociale:** <http://www.cleiss.fr/>

(available in French, English, German, Spanish, Italian and Portuguese)

Interface for France and Europe with an international legal framework for the coordination of national social security systems in the context of international mobility. CLEISS mediates between French institutions and foreign social security institutions, individuals and enterprises. It also offers information about the French social security system.

- **European Citizen Action Service (ECAS):** <http://www.ecas-citizens.eu/>

A non-profit organisation working for international NGOs, independent from political affiliation, commercial interests, and the EU institutions. Its mission is to enable NGOs and individuals to make their voice heard within the EU by providing advice on how to lobby, fundraise, and defend European citizenship rights.

- **Training and Reporting on European Social Security (trESS):** <http://www.tress-network.org/>

NB: The **trESS** project came to an end in December 2013.

In the current transition phase, the **trESS** website and its contents will be kept online.

- **On The Move's Charter for a Sustainable and Responsible Cultural Mobility:** <http://on-the-move.org/charter>

On the Move is the cultural mobility information network with more than 35 members in over 22 countries across Europe and beyond, facilitating artists' mobility through information, advocacy and capacity-building. In January 2013 On the Move launched its Charter, an online tool targeted at policy makers, funders and cultural organisations in order to improve the way they support, fund or practice cultural mobility, including on social and administrative matters.

Infotools produced in the context of the EU funded project (2008-2011) *Practics* can also be viewed on the On the Move website: <http://on-the-move.org/practicsinfotools/>

2.3. Resources and/or information points at national level

Austria

- Information for foreign artists in Austria: <http://www.artistmobility.at/home-english.html>

Belgium

- **Kunstenloket:** <http://www.kunstenloket.be/>

Provides information about commercial and legal aspects; advice and answers about social status of the artist, income tax, VAT, copyright, forms of organisation, insurance, etc.

- **SMart Société Mutuelle pour artistes:** <http://www.smartbe.be> and <http://smart-eu.org/>

Provides information and paid services on administrative or legal aspects for artists in Belgium and other European countries.

Denmark/Sweden

Kompas1: <http://www.kompas1.dk/om-kompas1-45-77-78/>

Tools of navigation for touring and co-producing theatres in Denmark and Sweden.

Finland

- *Mobility Infopoint Mapping* carried out by the Finnish Theatre Information Centre, partner to the EU mobility pilot project Practices:
<http://on-the-move.org/library/article/14377/mobility-infopoint-mapping-finland-practices/>

Germany

- **Touring artists** website: <http://www.touring-artists.info>

And in particular the resourceful web-links below:

<http://www.touring-artists.info/sozialversicherung-in-de.html?&L=1#c936> and <http://www.touring-artists.info/europaweite-infoportale.html?&L=1>

Luxembourg (Grande region)

- The website **Culture.lu** with the support of the Ministry of Culture: <http://www.culture.lu/en/50/cultural-practice/mobility.html>

Sweden

- Social security: [https://www.forsakringskassan.se/wps/portal/sprak/eng/in_brief_about_social_insurance_\(for_those_who_have_recently_arrived_in_sweden\)!ut/p/b1/hZDZUoNAEEW_JR9gMcPOlwMTmGIREInCCzVgIGMgxLAY_HrR8kVTxn7rqtO37mku41luO9GJ1XRg3Yk2n3sm5yoPPISgDh5IUQREW_sQuS4BG4FLuDQo56vZkxot83Dm8TF0WPLSFyLCyhCOSTckJDZM6Ff26NfalLvFA4UonGOoxE6wITKn8KA4hQON0tJJeEOewoz6a5R7zcWUmuq4P8j7VgBTXcmX8RVbbRuUqRoB9m4dBOohBjCbQ4Vlz-6Md41Fr3peJHaKkJYaAngr55ap4iKzW2TAH6ODu66u9H1_B_j3V9kXcq_Bzwx1C9Qlw9bwWuMtPRJuAF2GgED7CYY-2piO9Bu4LenbXbvnu3kuPIGV_pq9QENPmJ5/dl4/d5/L2dJQSEvUUt3QS80SmtFL1o2XzgyME1CQjFBME82NDQwSTIGTjFCTExJOEg0/](https://www.forsakringskassan.se/wps/portal/sprak/eng/in_brief_about_social_insurance_(for_those_who_have_recently_arrived_in_sweden)!ut/p/b1/hZDZUoNAEEW_JR9gMcPOlwMTmGIREInCCzVgIGMgxLAY_HrR8kVTxn7rqtO37mku41luO9GJ1XRg3Yk2n3sm5yoPPISgDh5IUQREW_sQuS4BG4FLuDQo56vZkxot83Dm8TF0WPLSFyLCyhCOSTckJDZM6Ff26NfalLvFA4UonGOoxE6wITKn8KA4hQON0tJJeEOewoz6a5R7zcWUmuq4P8j7VgBTXcmX8RVbbRuUqRoB9m4dBOohBjCbQ4Vlz-6Md41Fr3peJHaKkJYaAngr55ap4iKzW2TAH6ODu66u9H1_B_j3V9kXcq_Bzwx1C9Qlw9bwWuMtPRJuAF2GgED7CYY-2piO9Bu4LenbXbvnu3kuPIGV_pq9QENPmJ5/dl4/d5/L2dJQSEvUUt3QS80SmtFL1o2XzgyME1CQjFBME82NDQwSTIGTjFCTExJOEg0/)
- Taxation: <http://www.skatteverket.se/otherlanguages/inenglish.4.3a2a542410ab40a421c80006827.html>

Switzerland

- Social security: <http://suisseculturesociale.ch./index.php?id=101&L=2>
<http://www.ssrs.ch/faq>
<http://www.suisseculture.ch/fr/securete-sociale.html>
- Office of migration: <https://www.bfm.admin.ch/content/bfm/fr/home/themen/einreise.html>

United Kingdom

- International info point by Wales Arts International: <http://www.wai.org.uk/practices>
- Information provision in the UK: dedicated webpages in relation to taxation: "foreign entertainers unit": <http://www.hmrc.gov.uk/feu/feu.htm>

>>> Additional resources **on CLEISS website**: introduction in French but websites can be available in English, depending of the countries.
<http://www.cleiss.fr/docs/index.html>