



European Platform tackling undeclared work

# Employment characteristics and undeclared work in the cultural and creative sectors

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# List of abbreviations and acronyms

ACE-CAE	Architects' Council of Europe
ACT	Association of Commercial Television and Video on Demand Services in Europe
AER	Association of European Radios
AV	Audiovisual (sector)
CCS	Cultural and creative sectors
CCI	Cultural and creative Industries
CCW	Cultural and creative worker
CEPI	European Audiovisual Production Association
СМО	Collective Management Organisations
EAEA	European Arts and Entertainment Alliance
EBU	European Broadcasting Union
ECCO	European Confederation of Conservators-restorers Organisations
ECSA	Federation of European Composers' Association
EFA	European Festival Association
EFJ	European Federation of Journalists
EMMA	The European Music Managers Alliance
EP	European Parliament
ESS	European Statistical System
EVA	European Visual Artists
EWC-FAEE	European Writers' Council
FEB-FEE	Federation of European Publishers
FEG	European Federation of Tourist Guide Association
FERA	Federation of European Film Directors
FIA	International Federation of Actors
FIAPF	International Federation of Film and Audiovisual Producers
FIM	International Federation of Musicians
FSE	Federation of Screenwriters in Europe



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GESAC	European Grouping of Societies of Authors and Composers
IETM	International Network for Contemporary Performing Arts
IFPI	The International Federation of the Phonographic Industry
IP	Intellectual Property
IMPALA	Independent Music Companies Association
LFS	Labour Force Survey
PEARLE	Live Performance Europe
SAA	Society of Audiovisual Authors
SME	Small and Medium sized Enterprises

TRW Thematic Review Workshop



# **Executive summary**

This pilot study provides the **first mapping of undeclared work in the cultural and creative sectors** (CCS) within the EU. Due to the absence of a harmonised definition of the CCS across the EU and the varied national interpretations, this study focuses on six traditional subsectors: Literature and Written press, Music, Visual Arts and Crafts, Performing Arts, Audiovisual, and Cultural Heritage. Other subsectors such as Sports, Videogaming, Fashion Design and AI were excluded.

The study identifies three main stages of the creative production process (creation, production, and dissemination) and three occupational categories: 'artists'/'authors', performing 'artists' (performing functions), and supporting staff/occupations (technical functions). The study focusses on the **challenges undeclared work** in the CCS poses in EU Member States and in cross-border settings. The objectives were to define the employment characteristics, gather data on the prevalence and range of undeclared work, identify its causes and types, and gain deeper insights via five case studies.

The methodology used for this study combined desk research with a short survey filled out by members of the European Platform tackling undeclared work, designed to gather additional data from national enforcement authorities. Desk research was supplemented by semi-structured interviews with EU stakeholders in the CCS and country case studies conducted in **Belgium (Flanders), France, Germany, Latvia, and Portugal**. Further information, particularly on the extent and challenges of undeclared work in the CCS, was collected during the Thematic Review Workshop held in Brussels on 14-15 May 2024. This event included representatives from national enforcement authorities of eleven Member States and EU-level social partners in the live performance and audiovisual sectors.

In 2020, the EU had approximately 1.2 million cultural enterprises, accounting for 5.2% of businesses within the non-financial business economy. Eurostat data from 2022 indicated that **7.7 million people were employed** in the CCS in the EU, representing 3.8% of total EU employment. Significant regional disparities exist, with higher employment in the sector in Western and Northern Member States compared to Eastern and Southern ones. The most recent available statistics revealed that 1.7 million artists and writers were active in the EU, constituting 22% of employment in the sector. Germany and France, along with the Netherlands, Spain and Italy, housed 62.6% of all EU artists and writers.

Employment in the CCS is characterised by higher participation rates of women and younger individuals, and higher educational attainment compared to the general economy. Full-time employment in the CCS (76.5%) is significantly lower than the EU average (81.5%), with notably low rates in the Netherlands, Austria, and Germany. The sector has a **high prevalence of self-employment**, with almost one-third of CCS workers being self-employed in 2022, compared to just 13.8% in the overall economy. Among artists, only 73.3% of employees have permanent jobs, and 46% are self-employed.

The working conditions in the CCS are marked by structural precariousness and a reliance on project-based work and income. Many workers are self-employed, often holding multiple jobs or having a main job in other sectors. Income levels in the CCS are generally lower compared to other sectors, making it difficult for many workers to sustain themselves solely on CCS income. A unique feature of the CCS is the presence of individual artists and authors at the origin of value chains.

There is **no uniform definition of 'artists'** in the EU, and Member States have different approaches to their status and protection. Authors enjoy economic and moral rights over their works and are entitled to copyright income, often managed by Collective Management Organisations (CMOs). Performing artists may also receive income from their neighbouring rights from recorded and exploited performances. However, the tax and social security





treatment of copyright income can create a grey zone for income classification and declaration. Technical and supporting staff generally do not receive copyright income, highlighting income generation disparities within the sector.

The CCS also exhibits **fragmented representation** and a somewhat limited social dialogue due to the high prevalence of self-employed professionals and micro-enterprises. At the EU level, social partners are active in three CCS subsectors: live performance, audiovisual, and graphical industries. Cultural heritage stakeholders have some representation at the EU level, but other CCS occupations and categories rely on national and European interest groups, associations, or guilds. Authors and performers are represented by trade unions and associations while their IP rights are managed by CMOs.

Certain CCS value chains involve venue-based or visitor-based activities, such as performing arts, visual arts, museums, and some segments of the audiovisual sector and music industry. Venue operators and festival organisers often act as third parties in contractual relationships with CCS professionals or organisations. Intermediaries, like booking agencies and managers, also play a role.

Digitalisation has significantly impacted the CCS, particularly in literature, written press, audiovisual, and music. The rise of digital consumption, global intermediaries, and piracy and copyright violations have exacerbated systemic imbalances between the stakeholders. Rapid technological advancement and AI also have an impact.

**Undeclared work** in the CCS, both within Member States and across borders, remains **significantly understudied and often lacks sufficient data**. Defined as any legal work that has not been fully declared in terms of income, undeclared work indirectly reflects the employment status of individuals within national labour markets and the methods they use to earn and report their income. Undeclared work in the CCS has not been a high priority for national policymakers and enforcement authorities, who have focused more on other high-risk sectors like construction, agriculture, and road transport. National data on inspections are limited, and in-depth analyses are scarce. However, the available data and inspection findings reveal **significant levels of undeclared work**, varying by subsector and occupation categories in Member States and in cross-border situations.

Bogus self-employment is notably relevant among creative professionals and performers, prompting efforts to clarify their employment status. Research and interviews revealed practices of engaging workers **without written contracts** and the prevalence of **un(der)declared work**. The informal economy, cash payments' acceptance, and **unregistered events/performances** further complicate the landscape.

**Fraudulent practices** and abuse of social or unemployment benefits alongside undeclared income are also concerns, particularly given the sector's atypical and irregular working hours. Case studies revealed the engagement of **amateur artists** over professionals, which may point at the circumvention of national legislation concerning the working conditions, social security and taxation applicable to professional artists. There is also some indication about the **unlawful use of interns and volunteers**, pointing to potential undeclared work. **Occasional employers/organisers of cultural events** pose additional challenges.

**Street performers**, who typically require authorisations from local authorities, are often unsure how to declare their cash earnings. The digital platform economy has significantly impacted the CCS, with **online labour platforms and crowdfunding activities** creating new challenges for taxation, social security, and labour law enforcement. Crowdsourcing and collaborative platforms have undoubtedly facilitated creative endeavours, but their income declaration practices require further research.

Despite being a lower priority for enforcement authorities, several **initiatives have been implemented to tackle undeclared work** in the CCS. These include regional **prevention agreements** in France to tackle undeclared work in the audiovisual and performing arts subsectors. In Belgium, **new regulatory frameworks** for professional and amateur artists have been introduced, effective from early 2024. Various **registration systems** to collect data





on cultural and creative workers have been established, among others, in Belgium, France, Greece, and Portugal. Also, **prior authorisation and permits** are often required for organising events and public recordings in the audiovisual subsector. Targeted information campaigns and similar initiatives have been also effective in preventing undeclared work.

In cross-border contexts, certain cultural and creative professionals in the live performance sector are highly mobile, frequently moving across the EU for very short professional stays. However, most workers remain active within their country of residence, only occasionally crossing borders. Applying EU rules on free movement of workers and services to these professionals is challenging due to the sector's atypical work forms, high rates of self-employment, and possible misclassification. The national prior notification systems for posting workers, and compliance with the host Member State rules on working conditions and pay are complicated while the mandatory use of the PD A1 forms, certifying social security affiliation, is considered as cumbersome. Research and interviews with stakeholders reveal additional challenges, such as double taxation and withholding tax practices at venues that engage foreign organisations and workers. National case studies report instances of third-country nationals hired in cross-border situations without work or residence permit, indicating specific types of undeclared work.



# **1.0 Introduction**

# 1.1 Objectives

The present pilot study is a first mapping of undeclared work in the cultural and creative sectors ('CCS') focussing primarily on **the challenges** posed by undeclared work in the CCS in the EU Member States (and by extension in the EU) and in cross-border situations.

The main objectives of the study are twofold:

- To collect existing data and information on possible causes and types of undeclared work in the CCS at the EU level and in the Member States, to the extent that these are available, and to map the main challenges;
- To delve more deeply into the subject of undeclared work in the CCS, in a few selected Member States and in a cross-border context, in relation to selected CCS subsectors and occupations.

# **1.2 Defining the scope**

Currently, there is **no uniform or harmonised definition** of the cultural (and/or creative) sectors across Member States. When examining the national concepts and definitions of the CCS in the Member States, there seems to be **consensus on the inclusion of the more 'traditional' cultural and creative subsectors** into the national definitions and concepts (e.g., literature and press, the visual arts, the performing arts, the audiovisual sector (AV), museums and heritage, architecture, photography, and crafts). However, a greater variety can be noted with regard to **some other specific subsectors** (e.g., fashion and industrial graphic design, advertising, sports, gambling, multi- and/or interactive media, and (video-) gaming).

Listed below in Box 1 are some of the various definitions used in national economic estimates in EU Member States.

## Box 1. Defining CCS in EU Member States – Overview of national approaches

Where possible, these definitions have been taken from statistical offices' official datasets (including cultural satellite accounts) and statistics publications from cultural ministries. However, not all EU Member States produce regular statistics, so in these cases, definitions have been taken from singular mapping studies, either by government departments or by third-party consultants. The list outlines the main subsector groups of cultural business and enterprise data. This list is not exhaustive, but rather forms the first step in beginning to understand the variations in definition across the EU.

- ► Austria: Architecture; Audiovisual and multimedia; Books and press; Cultural education; Cultural heritage, archives, libraries; Fine arts; Performing arts (Statistics Austria, 2021).
- Belgium: (Flanders): Architecture; Audiovisual sector, Performing Arts, Communication, public relations and advertisement, Design, Heritage, Gaming industry, Print and Digital press, Fashion, Visual arts (VLAIO, 2021)
- Czech Republic: Advertisement; Architecture; Audiovisual and interactive media; Art education; Cultural heritage; Culture management incl. its support; Fine arts and crafts; Performing arts; Periodical and non-periodical press (Czech Statistical Office, 2019).



- Denmark: Advertising services; Amusement and theme parks; Architecture; Archives; Computer games; Crafts; Design; Film; Gambling; Libraries; Literature and books; Museums; Music; Newspapers and magazines; Performing Arts; Photography; Sports; TV & Radio; Zoological and botanical gardens; Miscellaneous cultural activities (Statistics Denmark).
- Estonia: Advertising; Architecture (interior architecture, landscape architecture, civil engineering design); Art (visual arts, retail sale of art supplies, framing, restoration, and production of works of art, and associated activities); Audiovisual (film and video, broadcasting); Cultural heritage (handicrafts, museums, libraries); Design (product and original design, design services); Entertainment software (mobile, online, computer and console games, software service providers for game developers, importers, localisers and associated activities); Music (authors and performers, production, live performance, private schools, manufacture and sale of musical instruments, production and sale of recordings, ancillary activities for concert organisation and associated activities); Performing arts (theatre, dance, festivals); Publishing (publishing, printing and associated activities) (Estonian Ministry of Culture, 2020).
- Finland: Artistic, theatre and concert activities; Libraries, archives, museums, etc.; Production and distribution of books; Art and antique shops; Newspapers, periodicals and news agencies; Production and distribution of motion pictures and videos; Manufacture and sale of musical instruments; Sound recordings; Radio and television; Printing and related activities; Advertising; Architectural and industrial design; Photography; Amusement parks, games and other entertainment and recreation; Manufacture and sale of entertainment electronics; Organisation of cultural events and related activity; Education and cultural administration (Statistics Finland, 2019).
- France: Advertising; Architecture; Artistic crafts; Books and press; Audiovisual and multimedia (including computer games publishing, film and cinema, television, radio and parts of music); Cultural education; Heritage (including libraries, museums and historic sites); Visual arts (including design, photography and visual arts) (Ministère de la Culture, 2021).
- Germany: Music; Book; Film; Art; Broadcasting; Performing arts; Design; Architecture; Press; Advertising; Software/games; Miscellaneous (Libraries/archives, Operation of monuments; Fairground trades and amusement parks; Botanical and zoological gardens and nature parks) (Söndermann, Backes and Arndt, 2009).
- ► **Greece:** (Hellenic Republic Ministry of Culture and Sports, 2017). Reference is made to the Eurostat definition.<sup>1</sup>
- Iceland: (Statistics Iceland, 2019). Reference is made to the Eurostat definition.
- Italy: (ISTAT, 2021). Reference is made to the Eurostat definition.
- Latvia: Advertising; Architecture; Cinematography; Computer games and interactive software; Cultural education; Cultural heritage; Design; Music; Performing arts; Publishing; Recreation, entertainment and other cultural activities; Television, radio and interactive media; Visual arts; (Latvian Ministry of Culture, 2020).
- Lithuania: (Statistics Lithuania, 2012). Reference is made to the Eurostat definition.

<sup>&</sup>lt;sup>1</sup> EU Guide to Eurostat Culture Statistics, (2018).



- Netherlands: Book industry; Communication and information; Creative design; Creative arts; Cultural heritage; Film; Live entertainment; Music industry; Other art and heritage; Other publishing; Performing arts; Press media; Radio and television.<sup>2</sup>
- Norway: Advertising and events; Architecture; Design; Computer games; Film; Literature; Music; Operation of library, archive, museum and other cultural activities; Other areas; Other artistic and entertainment activities; Performing arts; Printed and digital media; Teaching; Visual art (Statistics Norway, 2019).
- Poland: Advertising; Architecture; Audiovisual and multimedia arts; Artistic education; Books and press; Cultural heritage; Libraries and archives; Performing arts; Visual arts.<sup>3</sup>
- **Portugal** (Instituto Nacional de Estatística, 2021). Reference is made to the Eurostat definition.
- Slovakia: Cultural heritage; Periodic and non-periodic press; Visual arts and crafts; Architecture; Performing arts; Audiovisual media; Advertising; Arts education (<u>Summary of the Results of the Satellite Account of Culture and Creative Industries, Slovakia, 2021</u>).
- Spain: Activities of libraries, archives, museums and other cultural activities; Cinematographic, video, radio, television and music publishing activities; Design, creation, artistic and entertainment activities; Cultural education; Graphic arts and reproduction of recorded media; Manufacture of jewellery and similar items; Manufacture of supports and apparatus for image and sound, and musical instruments; News agency activities; Photography; Publishing of books, newspapers and other editorial activities; Trade and rental; Translation and interpretation; Video game publishing. (Ministerio de Cultura y Deporte, 2021).
- Sweden: Advertising; Architecture; Audiovisual (including audiovisual storage media; computer games; film & TV, radio); Cultural heritage (including archives, museums, historical and archaeological sites), Fashion; Literary and artistic creation; Literature & press (including press, uncategorised, literature, library); Performing arts (including music, cultural education, performing arts); Picture & shape (including art, design, photo) (tillväxt verket, 2018).

Approaches on the **concepts relating to CCS may also differ** in the Member States **between the different policy fields** (e.g., social, fiscal, cultural policies, etc) and/or **between the different levels of the administration**. In Federal states (e.g., Belgium, Germany) competences in the area of culture policies are typically entrusted to the regional levels and not the federal state, which often implies **different regional (policy) concepts and approaches**.

## Box 2. Defining the Cultural and Creative Sectors in Germany

In accordance with the provisions of the German constitution (Art. 70.1), **cultural policies are the competence** of the 16 regions (Länder) and not of the Federation. Whereas **cultural policies differ among the regions**, a permanent body of the 16 different ministers of education, research, universities and culture envisages the coordination of the regional policies on culture (Kultur-MK).

**Different concepts and approaches on CCS and the subsectors** are applied by different national stakeholders:

<sup>&</sup>lt;sup>2</sup> Media Perspectives (2019), *Monitor creatieve industrie, 2019*.

<sup>&</sup>lt;sup>3</sup> Statistics Poland (2021), *Cultural and Creative Industries in 2019*, Statistics Poland, Warsaw, Poland.





- ► The German Culture Council, which was established in 1982 as an umbrella organisation representing more than 280 organisations covers nine subsectors including music, performing arts, literature, arts, monuments, design, media, cultural education and photography.<sup>4</sup>
- ► In its 2021 monitoring report concerning the cultural and creative sectors, the Federal Ministry of Economy distinguishes between twelve subsectors including also videogaming, advertising and architecture.<sup>5</sup>

At EU level, most recent EU policy papers<sup>6</sup> and legislation increasingly refer to the 'cultural and creative sectors' ('CCS') or 'industries' ('CCI') instead of the 'cultural sector', and to the 'CCS professionals or workers' (CCW). Such an approach emphasises the entire creative process that is at the core of most cultural and creative dissemination/publication, activities and which results in the production, trading, preservation, reception/consumption of the created and produced artwork. It also reckons the specific value creation CCS organisations and professionals are striving for and which distinguishes the CCS sector from more traditional economic sectors and other industries. Article 2 of the Creative Europe Regulation (EU) No 2021/8187 defines the 'cultural and creative sectors' as follows: 'cultural and creative sectors means all sectors whose activities are based on cultural values or artistic and other individual or collective creative expressions. The activities may include the development, the creation, the production, the dissemination and the preservation of goods and services which embody cultural, artistic or other creative expressions, as well as related functions such as education or management. They will have a potential to generate innovation and jobs in particular from intellectual property. The sectors include architecture, archives, libraries and museums, artistic crafts, audiovisual (including film, television, video games and multimedia), tangible and intangible cultural heritage, design (including fashion design), festivals, music, literature, performing arts, books and publishing, radio, and visual arts'.

The available **EU cultural employment statistics** are based on a methodological approach that was adopted in 2012 by the European Statistical System Network on Culture (ESSnet-Culture) and which defined the statistical concept of 'cultural industries' to collect various business and employment statistics. At present Eurostat defines **cultural employment** as *'all individuals working in a culture-related economic activity regardless of their occupation, as well as all individuals with a culture-related occupation whatever the economic activity they are employed in'.* <sup>8</sup> Regular data collection is conducted by means of the Labour Force survey (LFS) while a list of cultural economic sectors (based on NACE rev. 2) and cultural occupations are used as a reference framework for the data gathering.<sup>9</sup> Sports<sup>10</sup> and the gaming industry<sup>11</sup> are not included into the Eurostat cultural employment statistics, while some occupations that may have relevance in some instances (e.g. cultural centre managers, etc.) are equally not reported on for methodological reasons. Furthermore, the statistics do not consider employment in the CCS when work is performed as a secondary job nor voluntary activities. Therefore, the available statistics are **underestimating the number of jobs and individuals** active in the CCS in the EU.

For this study, the **concept of the Cultural and Creative Sectors** (CCS) and professionals/workers (CCW) is used as defined by Creative Europe Regulation. The advantage of such an approach is that the specificities characterising the creative (development) processes, resulting in the production of an 'artwork', are being considered while still reckoning that the different subsectors are characterised by important differences and

<sup>&</sup>lt;sup>4</sup> See: <u>https://www.kulturrat.de</u> (Retrieved on 11 April 2024).

<sup>&</sup>lt;sup>5</sup> See: <u>https://www.bmwk.de/Redaktion/DE/Publikationen/Wirtschaft/monitoringbericht-kultur-und-kreativwirtschaft-2021.html</u> (Retrieved on 11 April 2024).

<sup>&</sup>lt;sup>6</sup> European Commission (2023), Report of the OMC Working Group of Member States' experts (<u>https://op.europa.eu/en/publication-detail/-/publication/01fafa79-1a13-11ee-806b-01aa75ed71a1/language-en</u>. European Parliament (2023), Draft Report with recommendations to the Commission on an EU framework for the social and professional situation of artists and workers in the cultural and creative sectors.

<sup>&</sup>lt;sup>7</sup> Regulation (EU) No 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme and repealing Regulation (EU) No 1295/2013.

<sup>&</sup>lt;sup>8</sup> ESSnet-CULTURE (2012), <u>ESSnet-Culture Final Report.</u> ESSnet-CULTURE (2012), ESSnet-Culture Final Report.

<sup>&</sup>lt;sup>9</sup> See, EU Guide to Eurostat Culture Statistics, ibidem.

<sup>&</sup>lt;sup>10</sup> Eurostat (2022), Employment in Sport.

<sup>&</sup>lt;sup>11</sup> The European Commission study on the Video Game Sector indicates that about 74 000 are employed in the gaming industry in the EU.





features in their respective value chains<sup>12</sup> and in their creation, production and publication/dissemination processes.

Policy papers and research on the CCS have used various approaches when **identifying the main CCS subsectors**. The Eurostat's approach is based on the NACE Rev 2 classification of cultural economic sectors using a broad gamma of, sometimes interrelated, economic activities. The EP's study (IDEA Consult et. al. (2021)) distinguishes eight subsectors (e.g., performing arts, music, visual arts and crafts, cultural heritage, film, book publishing and press, radio and television and games and animation), while the European Commission (EC) study (OMC study 2023) distinguishes between nine subsectors (e.g., visual arts, performing arts, cultural heritage, artistic crafts, book publishing, music, film, television and radio broadcasting and multimedia). Finally, the Ernst & Young (EY) 2021) study, 'Rebuilding Europe', which was commissioned by the European Authors' Societies (GESAC), representing various authors' representative bodies, defines ten CCS subsectors (e.g. advertising, architecture, audiovisual, books, music, newspapers and magazines, performing arts, radio, video-games and visual arts).

For the purposes of this study and considering the similarities that exist between some of the mentioned subsectors of the CCS, the study team has '**rationalised**' **the number to six subsectors**:

- Literature and written- press
- Music
- Visual Arts and Crafts
- Performing Arts
- Audiovisual
- Cultural Heritage

Other CCS subsectors (e.g. sports, videogaming, new emerging subsectors such as AI, etc), which are relevant when examining the wider cultural and creative sectors have not been taken into the scope of the study.

The study focusses on the six listed subsectors, but the sixth subsector concerned with 'Museums, Heritage and Archives' has been given less attention. The main reason is that these activities are most often part of the public or semi-public sector and predominantly depending on public financing for their operations and staffing. The extent of undeclared work in this subsector is likely to be rather small. Noteworthy in this regard is that in some EU Member States (e.g. Latvia), the cultural and creative sector is primarily confined to the public sector (e.g. museums, libraries, theatres, etc), at least in the formal statistics and policies, while cultural and creative activities in the private sector remain locally largely unaccounted for.

Table 1 details the approach taken by the study team based on **six selected or 'grouped' cultural and creative** (sub-)sectors or domains. The table lists for each subsector a **number of creative professionals** and some **key** features that are characterising the subsectors concerned (see below).

## Table 1. Six CCS subsectors and main characteristics

Subsector	Creative professionals	Key Features
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<sup>&</sup>lt;sup>12</sup> A value chain is a series of consecutive steps that contribute to the creation of a finished product, from its initial design to its purchase or consumption by customers. The chain identifies each step in the process at which value is added, including the sourcing, manufacturing, sales and marketing stages.





Literature and (written) press	Writers, Journalists	Individual Digital consumption CMOs
Music	Composers, Performing artists (musicians, etc.)	Individual & collective Digital consumption CMOs
Visual Arts and Crafts	Sculptors, Painters, Photographers, Graphic designers, Handicraft workers	Individual Venue-based and visitor-based CMOs
Performing Arts	Choreographers, Performing artists (actors, dancers, etc.)	Individual Venue-based and visitor-based CMOs
Audiovisual (including Film)	Screenwriters, Directors, Performing artists (actors, etc.)	Individual & collective Digital consumption CMOs
Cultural Heritage (Museums, Archiving, Heritage and Architects)	Architects	Individual & collective Venue-based and visitor-based

Source: Author's own elaboration

As will be elaborated later, the CCS are characterised by a typical **creative value chain**. Whereas research on the creative value chains usually distinguishes between five to six 'stages', our approach is to simplify. Table 2 distinguishes between *three main stages* of the creative production process (creation, production, and dissemination) corresponding to three types of occupational 'categories'.

Three types of occupational 'categories' are distinguished:

- (1) 'artists'/authors, (creators of artwork)
- (2) performing 'artists' and,
- (3) supporting (technical and other) staff/occupations (i.e. technical functions).

Not listed but also of importance when discussing employment in the CCS are the 'management' and 'education' occupations.

In Table 2 a non-exhaustive listing is made of the occupations performed by artists/authors, performers and support functions for each of the six subsectors during the three main stages of the creative value chains.

#	Subsectors	Creative Process	Production	Publication and Dissemination <sup>13</sup>
1	Literature and written press	Writers (authors)	Publishers	Publishers Sales functions

## Table 2. CCS subsectors and occupations

<sup>13</sup> Theatre play, spectacle, show, exhibition, screening, festival, online, TV, radio, etc.





		Journalists	Media and press agencies Technical support functions	Library related functions Media and press agencies functions Technical support functions
2	Music	Composers	Producers Performing artists and musicians (members orchestra's, music bands, DJs, etc.) Technical support functions	Publishers Sales functions Venue-related functions (concert halls, etc) Festival related functions Radio and online related functions Technical support functions
3	Visual Arts and (Handi) Crafts	Painters Sculptors Photographers Graphic designers Handicraft workers		Museum related functions Exhibition related functions Technical support functions
4	Performing arts	Choreographers	Performing artists (dancers; actors, comedians, etc.)	Venue-related functions (theatre hall, cultural centra, etc) Festival related functions Technical support functions
5	Audiovisual	Screenwriters Directors	Producers Performing artists (actors, etc) Camera Sound Technical Editors Technical support functions	Media and broadcasters' related functions Distribution related functions Streaming related functions Cinema related functions Festival related functions Technical support functions
6	Cultural Heritage (Museums, Archives, Heritage, Architecture)	Architects		Venue-related functions Conservator Archivists Art Restorer Technical support functions
A + h .	ar'a auto alabaratian			

Author's own elaboration

# 1.3 Methodology

The present study is **the first study of its kind and scope**, as undeclared work in the CCS has not been under the specific focus of the European Platform tackling Undeclared Work ('the Platform') until now. It was conducted in the first quarter of 2024, mainly based on desk research and complemented by targeted interviews in 5 selected Member States. Some additional information was collected during a Thematic Review Workshop ('the workshop') that was organised by the European Platform tackling undeclared work on 14 and 15 May.

In a first phase, **desk research** was undertaken on the available relevant literature and policy papers concerned with (employment in) the CCS in the Member States and at the EU level. There is abundant academic research on the CCS and its subsectors, while EU institutions and agencies but also various CCS interest groups have produced several policy papers and studies with relevance for the CCS. However, most research primarily focuses on the professional status and working conditions of CCS professionals while only indirectly pointing at the (possible) extent of undeclared work. Very little EU wide research and data on the extent of undeclared work within the CCS subsectors has been identified.





A **short survey** was launched among the members of the Platform with the aim to collect additional data and information from national sources and stakeholders including national enforcement agencies who are involved in tackling undeclared work in the CCS. The information and data obtained through the survey remained however very limited despite the positive response rate (30%) from the Platform members. This could be explained by several possible reasons (or a combination thereof):

- (1) The low priority of CCS for national policies and enforcement strategies tackling undeclared work. Other economic sectors (e.g. construction, road transport, HORECA, platform economy, etc.) are likely to be of much higher concern in the overall fight against undeclared work.<sup>14</sup>
- (2) The presence of a higher share of the self-employed in the CCS as compared to other economic sectors. CCS professionals, and especially artists, are often active as self-employed and, therefore, may fall out of the mandate of labour inspectorates in some Member States.
- (3) The absence of relevant national policy papers, research and statistics on undeclared work in the CCS and its subsectors in most Member States.
- (4) The fact that in some Member States e.g., the EU-12, the CCS are primarily concerned with the public sector (e.g., museums, theatres, libraries, etc) and very little information is available on the private CCS (e.g. Latvia).

Desk research was complemented by some semi-structured interviews with EU stakeholders in the CCS and country case studies in five selected Member States: **Belgium (Flanders), France, Germany, Latvia, and Portugal**. The findings from these country case studies point at the various obstacles a study of this kind is confronted with: lack of policy and enforcement priorities on the subject of undeclared work in the CCS in Member States, heterogeneity of national concepts such as 'artists', 'authors', 'cultural and creative sectors' between Member States, absence of reliable (national and/or comparable) statistics concerning (1) employment in the CCS in Member States and (2) the cross-border provision of CCS services and mobility of CCW, and the complexity of the national (labour, social security and tax) and EU legislation that is applicable to the CCS.

Some of the country case studies and interviews with national stakeholders brought some interesting information to the surface, confirming that there is relevant national information and data available for some Member States (e.g. France, Germany, but also Belgium), which are those Member States in which the CCS (including the private sector) have a relatively higher extent in terms of CCS employment, number of cultural businesses and economic weight (see below). These identified national sources, and their findings have been incorporated into the study. However, to obtain a more detailed insight into the extent and challenges of undeclared work in the CCS in all EU Member States and in a cross-border dimension, more in-depth research is needed, which considers the specific characteristics of the CCS and all subsectors.

Finally, some additional information, mainly concerned with the prevalence and challenges of undeclared work in the CCS was collected during the **Thematic Review Workshop** (Brussels, May 2024). Participants representing national enforcement authorities from Member States (Belgium, Czechia, Denmark, France, Greece, Ireland, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia and Spain) and European social partners in the live

<sup>&</sup>lt;sup>14</sup> The country case study for Latvia seems to confirm this finding, indicating that there is no research or data available on the extent of undeclared work in the private CCS. National research and policy papers only focus on the public cultural sector (e.g., state and municipal museums, theatres, etc). The recently adopted National Plan for Combating Undeclared (January 2024) is specifically targeting the construction, health care and retail sectors, leaving out CCS. See link (in Latvian): Plan Combating Undeclared WorkPlan Combating Undeclared Work\_





performance industry and audiovisual sector took part in the workshop, which focused on concepts, challenges but also on policy approaches and measures.<sup>15 16</sup>

# 2.0 Employment in the cultural and creative sectors

# 2.1 Introduction

The cultural and creative sectors and their subsectors have been the subject of **numerous research activities and policy papers** over the years, at both the EU level and national level. Whereas important studies have analysed the CCS value chains,<sup>17</sup> their economic impact and business models,<sup>18</sup> more recent analysis has focused on the professional status and working conditions of artists<sup>19</sup> and on the recovery of the CCS following the impact of the Covid-19 pandemic on the industry.<sup>20</sup> Other papers and research examined specific subsectors (e.g., visual arts, performing arts, audiovisual) or dimensions such as the specific income schemes authors are entitled to because of their intellectual property rights.

Prior to the Covid-19 pandemic, the CCS was representing 4,4% of the EU GDP and employing about 7,6 million people.<sup>21</sup> The figures on CCS showed a constant and structural growth rate (+17%) and job creation (+10%) in the period 2013-2019<sup>22</sup> in almost all subsectors.<sup>23</sup> In terms of turn-over the visual arts (EUR 138 billion), advertising (EUR 129 billion) and audiovisual (EUR 119 billion) were the largest CCS subsectors in 2019. Four subsectors employed each more than 1 million people (visual arts, music, audiovisual and performing arts) in the EU.

Together with the aviation industry, the CCS was the **economic sector that was hardest hit** by the Covid-19 pandemic (with an estimated average 31% loss in revenue in 2020) in the EU, more so than tourism or the automotive industry. The economic impact affected all CCS subsectors, with the exception of the video-games. The subsectors of performing arts (-90%), music (-76%) and visual arts (-53%) suffered the most, while the crisis affected Central and Eastern Europe in particular, mainly because of the comparatively higher share of the performing and visual arts subsectors in the national economy.<sup>24</sup>

As has already been explored in the previous chapter on the concepts and scope for the study, the CCS comprise of **very different sub-domains** or (groupings of) economic activities, each of them having own and **distinct value chains**. This makes comparison between the subsectors challenging, while also hindering a robust aggregation of trends and/or conclusions which apply across the CCS.

<sup>&</sup>lt;sup>15</sup> PEARLE, European Arts and Entertainment Alliance (EAEA – made up of FIA, FIM and UNI MEI).

<sup>&</sup>lt;sup>16</sup> A separate Learning Resource paper presenting the policy approaches relating to the prevention, detection and tackling of undeclared work

in the CCS and findings from the Thematic Review Workshop has been produced (forthcoming).

<sup>&</sup>lt;sup>17</sup> European Commission (2017).

<sup>&</sup>lt;sup>18</sup> Rex B. et. al; (2019).

<sup>&</sup>lt;sup>19</sup> E.g., Culture Action Europe and Dâmaso (2021), European Commission, OMC Report (2023).

<sup>&</sup>lt;sup>20</sup> IDEA Consult et. al. (2021); EY (2021).

<sup>&</sup>lt;sup>21</sup> EY (2021).

<sup>22</sup> Ibidem.

<sup>&</sup>lt;sup>23</sup> Only the subsector of newspapers and magazines showed a steady declining trends in the same reference period. (EY (2021).

<sup>&</sup>lt;sup>24</sup> European Parliament (2021).



# 2.2 Employment in the cultural and creative sectors: key statistics

In 2020 there were some **1,2 million 'cultural enterprises' in the EU**, representing 5,2% of all businesses within the non-financial business economy.<sup>25 26</sup> Their total value added was EUR 147 billion, or 2,3% of the non-financial business economy total. The value added was primarily generated by small and medium enterprises (SMEs). Half (49,8%) of the EU cultural enterprises were established in France, Germany, Italy and Spain.

According to most recent Eurostat statistics, some **7,7 million people were in cultural employment** in 2022, representing 3,8% of the total employment in the EU.<sup>27</sup> The real number of persons engaged in the cultural and creative sectors is however likely to be much higher as some domains (e.g. sports, the gaming industry, etc) and occupations (e.g. managers of cultural centres, etc) are not included into the official statistics. Furthermore, secondary jobs, which constitute an important volume in the sector as many persons perform cultural activities as a second (economic) activity, are also not included into the cultural employment figures of Eurostat.

There are **significant differences in cultural employment among Member States** with a higher share of total employment in Western and Northern Member States than in the east and the south of the EU.<sup>28</sup> In Romania, cultural employment represents only 1,5% of the total employment, while in several Member states, the share of cultural employment in the total employment exceeds the 4,5%: the Netherlands (5,4%), Sweden (4,9%), Luxembourg (4,8%), Finland (4,6%), Slovenia (4,6%), Denmark (4,5%) and Estonia (4,5%). Cultural employment in six larger Member States (Germany, France, Italy, Spain, Poland and the Netherlands) represents about 5,5 million CCS professionals or about 71,16% of the total EU cultural employment.

Whereas cultural employment was significantly affected by the Covid-19 pandemic, a recovery was noted for the year 2022 with an annual growth rate at EU level of 4,5% as compared to the preceding year. Important increases were recorded in Germany (by 100 000), France (by 55 000) and the Netherlands (by 40 000) and in another 16 Member States (e.g. Cyprus: 21,5% increase, Luxembourg: 14,5% increase and Ireland 14% increase). However, in several Member States (e.g. Bulgaria, Croatia, Czechia, Estonia) cultural employment sharply declined.

In Table 3, the **distribution of cultural employment across eight selected (sub-)economic sectors** as defined by NACE Rev. 2 classification is presented.<sup>29</sup> The subsector 'creative, arts and entertainment' (R90), represent 24,18% of the cultural employment in 2022. Whereas the subsector suffered significantly from the Covid-19 pandemic, figures for 2022 revealed the highest level of employment in a decade with an increase of 15% when compared to the preceding year. The subsectors related to 'design, photography and translation (M74)' as well as the 'audiovisual production sector (J59)' also recorded substantial annual employment in the subsector of libraries, archives, museums and other cultural activities has been subject to a modest long-term growth trend, which continued also in 2022.<sup>30</sup> On the other hand, employment in two subsectors (e.g. printing and reproduction of recorded media, and programming and broadcasting activities) continued along a downward trend that is noted over the past decade, whereas the publishing sector despite its growth of 1,8% in the period between 2021 and 2022, remained significantly below the employment levels that were recorded a decade ago (e.g. the employment in 2022 was about 83,8% of that recorded in 2013).

<sup>&</sup>lt;sup>25</sup> Eurostat (2023), Cultural Statistics – Cultural Enterprises.

<sup>&</sup>lt;sup>26</sup> Important to note is that two important cultural 'NACE' divisions (e.g., division 90 regarding the Creative, arts and entertainment activities and division 91 regarding Libraries, archives, museums and other cultural activities) are not taken up into these figures.

<sup>&</sup>lt;sup>27</sup> Eurostat (2022), Cultural Statistics – <u>Cultural Employment</u> Eurostat (2022), Cultural Statistics – Cultural Employment.

<sup>28</sup> Ibidem.

<sup>&</sup>lt;sup>29</sup> The figures represent 4,5 million individuals or 56,5% of individuals employed in cultural employment. The other 3,2 million persons are engaged in other NACE 'non-cultural' economic activities but are included in the statistics on cultural employment.

<sup>&</sup>lt;sup>30</sup> Eurostat (2022), Cultural Statistics – Cultural Employment Eurostat (2022), Cultural Statistics – Cultural Employment.





## Table 3. Cultural Employment in Cultural and Creative Subsectors based on Eurostat data

#	NACE code	NACE Rev2 classification of cultural economic activities	Number of persons employed (2022)	Share in cultural employment in listed NACE sectors
1	C18	Printing and reproduction of recorded media	623 800	13,83%
2	C32	Other manufacturing	144 800	3,21%
3	J58	Publishing activities	576 500	12,78%
4	J59	Motion picture, video and television programme production, sound recording and music publishing	443 600	9,84%
5	J60	Programming and Broadcasting activities	266 400	5,91%
6	M74	Other professional, scientific and technical activities (including design, photography and translation)	823 800	18,27%
7	R90	Creative, arts and entertainment activities	1 090 600	24,18%
8	R91	Libraries, archives, museums and other cultural activities	540 500	11,98%
		TOTAL	4 510 000	100%

Author's own elaboration based on EUROSTAT figures

The employment of **'artists and writers'** is measured by Eurostat by means of selecting two specific cultural occupations as defined by the ISCO-08 classification, e.g. authors, journalists and linguists (264) and creative and performing artists (265). In 2022, about **1,7 million artists and writers** were professionally active, constituting **22% of all cultural employment**.<sup>31</sup> About 396 300 artists are based in Germany, 244 700 in France, while the Netherlands, Spain and Italy accounted for 146 700, 142 600 and 133 900 artists respectively, constituting together 62,6% of all EU artists and writers.

# 2.3 Employment characteristics of the cultural and creative sectors

The 2022 Eurostat data on 'cultural employment' provide some interesting insights in the (total) numbers and distribution according to gender, age and educational attainment of the workers in the CCS across the EU. A summary of these data is presented below.

## 2.3.1 Gender, age and educational attainment

There are **more women employed in the CCS** than in the overall economy (49,2% versus 46,3%). The gender gap in cultural employment in 2022 narrowed to 1,6%. In fourteen Member States more women than men are in cultural employment with the highest share in Latvia (63,0%), Lithuania (62,8%) and Cyprus (58,6%).<sup>32</sup> Ireland (45,7%), Italy (45,6%), Spain (45,3%) and Malta (39,2) have the lowest percentages of women in cultural

<sup>&</sup>lt;sup>31</sup> Ibidem.

<sup>&</sup>lt;sup>32</sup> Ibidem.





employment. In terms of the age cohorts, cultural employment showed **higher participation rates in the younger age cohorts** (people aged between 18 and 39) and those aged 65 and over, than in total employment. The cultural and creative industries furthermore attracted higher levels of educational attainment than in the general economy (e.g. 60,6% versus 37,1% of people who have obtained tertiary education).

## 2.3.2 Type of employment

Cultural employment in the EU is characterised by a **very high share of self-employed workers**. In 2022, almost one third of workers in the cultural and creative industries **(31,7%)** in the EU were self-employed as opposed to a mere 13,8% in the overall economy.<sup>33</sup> The level of cultural self-employment is higher than the level of self-employment in the national economies of all Member States (with the exception of Romania).

Self-employment rates in the CCS are particularly high in the Netherlands (47,2%) and Italy (46,2%) but figures for Belgium, Czechia, Ireland, Greece, Malta, Slovenia and Slovakia also exceeded the EU average. By contrast, in Romania (12,5%) and Bulgaria (17,2%) less than one in five CCS professionals are self-employed, while relatively low extent rates can also be noted in Denmark (20,6%), Estonia (21,6%), and Luxembourg (21,1%).

The **prevalence of permanent jobs in the CCS is lower** than in the total economy. On average 81,5% of CCS professionals have a permanent job in the EU as compared to 85,5% in the total economy. In the Netherlands (67,3%), France (72,6%) and Spain (76%), the numbers are significantly lower. On the other hand, In Romania (99,5%), Lithuania (98,8%), Estonia (98,3%), Bulgaria (97,3%), Latvia (96,8%) and Hungary (96,6%), almost all CSS workers have a permanent job.

93,1% of the active CCS professionals have **one single job** as compared to 96,1% in the total EU economy. The proportion of workers having only one single job is lower in the CCS in all EU Member States when compared to the national economy except for Bulgaria and Romania.

**Full-time employment** in the CCS (76,5%) is **significantly lower** than in the global economy in the EU (81,5%). Full-time cultural employment is particularly low in the Netherlands (60,7%), Austria (64,2%), Germany (66,7%), Denmark (67,6%) and Sweden (70,4%) with large differences when compared to the total national employment (except for the Netherlands where more people in the CCS have a full-time jobs when compared to the national economy.) By contrast full-time employment in the CCS is particularly high in Romania (96,7%) and Bulgaria (95,8%).

## Box 3. Employment in the CCS in Portugal<sup>34</sup>

A 2021 study conducted on the CCS in Portugal revealed that 197 800 CCW were professionally active in the CCS, representing 4% of the total employment in Portugal:

- ▶ 55% of the CCW have two or more jobs;
- ▶ 72% of the CCS work as self-employed;
- ► 28% were active under different legal regimes (combination of employment contract and selfemployment status)

The study furthermore pointed at the informality that exists in the CCS, the prevalence of oral contracts and significant number of part-time contracts.

<sup>33</sup> Ibidem.

<sup>&</sup>lt;sup>34</sup> Presentation made by the Portuguese Authority for Working conditions, Thematic Review Workshop on undeclared work in the CCS, 14-15 May, Brussels.





National employment statistics in Portugal reveal that 698 900 individuals are working as self-employed. 12,6% of them are depending on one dominant client for more than 75% of their annual income while 12,3% reported that their working hours are established by their client.

# 2.4 Employment of artists and writers

The available Eurostat employment statistics concerning the CCS are even more striking when the **focus is laid on the category of 'artists and writers'**, which in fact is the combination of two types of occupations (as defined in the ISCO-08 classification), i.e. the 'creative and performing artists (including visual artists, musicians, dancers, actors, film directors, etc.)' and the 'authors, journalists and linguists'. From a statistical viewpoint, the category of 'artists and writers' constitute the large majority of the creative occupations and professions. As has been mentioned already, about 1,7 million artists and writers were professionally active in the EU in 2022. About **46% of artists are self-employed**, which is **significantly higher** than **the proportion of self-employed in all sectors of the CCS (31,7%) and in the total employment (13,8%)**. This trend is present in all EU Member States with the exception of Croatia, Greece and Luxembourg where the share of self-employed artists is particularly high in the Netherlands (66,1%), Czechia (60,3%), Italy (59,7%), Portugal (57,5%), Malta (56,9%), Ireland (54,1%) and Slovakia (51,9%). In some Member States the share of self-employment among artists was more than 4 times higher than in the general economy (Germany 5,3 times higher, Sweden 4,8 times higher, Austria 4,3 times higher, Slovenia and the Netherlands 4,1 times higher).<sup>35</sup></sup>

Only **73,3% of artists have a permanent job** as opposed to 81,5% of all workers in the cultural and creative sectors and 85,9% in the total economy. In France only 52,9% of artists have a permanent job. Full-time employment among artists is also lower that generally in the CCS (73,3% versus 76,5%) while 90,1% of artists have one single job as compared to 93,1% in CCS generally.

## 2.5 Cross-border mobility in the cultural and creative sectors

Desk research, survey and country case studies reveal that there is at present **little reliable statistical data**, information and research on the cross-border provision of CCS services by various organisations and on the crossborder (temporary) mobility and longer-term migration of CCW in the EU. The only CCS subsector which has been researched in this regard in more detail is the 'live performance sector'.<sup>36 37</sup> The latter concept is cross-cutting the demarcation lines of the six subsectors as they have been defined for the purposes of the present pilot study and primarily concern the subsectors of 'music' and of the 'performing arts'. These subsectors may imply stageproductions (f.i. music festivals) and/or productions at venue operators (f.i. theatre and concert halls). The research confirms that the 'live performance sector' is the subsector with the highest proportion of cross-border mobility among the CCS subsectors in the EU. De Wispelaere, et.al. observe that, based on the issuance of Portable Documents ('PD') A1, the live performance sector has a relatively more important transnational dimension than other subsectors in the CCS and some other business sectors in the general economy.

De Wispelaere, et.al estimate that around 807 700 companies and 1,3 million persons are active in the live performance sector within the EU27/EFTA/UK. However, the findings also reveal that the businesses and

<sup>&</sup>lt;sup>35</sup> Ibidem.

<sup>&</sup>lt;sup>36</sup> De Wispelaere, F., et.al, (2021), Cross-border employment in the live performance sector, exploring the social security and employment status of highly mobile workers, HIVA-KU Leuven.

<sup>&</sup>lt;sup>37</sup> There is no clearcut definition of the 'live performance sector' as such. For statistical purposes NACE R90 'creative, arts and entertainment' activities are most often used referring to (1) performing arts such as live theatre, concerts, opera, dance and other stage productions and related supporting activities and (2) operation of venues such as concert halls, theatres and other art facilities. NACE Code R90 is composed of the subcategories 90.01 'performing arts', 90.02 'activities in support of performing arts', 90.03 'creative art', and 90.4 'operation of arts facilities. subcategory 90.03 is not taken into account as part of the live performance sector statistics. See De Wispelaere, F., et.al.





employment in the live performance sector are concentrated in a limited number of Member States (e.g. about 40% of companies are established in France, whereas 18% of employment in the live performance sector is situated in Germany). About 70% of the organisations<sup>38</sup> are one person companies, while 98% are considered small sized companies. Moreover, research indicates that the highest levels of cross-border mobility are concentrated in a limited number of businesses and concern a specific group of (highly mobile) professionals active in the live performance sector, while the majority of mobile cross-border CCW in the live performance sector are crossing borders only occasionally. Cross-border mobility of the live performance workers including technicians and supporting staff is connected with particular periods of the year (e.g. outdoor events including stage construction in summer season, indoor concerts in winter, etc). The research undertaken by De Wispelaere, et.al reveals that the PD A1 in the live performance sector are predominantly issued under the posting provisions (Article 12 of the Regulation 883/2004<sup>39</sup>) and not under the provisions that regulate simultaneous work in several Member States (Article 13 of the Regulation 883/2004). 60% of the postings last between one and eight days and are hence of a very short duration. France and Germany are the main receiving Member States of CCS mobile workers in the live performance industry.

As for the other subsectors of the CCS (e.g., literature and written press, visual arts, audiovisual and cultural heritage), no robust data have been identified on the extent of cross-border mobility of CCW. Nevertheless, several cross-border mobility situations in the CCS can be thought of: individual artists such as painters, sculptors or writers who are invited under 'artist in residence schemes' or who travel to exhibitions and/or art festivals abroad, journalists and crew members who travel to cover international news items, directors and crew of independent audiovisual companies when shooting their productions abroad, audiovisual technicians and staff of the facilities sector traveling abroad in support of large events which do not concern the live performance sector (e.g. light shows, camera crews, etc.), art or antique dealers traveling to international fairs or galleries, etc. Depending on the specific circumstances, their cross-border mobility may trigger the application of the EU rules concerned with the free movement of workers, social security coordination and posting.

The country case studies also reveal that there are no national data and statistics available on the crossborder service provision and mobility of CCS professionals in Member States. In Germany, CCS stakeholders confirm that there are data on the export of artworks but not on the export of artistic services. It is also unclear who could provide this data. For instance, in the 2022 Culture Report of the North Rhine-Westphalia State (Landeskulturbericht 2022, NRW), cross-border mobility in the CCS is not mentioned once and neither is there any information of non-German artists in the region itself.<sup>40</sup> The region of Bavaria mentions only generally the cross-border cooperation and exchange in CCS with countries such as Austria, Italy and France but does not provide further details.<sup>41</sup> The federal social security services of Belgium operate a mandatory prior notification system for posted workers and for self-employed who intend to work in Belgium, but the latter obligation for selfemployed applies only to three risks sectors (e.g. construction, meat processing and cleaning services). Selfemployed CCW who are based in other EU Member States are hence not obliged to notify the Belgian authorities when they intend to temporarily provide artistic services in Belgium.

<sup>&</sup>lt;sup>38</sup> Excluding thereby the NACE code 90.04 'operation of art facilities', see De Wispelaere, F, et. al. (2021).

<sup>&</sup>lt;sup>39</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. <sup>40</sup> See <u>https://www.mkw.nrw/system/files/media/document/file/landeskulturbericht\_nrw\_2022\_0\_0.pdf</u> (Retrieved on 11 April 2024).



# 3.0 Characteristics of the cultural and creative sectors

# 3.1 Key features and challenges of the cultural and creative sectors

As has been highlighted already, several EU studies and policy papers have examined the CCS from different thematic perspectives. The European Parliament's study on the CCS in the post-Covid-19 Europe<sup>42</sup> presents a detailed analysis of the **five main critical and structural challenges the CCS are at present confronted with.** A summary of these main challenges is presented in the box below.<sup>43</sup>

### Box 4. The five main critical challenges of the Cultural and Creative Sectors in the EU

(1) Fragmented ecosystem structure, which is characterised by:

- ► The presence of a vast majority of small and medium sized enterprises (the exception being the programming and broadcasting activities), and specifically of micro enterprises (with less than 10 persons employed),<sup>44</sup> which largely rely on freelancers and on temporary and intermittent workers;
- Fragmented value chains that are dependent on the necessary cooperation (and mutual dependency) involving numerous organisations of various sizes and individual professionals with varying employment status during the entire value chain: from the creation of the cultural and creative products and services to the ultimate consumers and audiences;
- ▶ High diversity in cultural and creative expressions, goods and services, and linguistic diversity in the EU;
- Highly varied business structures: not-for-profit and public institutions, micro, small and medium sized organisations and, in some subsectors (e.g. music and audiovisual), also global for-profit players (e.g. especially in the distribution sector).
- (2) Irregular employment and fragile working conditions as a consequence of:
  - Large share of self-employed and part-time workers;
  - Presence of 'invisible' workers (in official statistics), such as temporary and intermittent workers, unpaid volunteer work and persons having a second job in the CCS apart from their main occupation in another sector;
  - ► Low social protection and low-waged non-standard workers.
- (3) Difficult and multi-tiered financing of the CCS organisations and of the creative goods and services:
  - ► Higher barriers to access finance for CCS organisations and their goods/services;
  - Importance of own earnings and government subsidies in the financing structure of many CCS organisations;
  - ► Abundant use of short-term finance and dependency on bridge financing and pre-financing of projects;

<sup>&</sup>lt;sup>42</sup> IDEA Consult, Goethe-Institut, Amann S. and Heinsius J. (2021), Research for CULT Committee – *Cultural and creative sectors in post-Covid-19 Europe*: crisis effects and policy recommendations, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels.

<sup>&</sup>lt;sup>43</sup> The enumeration is slightly adapted by the authors.

<sup>&</sup>lt;sup>44</sup> Employment in microenterprises constitutes is specifically high in photography (83%), specialized design (75%) and audiovisual and music production (37%). Figures from 2016 (EY 2021), p. 21.





- Absence of a healthy financing ecosystem
- ▶ High level upfront investment costs for the development and creation.<sup>45</sup>
- (4) Imbalanced translation of the CCS market value into fair remuneration for CCS organisations and CCW due to:
  - ▶ Limited bargaining power of non-standard workers and of SME including micro enterprises;
  - Complex and non-transparent remuneration models based on IP usage.
- (5) Digitisation disrupting creative value chains in some CCS subsectors (e.g. audiovisual, music, literature and written press and video-games) as a consequence of
  - A growing mass customisation and servitisation;
  - A data-driven economy and AI applications.

Source: EP study: IDEA Consult et. al. (2021)

The listed **structural challenges of the CCS** reveal the **unique characteristics of the industries**, distinguishing them from other economic sectors in the EU. However, they also point at the **huge diversity** between the different subsectors of CCS. Some of the mentioned challenges or underlying causes, deserve some further observations.

The most critical feature of the CCS seems to be the **highly fragmented value chains** that necessitate the cooperation between individual CCW and, most often, micro-sized CCS organisations, in combination with the **high dependency on public financing** and the focus on the **creation of individual 'artworks'**, which often have limited reproduction or exploitation possibilities. The systemic project-based approach together with the unpredictability of the success rate of the created goods and services, point at an economic vulnerability of the CCS organisations and of the services and goods they produce. The value chains of the different subsectors are quite distinct. In some subsectors (e.g. visual arts, literature and written press, photographers, etc.) the production process is relatively **'individualistic'**: the creative process, including the production of the 'work', is mainly driven and conducted by the creative professionals themselves. In other subsectors (e.g. performing arts, AV, etc.) the 'collective' or **'collaborative'** production process is, especially during the production and subsequent stages, key to the achievement of the creative works or services (e.g. AV, video-games) or during their publication, dissemination, or exploitation (e.g. performing arts).

The presence of **individual artists and/or of authors** (the creatives) who are at the origin of the value chains (in most of the CCS subsectors) is undoubtedly a unique feature of CCS. There is at present **no unform definition of the concept of 'artists' in the EU** and Member states have approached the status and protection of artists in varying ways.<sup>46</sup> Creatives are often, but not always, also considered as 'authors', especially in the literature, visual, music and AV subsectors. Unlike what is the case for 'artists', the **concept of 'authors' is originating and defined in the EU and national legislation concerned with intellectual property and copyright**. Authors enjoy economic and moral rights on their created artworks and are entitled to copyright income when their artworks are exploited. Authors in the music, visual arts, literature, and AV subsectors are often entitled to copyrights-based revenues which Collective Management Organisations (CMOs) are collecting on their behalf and are distributing

<sup>&</sup>lt;sup>45</sup> European Commission (2017).

<sup>&</sup>lt;sup>46</sup> European Commission (2023).





to their individual members.<sup>47 48</sup> Apart from the creatives and authors, performing artists (e.g., actors, performing musicians, etc) are also entitled to income sources other than the remuneration that is paid for their working time during performances, by means of neighbouring ('ancillary', or 'related') rights for these performances. **Income from intellectual property rights is often treated differently than wages or 'fees' from a tax and social security point of view, which may create a grey zone in terms of adequately classifying and declaring income. It may also be used as a means to pay CCW at a lower cost for the purchaser or employer as the they are often subject to lower tax rates and/or financed by the end users or consumers of the artwork. Finally, there is the largest category of CCW who are employed in CCS, being it under varying employment status, similar to workers in the global economy. They represent the many technical and supporting functions that are critical in the Cultural and Creative economy. Technical and supporting CCW are usually not entitled to copyright income. The income generation and different types of income of the different categories of professionals is hence an important dimension when focusing on 'undeclared work'.** 

A third distinct feature of the CCS is the fragmented representation of the various occupations and relatively limited structured social dialogue in Member States and at EU level. The latter is mainly due to the very high prevalence of (solo) self-employed professionals and micro-enterprises in some of the CCS subsectors. At EU level, social partners are actively engaged in three CCS subsectors only (e.g., live performance subsector,<sup>49</sup> the audiovisual subsector<sup>50</sup> and the graphical industry<sup>51</sup>), which is reflecting the national situation in many Member States. In Member States these three subsectors are the ones that most often have structured social dialogue between the social partners which may have led to the adoption of collective agreements for these specific subsectors. In the cultural heritage subsector several stakeholders are represented at EU level.<sup>52</sup>The various CCS occupations and/or 'categories' of authors/artists have national and European interest groups or associations: composers and songwriters (ECSA), writers (EWC-FAEE), journalists (EFJ), publishers (FEB-FEE), visual artists (EVA), screen directors (FERA), screen writers (FSE), performers (FIA),<sup>53</sup> musicians (FIM), music managers (EMMA), architects (ACE-CAE), tourist guides associations (FEG), conservators and restorers (ECCO).54 Authors, who hold copyrights and those who have ancillary rights (performing artists, producers and broadcasters) are also represented by their Collective Management Organisations, nationally and at EU level (e.g., GESAC: the authors' and composers' associations, SAA: audiovisual authors, ECSA : composers and songwriters). On the side of the employers there are also various representative bodies at EU level: employers in the live performance sector (PEARLE), public broadcasters (EBU), commercial broadcasters (ACT), independent television producers (CEPI), independent film producers (FIAPF), commercial radio's (AER), recording industry (IFPI), independent music companies (IMPALA), etc. EU workers' representative bodies in the live performance sector are (the already mentioned) FIA and FIM, and UNI - MEI Media, arts and entertainment (EAEA), while the latter is also involved as a workers' representative body in the social dialogue in the audiovisual subsector.

A fourth dimension that is characterising some of the CCS sectors, is that they imply **venue-based** or **visitor-based economic activities**: performing arts, visual arts, museums and partly also the audiovisual sector and music industry depend to a varying extent on the income generation at a location where the artworks or services are being displayed or performed (e.g. museums, festivals, theatre halls, cultural centra, cinema, etc.). Venue operators and festival organisers are often a (third) party in the contractual relations with individual CCS

<sup>&</sup>lt;sup>47</sup> Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market Text with EEA relevance.

<sup>&</sup>lt;sup>48</sup> Apart from the individual authors who own the copyright of their works, some other parties such as performers, producers and broadcasters can also be right holders of the 'related'/ancillary economic rights, which are often also managed by CMOs. In the EU there are some 250 CMOs active.

<sup>&</sup>lt;sup>49</sup> EU social partners live performance subsector.

<sup>&</sup>lt;sup>50</sup> EU social partners audiovisual subsector.

<sup>&</sup>lt;sup>51</sup> EU social partners graphic industry.

<sup>&</sup>lt;sup>52</sup> EU stakeholders Cultural Heritage.

<sup>&</sup>lt;sup>53</sup> The International Federation of Actors is a global federation of performer's trade unions, guilds and professional associations.

<sup>&</sup>lt;sup>54</sup> The IETM can also be mentioned here, which is representing organisations and freelancers working in contemporary performing arts.





professionals and/or the CCS organisations engaging the latter. In addition, depending on the CCS subsectors, **intermediaries** may also be involved such as the booking agencies and managers (e.g. music managers, management agencies of actors, etc).

Of a slightly different nature are the many 'artist in residence' schemes that exists in the CCS, by means of which hosting organisations are facilitating artists/groups/collectives to spend time on the creation of artworks at their premises, with various forms of direct or indirect payments of certain costs and/or fees for the artists concerned. Such schemes are sometimes linked with exhibitions of artworks.

Finally, business models in some CCS subsectors have been seriously impacted by the **digital consumption** of the produced artworks. This is the case for literature and the written press, the audiovisual and music subsectors. **Digitisation** has had an enormous impact on the CCS in the last decade, in the production but more so in the dissemination and distribution stages of the value chains, while it has also exacerbated the contractual imbalances between the different stakeholders. The music and AV subsectors have been affected the most by the rise of the **global intermediaries** (e.g. platforms) and by **piracy and copyright violation while the fast technological developments regarding AI are expected to further impact the sectors drastically**.

# 3.2 Working conditions and social protection in the cultural and creative sectors

While in Chapter 2 some characteristics of the CCS employment in the EU have been presented based on the available Eurostat statistics, this chapter presents some **findings concerning the working conditions, income and social protection of the cultural and creative workers ('CCW')**. The information presented is obtained from the existing literature and policy papers, from interviews with stakeholders and from the findings of the five country case studies undertaken in the frame of the present pilot study.

The available research and literature on the working conditions of the CCW in the EU and in Member States systematically point at the **structural precarious working conditions** and **contractual (and/or employment) status** of the CCW, who are often (solo) self-employed<sup>55</sup> while being dependent on 'project'-based work and 'project'-related income. The sector is also characterised by a high and growing proportion of temporary fixed-term contracts (e.g. for a short duration or for a fixed task or assignment). CCW are often multi-job holders or have a main job in other economic sectors while having a secondary job in the CCS.

## Box 5. The Live performance sector in Germany

There is some indication that public theatres in Germany are increasingly using temporary employment contracts linked to specific theatre productions.<sup>56</sup> The trade union in the public sector (*Ver.di* '*Theaterstatistik*' (*Deutscher Bühnenverein*) reports that there have been more contracts for self-employed or so-called guest engagements and that an increasing number of CCS professionals are working in a hybrid way, combining employment and self-employment, in often precarious situations, with short term, constantly changing contracts.<sup>57</sup> Other sources however report on an increase of the number of performances since the Covid-19 crisis, which triggered the rise in temporary contracts in order to meet the needs of specific theatre productions.<sup>58</sup>

<sup>&</sup>lt;sup>55</sup> 'Solo self-employed person' refers to a person who does not have an employment contract or who is not in an employment relationship, and who relies primarily on their personal labour for the provision of the services concerned.

 <sup>&</sup>lt;sup>56</sup> See: <u>https://darstellende-kuenste.de/sites/default/files/2023-08/230824\_DP\_Unterm\_Durchschnitt\_0.pdf</u> (Retrieved on 11 April 2024).
 <sup>57</sup> See: <u>https://kunst-kultur.verdi.de/schwerpunkte/soziale-lage</u> (Retrieved on 11 April 2024).

<sup>&</sup>lt;sup>58</sup> See: <u>https://darstellende-kuenste.de/sites/default/files/2023-08/230824\_DP\_Unterm\_Durchschnitt\_0.pdf</u> (Retrieved on 11 April 2024).





### Box 6. The situation of audiovisual directors and screenwriters in the EU

- Only 11,4% of screenwriters and 18,2% of directors work as employees, the vast majority is active as self-employed.
- ► 80%-90% of authors who are doing cinema, television and/or documentary work with temporary contracts
- ► 55,1 % of directors and 49,4% of screenwriters report that at least one year in the last 5 years, they did not do any production as an audiovisual author, which is demonstrating the high prevalence of **long** periods of inactivity or unpaid activity.
- ▶ 42% of screenwriters and 34% of directors have a second paid job outside of the sector.

#### Source: Willekens, M. et al (2018)

Research and policy papers also reveal the relatively **low levels of income that CCW (including artists) have** when compared to other economic sectors. Many of the CCW have difficulties in making ends meet with the income they earn from CCS activities, especially when it is their main source of (professional) income. This is pushing many CCW away from the sector to seek employment in other economic sectors and perform artistic work as a secondary job and/or as a mere complementary occupation or hobby.

#### Box 7. Income of cultural and creative workers

- The median income of authors in the audiovisual sector in the EU is generally low, varying between EUR 18 234 /year after tax for female directors and EUR 26 000/year after tax for male directors and EUR 27 000/year for female screenwriters and EUR 30 000/year for male screenwriters and, with great variety between the types of content: documentary authors and audiovisual authors who are not working on cinema, TV fiction or documentaries, e.g. non-fiction for television, animation or commercial commissioned work (e.g. advertisement, corporate films, etc) have the lowest income.<sup>59</sup>
- ► 54% of professional **music managers in the EU** earn an income from music management activities that is below EUR 20 000/year. 52% of women music managers earn less that EUR 10 000/year.<sup>60</sup>
- According to a 2023 research report<sup>61</sup> from the German Culture Council (Kulturrat), 21% of the more than 1,5 million CCW are self-employed with an annual income of less than EUR 20 000/year, using primarily the German mini-job mechanism which allows individuals to do part-time work in certain sectors without paying the full social security contributions, when their income is below a monthly threshold of EUR 520.
- Many actors work as self-employed in the EU and are, for obvious reasons, not full-time active as actors. They often earn income only for their acting work (including sometimes preparations and rehearsals). For example, Lynn Van Den Broeck, an actress in the famous daily soap 'Thuis', which is broadcast on the main public channel (VRT één) in Flanders (Belgium) is working as an actress on set for 7 days per month on average, with a total monthly income before tax of EUR 3 500.<sup>62</sup>
- Research in Germany reveals that the minimum wage for actors who are employed in the public CCS has increased in 2023 to a minimum of EUR 2 715 with a top-up after two years to EUR 2 915. Due to

<sup>&</sup>lt;sup>59</sup> Willekens, M. et al (2018).

<sup>&</sup>lt;sup>60</sup> Calkins, T. (2024).

<sup>&</sup>lt;sup>61</sup> Schulz, G. and Zimmerman, O. (2023).

<sup>&</sup>lt;sup>62</sup> Newspaper <u>article</u>, 19 March 2024, De Morgen. Newspaper article, 19 March 2024, De Morgen.





the collective agreements the minimum wage is now around EUR 3 000.<sup>63</sup> In **Latvia** the remuneration of workers who are employed in the CCS public sector is lower than the average pay in the general public sector. There are concerns with regard to the operation of the public libraries and museums as the remuneration in these establishments are the lowest. As of 2024, the salaries of musicians, opera singers and ballet dances in the public CCS have been increased but they remain low (1/7 of what is paid in West-European countries).

- 64% of all self-employed writers in Germany are mini-self-employed with an average annual turnover or income of EUR 5 100.<sup>64</sup>
- ► Research and policy paper in Latvia indicate that the CCW who are employed in the public (state and municipal) cultural organisations (e.g., museums, theatres, etc) are underpaid and earn the lowest income

The **types of income** CCW receive from their work in the CCS can take **different forms**, some of which are sector-specific and different than in other sectors of the total economy.

Salaries/remuneration paid in the frame of an employment contract and fees for services delivered by selfemployed are the more standard types of payment and known in other economic sectors. In **France**, a special method for paying salaries in the live performance sector exists, using minimum remuneration for one-off services regardless of the actual performed working hours.

## Box 8. The 'cachet' (flat-fee remuneration) payment system in France

In **France**, performing artists are typically working with a fixed-term employment contract and remunerated by means of a specific method that is called 'cachet' (fixed fee). The cachet is a flat-rate type of payment which is often used for one-off services like theatre plays and concerts. The flat-rate payment does not correspond with the number of hours that are actually worked by the artist. For instance, musicians who are working during an opera performance, are employed by an employment contract and receive a cachet for their performance regardless of its length (2 hours, 5 hours).

#### Source: country case study France

*Copyright related payments* are specific for the CCS and linked to the concepts of authors who are protected by copyright legislation. Copyright related income may constitute an important part of the income for CCW. For instance, such secondary payments (for the exploitation of works mainly through collective management organisations ('CMOs') range from 7,1% (emerging authors) to 17% (established authors) of the income from work as an audiovisual author.<sup>65</sup> Payments for the exploitation of copyrights can be directly done by a contracting party (the buyer, the producer, the publisher, etc.) of the author (transfer of rights) and/or it can be organised through the CMOs representing the different categories of authors and those that have neighbouring rights (inalienable rights protected in copyright legislation which are entrusted to persons who are not the authors), income from copyright is the main source of income. For instance, in **Belgium**, Herman Brusselmans, a known and popular

<sup>&</sup>lt;sup>63</sup> See: <u>https://darstellende-kuenste.de/sites/default/files/2023-08/230824\_DP\_Unterm\_Durchschnitt\_0.pdf</u> (Retrieved on 18 March 2024).

<sup>&</sup>lt;sup>64</sup> See: <u>https://kulturwirtschaft.de/</u> (Retrieved on 18 March 2024).

<sup>&</sup>lt;sup>65</sup> Secondary payments in the audiovisual sector represent the revenues for repeated exploitation of audiovisual works and compensations for copyright exceptions (i.e. private copying levy). These payments can come from the contractual counterpart of from CMOs. In the EU there are two major rights that are collectively managed, resulting in payments to the audiovisual authors: the cable retransmission and the private copying in countries where such a levy exists. Other rights (on-demand use, education, etc) can be collectively managed but this varies to a great extent between Member States.

<sup>&</sup>lt;sup>66</sup> Examples are producers of audiovisual content, performers, actors, etc.





author of several books in Flanders, receives 12,5% of the commercial sales prices of the books he authored from the publisher.<sup>67</sup>

### Box 9. Collective Management Organisations in Portugal

In Portugal several collective management organisations exist, which represent authors and creators from different artistic and creative fields, responsible for protecting copyright and related rights:

- SPA Sociedada Portuguesa de Autores (Portuguese Authors' Society): One of the largest collective management organisations in Portugal, representing authors in music, literature, theatre, dance, cinema, visual arts and television.
- GDA GestAo dos Direitos dos Artistas (Management of Artists' Rights): Focuses on the rights of the performing artists.
- ► Audiogest: Represents music producers, managing rights relating to music recordings.
- GEDIPE Associação para Gestão de Direitos de Autor, Produtores e Editores (Association for the Management of Copyright, Producers and Publishers): Manages the tights of film producers and video editors.
- VISAPRESS Gestao de Conteudos dos Media (Media Content Managaments): Specialises in manging rights for written and online press content.

These CMOS play a crucial role in advocating the rights of authors and creators in Portugal, ensuring fair compensation for the use of their works.

#### Source: country case study Portugal

Other types of payment also exist such as *commissions* (e.g. in the case of music managers), *prize moneys*, *scholarships*, *'residence' arrangements*, *exhibition fees*, *various forms of expense payments or income through the sales of artworks (primary and secondary markets)*.

The sales of artworks are most often subject to specific VAT legislation in Member States. In **Germany** different VAT rates apply when an artist is selling own artworks as opposed to the sales by an intermediary (e.g., a gallery, sales agent, etc). In **Belgium**, artworks are at present sold through art galleries, fairs, and auction houses at the lower VAT rate of 6% provided that it is the artist in person who sells and receives the income.<sup>68</sup> However, new EU legislation on VAT will become applicable as of 1 January 2025, which aims at applying a uniform VAT rate of 21% across the EU.<sup>69</sup> This has triggered some animosity in the sector in Belgium as this change will render artworks more expensive for the private buyers and may impact on the income of the artists. At the same, there are concerns relating to the fact that reduced VAT rates (5%) may still be applied in exceptional cases or in some Member States which may imply unfair competition.

The **sector-specific types of payments** are mostly relevant for the tax authorities' perspective and hence they fall outside of the realm of the present study for the Platform. Nevertheless, they do have some indirect **relevance** especially when these types of payments are subject (or not) to social security contributions, may (or not) be considered as remuneration for work and/or are intentionally used as a replacement for the payment of a remuneration for work in order to cut on costs.

<sup>69</sup> Council Directive (EU) 2022/542 of 5 April 2022 amending Directives 2006/112/EC and (EU) 2020/285 as regards rates of value added tax.

<sup>&</sup>lt;sup>67</sup> Newspaper article, 19 March 2024, De Morgen. Newspaper article, 19 March 2024, De Morgen.

<sup>&</sup>lt;sup>68</sup> In Belgium, the sales of own artworks can be exempted from VAT if the artist has an annual income below EUR 25 000.





Given their precarious status on the employment market in Member States, the **social protection** (and, in particular, protection in cases of unemployment, illness and old age) of CCW has also received extensive coverage by many EU studies and research. Social security affiliation in most Member States is connected with the employment status of the workers concerned and national social protection systems often have lower access and coverage for the self-employed when compared to persons in dependent employment. CCW are hence often disproportionally affected by lower levels of social protection due to the very high prevalence of solo self-employment and non-standard work. In combination with their low-income levels and activity interruptions due to project-based work, this may further hamper their social protection rights and benefits.

One of the key challenges in the CCS is that the many **solo self-employed are insufficiently represented** in the national collective bargaining mechanisms with great differences between the Member States and between the CCS subsectors. In what regards the latter, the research undertaken in the frame of the present study confirms that in Member States, collective bargaining exists especially in the live performance and audiovisual subsectors while also in the public CCS (public theatres, orchestra's). However, these collective agreements are most often concerned with dependent employment and to a far lesser extent with the working conditions and income of the (solo) self-employed and free-lancers. Some of the CCS subsectors and related cultural and creative occupations are specifically affected by the low degree of representation (e.g. visual arts, literature, music, handicrafts, etc) in social dialogue structures. They are often represented by professional associations, various authors' representative bodies or by CMOs, but these bodies are not necessarily involved in collective bargaining mechanisms.

There are also notable differences between Member States as became clear from the five country case studies. In **Latvia**, only one trade union representing the cultural and creative workers exists<sup>70</sup> and it represents primarily the workers employed in the public (state and municipal) sector (orchestras, opera, museums, libraries, theatre and performing arts). Only very few members are active in the private sector. In other Member States (e.g., Belgium, France, Germany) social dialogue structures and mechanisms operate but they do not always cover all CCS subsectors and are primarily focused on the subsectors of 'live performance' and AV.

## Box 10. Social Dialogue in CCS – example of France

In France, there are **numerous stakeholders** including social partners representing the CCS. They cover several sub-sectors of activity.

As far as **social partners** are concerned, the following organisations have been involved in the negotiation and signature of collective agreements. As the list shows, the system of representation is highly fragmented:

Private Employers' representatives:

- *Ekhoscènes* (show producers, festival organisors, live venues, private theaters, cabarets)
- SCC (circus and creation companies)
- SNES (entertainment companies)
- ► *SPI* (independent producers)
- SPECT (independent producers)
- AFPF (independent producers)
- ► USPA (producers)
- Synpase (stage, event and audiovisual service providers)

Public Employers' representatives:

- ► LFM (Les forces musicales (opera houses, festivals, orchestras)
- Profedim (Producers, Festivals, Ensembles and Independent Music distributors)

<sup>&</sup>lt;sup>70</sup> The Trade Union of Cultural Workers: IKDAF





- ► SNSP ( (Public venues and theatres)
- Syndeac (Artistic and Cultural Enterprises, production companies)

Workers' organisations have either a transversal scope (covering many artistic activities) or are specialised. Main French trade unions (CGT, CFDT, CFE-CGC, FO) have created sub-sections per type of artistic activity, reflecting a similar level of fragmentation:

► Fédération communication, conseil et culture (F3C) CFDT (communication and culture)

► Fédération culture, communication et spectacle (FCCS) CFE-CGC (communication, culture and entertainment)

► Fédération Média 2000 CFE-CGC (media)

► Syndicat national des artistes, chefs d'orchestre professionnels de variétés et arrangeurs (artists, musical directors, music professionals and arrangers)

- Syndicat national des artistes et des professions du spectacle (artists and entertainment profesionnals)
- Syndicat national des artistes musiciens CGT (musicians)
- Syndicat français des artistes interprètes CGT (performing artists)
- ► Fédération de la communication UNSA-CFTC (communication)

► Fédération des travailleurs des industries du livre, du papier et de la communication (FILPAC) CGT (book industry)

► Fédération nationale des syndicats du spectacle, de l'audiovisuel et de l'action culturelle (FNSAC) CGT (entertainment, audiovisual and cultural activities)

► Fédération des arts, du spectacle, de l'audiovisuel et de la presse (FASAP) FO (arts, entertainment, audiovisual and press)

SNTR-CGT (audio-visual)

► Fédération française des syndicats de la communication écrite, graphique, du spectacle et de l'audiovisuel CFTC (written communication, graphism, entertainment and audiovisual)

Authors or creators are also represented by a **myriad of other sub-sector organisations** which are managing the income from the IP rights of the respective groups. The impression of fragmentation is striking:

- AdaBD Association des auteurs de bandes dessinées (comics authors)
- ► ATAA Association des traducteurs adaptateurs de l'audiovisuel (TV translators)
- ► CAAP Comité pluridisciplinaire des artistes-auteurs.ices (authors)
- Charte des auteurs et illustrateurs jeunesse (children's books authors)
- ► Chorégraphes Associé e s (choregraphers)
- Guilde française des scénaristes (screen writers)
- Ligue des Auteurs Professionnels (authors)
- SAJ Société des auteurs de jeux (game authors)
- SDS Syndicat des scénaristes (screen writers)
- SELF Syndicat des Écrivains de Langue Française (French speaking writers)
- SMC Syndicat français des compositrices et compositeurs de Musique Contemporaine (music composers)
- ► SMdA CFDT (artists)
- SNAA FO (Artists)
- SNAP CGT Syndicat National des Artistes Plasticiens CGT (plasticians)
- SNP Syndicat National des Photographes (photographers)
- SNSP Syndicat National des Sculpteurs et Plasticiens (sculpters and plasticians)
- STAA CNT-SO Syndicat des Travailleurs Artistes-Auteurs (authors)
- UNPI Union Nationale des Peintres Illustrateurs (Painters)
- USOPAVE Union des Syndicats et Organisations Professionnelles des Arts Visuels et de l'Écrit (visual and written art).

The social partners have concluded **national collective agreements with either a transversal scope** (applicable to several artistic sub-sectors) or targeting a specific sector of activity:





- National collective agreement for private sector performing arts companies of 3 February 2012<sup>71</sup> (transversal agreement covering dramatic, lyrical, choreographic and classical music performances, song, variety, jazz and contemporary music shows, cabaret shows, touring shows, circus shows, ballroom shows with or without an orchestra). The convention of 3 February 2012 replaces a set of collective conventions covering private theatres, entertainment entrepreneurs and dramatic, lyric, puppeteer, variety and musical artists touring; songs, jazz and contemporary music.
- National collective agreement for artistic and cultural (*public sector*) companies of 1 January 1984<sup>72</sup> (transversal agreement with a very long list of artistic occupations covered by the agreement).<sup>73</sup>
- ▶ National collective agreement for *film production* of 19 January 2012<sup>74</sup>
- ▶ National collective agreement for *phonographic publishing* (music), 30 June 2008<sup>75</sup>
- National collective agreement for audiovisual production of 13 December 2006<sup>76</sup>

In addition, some 'national theatres', funded by the State such as the Comédie-Française, théâtre de l'Opéra de Paris, Odéon, Chaillot, théâtre national de Strasbourg, théâtre national de la Colline et Opéra-Comique, have each their **own company's collective agreement**.

#### Source: country case study France

The case studies revealed that **some of the occupations or categories of cultural and creative workers do not always feel well represented** in the national social collective bargaining structures and/or by Collective Management Organisations. In **Portugal**, freelancers and independent workers in the graphic design, photography (visual arts), audiovisual production and in artisanal crafts are categories of professionals, regarding whom social dialogue could be improved. The same applies to the emerging subsectors in the CCS, such as augmented reality (AR), virtual reality (VR), generative art, and other forms of artistic expression that use advance technologies. Thirdly, the Portuguese country case study also mentions the professionals working with minority and regional cultures in this respect.

<sup>&</sup>lt;sup>71</sup> See: <u>https://www.legifrance.gouv.fr/conv\_coll/id/KALICONT000028157262</u> (Retrieved on 11 March 2024).

<sup>&</sup>lt;sup>72</sup> See: <u>https://www.legifrance.gouv.fr/conv\_coll/id/KALICONT000005635964</u> (Retrieved on 11 March 2024).

<sup>73</sup> There is a very long list of occupations: Accessoiriste. Administrateur de production, Administrateur de tournée, Architecte décorateur, Armurier, Artificier/ technicien de pyrotechnie, Attaché de production/ chargé de production, Bottier, Chapelier/ modiste, Cintrier, Coiffeur/ posticheur, Collaborateur artistique du metteur en scène/ du chorégraphe/ du directeur musical, Concepteur des éclairages/ éclairagiste, Concepteur des coiffures/ des maquillages et des perruques, Concepteur du son/ ingénieur du son, Conseiller (ère) technique, Costumier. Décorateur, Directeur de production, Directeur technique, Dramaturge, Électricien, Ensemblier, Habilleur, Lingère/ repasseuse/ retoucheuse, Machiniste/ constructeur de décors et structures, Maquilleur, Menuisier de décors, Monteur de structures, Monteur son, Opérateur lumière/ pupitreur/ technicien CAO-PAO, Opérateur son/ preneur de son, Peintre de décors, Peintre décorateur, Perruquiet, Réalisateur coiffures, perruques, Réalisateur costumes, Réalisateur lumière, Réalisateur maquillages, masque, Réalisateur son, Régisseurs/ régisseur de production, Régisseur d'orchestre, Régisseur de salle et de site (dans le cadre d'un festival exclusivement), Régisseur de scène/ régisseur d'équipement scénique, Régisseur général, Régisseur lumière, Régisseur plateau son (retours), Régisseur son, Répétiteur/ souffleur, Rigger (accrocheur), Scénographe, Sculpteur, Serrurier/ serrurier métallier de théâtre, Staffeur, Sur/sous-titreur, Tailleur/ couturier, Tapissier, Technicien console, Technicien de maintenance (dans le cadre d'une tournée et d'un festival exclusivement), Technicien de plateau, Technicien effets spéciaux, Techniciens instruments de musique (backline), Technicien lumières, Technicien son technicien H/ F, Technicien de sécurité (cirques), Technicien groupe électrogène (groupman). Teinturier coloriste, Cadreur, Chef opérateur, Monteur, Opérateur image/ pupitreur, Opérateur vidéo, Projectionniste, Régisseur audiovisuel/ vidéo, Technicien vidéo (see Rider of 8 December 2016 to the collective agreement).

<sup>&</sup>lt;sup>74</sup> See: <u>https://www.legifrance.gouv.fr/conv\_coll/id/KALICONT000028059838</u> (Retrieved on 11 March 2024).

<sup>&</sup>lt;sup>75</sup> See: <u>https://www.legifrance.gouv.fr/conv\_coll/id/KALICONT000023974024</u> (Retrieved on 11 March 2024).

<sup>&</sup>lt;sup>76</sup> See: <u>https://www.legifrance.gouv.fr/conv\_coll/id/KALICONT000018828041</u> (Retrieved on 11 March 2024).



# 4.0 Undeclared work in the cultural and creative sectors

# **4.1 Introduction**

The present pilot study was implemented in a policy context in which CCS is receiving increased attention by law and policy makers at EU level, but for very different reasons than fighting undeclared work. First, there is a growing awareness of the economic importance of the EU CCS in a more globalised market. Second, the CCS have been seriously impacted by the Covid-19 pandemic and, because of its economic fragility, is requiring targeted policy action and clearer regulatory frameworks with a view to make CCS more resilient and sustainable. Third, the professional status and precarious working conditions of cultural and creative workers ('CCW') and in particular of 'artists' have been of considerable concern to EU policy makers and stakeholders for many years, turning it at present into a high policy priority. In this respect, the European parliament (EP) called in November 2023 for the adoption of an EU framework on improving the professional status and working conditions of 'Artists'. The framework would contain a Directive on decent working conditions of CCS professionals and correct determination of their employment status, the setting-up of an EU platform to improve the mutual learning among Member States on the working and social security conditions of CCW, and the adaptation of the EU programmes funding artists.<sup>77 78</sup> The recent legislative initiative builds further on two important earlier EP Resolutions: the 2007 EP Resolution on the social status of artists<sup>79</sup> and the 2021 EP Resolution on the situation of artists and the cultural recovery in the EU.<sup>80</sup> The former calls for access to social protection (unemployment benefits, health care and pensions) for all artists and workers in the cultural and creative sectors, regardless of employment status. It furthermore emphasises the need to address challenges such as the unstable income, unpaid work and job insecurity, and to ensure a minimum income for the CCS professionals. Both have called upon the creation of a European status for artists.

As was mentioned earlier, undeclared work in the CCS in Member States and in cross-border settings has not vet been studied thoroughly and data are most often not available. Undeclared work is defined as 'any paid activities that are lawful as regards their nature, but not declared to public authorities, taking into account differences in the regulatory systems of the Member States'.81 Undeclared work indirectly refers to the employment status of individuals in the national labour markets and the ways they earn and declare their professional income. This is triggering the application of national labour, social security, and income tax legislation, which remain primarily a Member States' prerogative. Most Member States' national legislation distinguishes between the two distinct traditional categories of employment status: dependent employment ('workers', 'employees') on the one hand and the self-employment (independent contractors, free-lancers) on the other. Changing labour markets and modes of employment have challenged this traditional binary divide, giving rise to a growing number of atypical forms (non-standard forms) of work (e.g., temporary work, fixed-term work, etc.) and of a grey zone: the situation in which self-employed are primarily providing services to one dominant client (e.g., dependent self-employment or bogus self-employment). Whereas national concepts of workers and self-employed still vary, Member States have addressed these challenges in various ways such as through the use of legal presumptions of employment status or the introduction of a 'third' or in-between category of workers who are partially protected by labour and/or social security protection. At EU level, most recent EU labour legislation refers to the EU concept of 'worker', which is based on the CJEU jurisprudence related to the free movement of workers

<sup>&</sup>lt;sup>77</sup> See: EP proposal on improvement of status and working conditions CCS professionals.

<sup>&</sup>lt;sup>78</sup> See: Kammerhofer-Schlegel, C. et.aL (2023).

<sup>&</sup>lt;sup>79</sup> The European Parliament <u>Resolution</u> of 7 June 2007 on the social status of artists.

<sup>&</sup>lt;sup>80</sup> The European Parliament Resolution of 21 October 2021 on the situation of artists and the cultural recovery in the EU.

<sup>&</sup>lt;sup>81</sup> See: <u>https://www.ela.europa.eu/en/topics/tackling-undeclared-work</u> (Retrieved on 02 September 2024).





and applicable in a cross-border context: a 'worker' is someone who provides services of economic value to another person in return for a remuneration while work is delivered under 'subordination' or 'hierarchical/supervisory control'. Subordination' is in most Member States the key factor determining the existence of a dependent employment relationship as opposed to a service contract performed by a self-employed who works for her/his own account and bears the business risks.

The **traditional binary divide** between workers and the self-employed is of **particular relevance in the CCS**, as some CCS occupations (and especially the creative functions), presuppose a **degree of autonomy and/or independence** when they engage in a creative process. Such a degree of 'autonomy' might, from a legal perspective, be considered incompatible with the subordination or dependency dimension that is an intrinsic part of an employment relationship as defined in Member States' labour legislation. Also typical for the CCS is that creative professionals may work either **'on commission'** from someone else or **create artworks on their own initiative**, with the aim to 'publish' or 'exploit' these works once they have been created. These two ways of working may also have a repercussion on the determination of the employment status of a CCW in a particular situation. The previous observations are especially relevant for the creative CCW who are authors and are entitled to copyright income (e.g. composers, screen writers, journalists, etc), but less so for the performing functions and the technical and administrative CCW In other words, the degree of autonomy and/or ways CCW engage into a creative process may hint at a certain employment status. Contracting parties may use these arguments when concluding agreements whereas enforcement agencies and courts which ultimately decide on the employment status in cases of litigation, may also take these dimensions into account when assessing the facts and circumstances in individual cases.

As has been set out above, CCW receive **various types of income and payments** for their artistic work and there is a great variety of how these various types of income are treated from a labour law, social security and tax perspective in EU Member States which have the primary competence in these policy fields. The adequate classification of the payments and income of CCW seems often to be a challenge for enforcement agencies in Member States.

Furthermore, many artistic work and cultural activities are performed by individuals who are not active as professionals who are fully dependent on the income from their artistic work to make their living. **Hobbyists or amateurs** are not considered as professional artists in Member States and the income they may receive for their artistic work, if any at all, is often regulated separately by the prevailing national legislation. **Internships and traineeships** are important mechanisms for youngsters in Member States who are seeking to develop a career in the CCS and are also subject to specific national legislation. Finally, some CCS subsectors (e.g. music festivals, cultural associations, etc) are to a large extent also dependent on **voluntary work**, the conditions of which are regulated by the national legislation of Member States. The existence of these various 'capacities' by means of which individuals can be engaged in the CCS and the fact that some are not remunerated for, **may conduce to the incorrect use of these capacities and hence undeclared work** (e.g., voluntary work in cases of de facto employment, improper engagement of amateurs or interns, etc.) and to unfair competition with professionals on the pay-roll.

The different country case studies and interviews held with CCS stakeholders at EU level and in Member States, confirmed what can be deducted from the studies and policy papers concerning CCS in general. The **available information, data, and research on undeclared work in the CCS in the EU and in Member States are scarce** and there is hardly any evidence on its extent and size. This may be explained by the fact that '**undeclared work' may not be considered to be a widespread phenomenon nor a fundamental challenge in the perspective of the CCS professionals and various interest groups**. The main focus of research and policy papers concerned with the CCS has been on the precarious working conditions most CCW are confronted with throughout all of the subsectors. Professional CCW work primarily in non-standard forms of work including as self-employed or under short term temporary (employment or service) contracts, while a large majority has low income and





difficulties in making ends meet when the income is based solely on their artistic activities. Mapping and analysing undeclared work in a sector which in addition was seriously hit by the Covid-19 pandemic, is not conceived by the stakeholders from the CCS as a priority or concern. However, the same stakeholders reckon that there **may be some types of undeclared work in some specific subsectors** (e.g. large events organisation, informal small-scale gigs, etc) or because of the **high prevalence of non-standard forms of work** especially when clients or employers are under high cost-containment pressures, often depending on public financing and/or are requiring high degrees of flexibility in employment.

The perspective and experiences of national enforcement agencies on undeclared work in the CCS may be different. Very little information and data, directly produced by national policy makers and inspections, has been gathered in the frame of the present study but some replies on the survey that was launched among the members of the Platform indicate that undeclared work in the national CCS is at present not a priority for national policy makers and enforcement agencies. This finding was also confirmed at the Thematic Review Workshop at which enforcement agencies from thirteen Member States participated.

The present study points at some **indirect evidence** on undeclared and illegal employment in the CCS in Member States and in cross-border situations. The main challenges seem to be related to the **adequate employment classification** of the CCW (e.g. bogus self-employment), the fact that some **parts of the creative 'work'/'services are not compensated for financially**, the existence of some **informal economy**, the **unawareness on and complexities of the regulatory and administrative frameworks**, and the high **administrative burden** imposed on CCS professionals and organisations. This may lead to the incorrect application of and regulatory compliance gaps regarding the national and EU legislation in specific instances. At the same time there is some evidence that CCS organisations (both clients and employers) may use the existing (often unclear or complex) national regulatory frameworks in order to hire CCW at the lowest cost as possible.

# 4.2 Employment status of workers in the cultural and creative sectors

The recent EP study highlights the **inconsistent definitions** at EU and at Member State level not only in relation to (the scope of) the cultural and creative sectors but also **in relation to the CCS professionals**, impeding comparison and an effective coordination of policies. The study also indicates that there are substantial gaps in terms of the mutual recognition of qualifications and education by Member States in the CCS and that most CCS professions are not part of the Regulated Professions Database of the European Commission. This may hinder the free movement of CCS workers and of services within the EU.

As mentioned above (see Chapter 1.2 and 3.1), three types or categories of CCS occupational or functions have been identified.<sup>82</sup>

- Creatives, who create and develop, and who use their own intellectual capacities and skills for the creation and production of artistic goods/works/services (e.g. composers, painters, screenwriters, photographers, etc). Most creative professionals are 'authors' who enjoy copyright protection.
- Performing artists, who are involved in the production/presentation of a certain artworks as performers (e.g., musicians, orchestra's, dancers, etc). Some of these performing artists enjoy protection under copyright legislation through their neighbouring rights but are not necessarily 'authors'.

<sup>&</sup>lt;sup>82</sup> Education and management functions have not been included into the main scope of the pilot study, nor have some specific functions in the subsector of museums and preservation.





Technical and administrative support functions. These functions are in principle not entitled to copyright protection and/or related copyright income.

Of particular interest in this regard is the **concept of 'artist'**, which in general terms corresponds to the occupations that belong to the first two categories outlined above. It typically refers to individuals ('creatives') who are involved in the creation, interpretation, or performance of artistic works in the various domains (e.g., music, theatre, dance, and visual arts). Artists are instrumental in the expressive and interpretation aspects of the creative process and presentations of the artworks, often engaging directly with the audiences through live performances or various media formats. Artists' rights are primarily associated with the creation of the artworks (and hence entitled to copyright income) or with the performances, exhibitions and other presentations of the artworks (the so-called 'neighbouring' or 'related' rights under the prevailing copyright legislation).

However, while some Member States have no definitions or concepts of 'artist' in their national legislation (e.g., **Latvia**<sup>*s*3</sup>), the concept has often been defined in very different ways (directly or indirectly) by Member States while seeking to achieve different policy goals. These policy objectives were most often aimed at improving the professional and/or social 'status' of the artists concerned in terms of their working conditions, income, or social security protection (and more in particular their unemployment protection, health and pensions). Only a minority of Member States tackled the employment status of (some categories of) artists directly in the labour legislation.

#### Box 11. The concept of 'artists' in Member States

Five different approaches are applied by Member States when defining 'artists', while some Member States apply a mix of these approaches:

- Definition through the membership of a recognised artist association;
- Definition by a committee of 'experts' or 'peers';
- Definition by authority or by (tax or other) legislation;
- Definition by association with an artistic output;
- Definition by the nature of the paid activities distinguishing between professional and amateur artists or hobbyists (especially relevant in the context of the VAT legislation).

Source: EP study: IDEA Consult et. al. (2021)

'Artists' in the Member States **most often do not have a separate employment status**, distinct from the worker or self-employed status (e.g. Belgium, Germany, Latvia, Portugal, etc). In these Member States, 'artists' are employed as workers, as self-employed, as civil servant or under another existing employment status which may exist in these countries (e.g. civil law contracts, etc) just as what is the case in other economic sectors. When artists are 'authors' they may also receive income from copyright while performers enjoy income from their neighbouring rights.<sup>84</sup>

Some Member States have **statutory definitions of 'artists'** but this is usually limited to one specific policy domain (e.g., in the field of social security) and does not apply throughout all policy domains. Whereas being artist

<sup>&</sup>lt;sup>83</sup> Information obtained through the country case study on Latvia.

<sup>&</sup>lt;sup>84</sup> Some other groups (e.g. producers of audiovisual content, producers of music, broadcasters, etc.) are also entitled to 'neighbouring' or 'related' rights.





is defined differently in Member States, various national<sup>85</sup> policy measures have been adopted with a view to improve their social and labour protection. The rights of artists are typically associated

**Germany** has a **statutory definition** of 'artists' based on **social protection legislation** adopted in 1983, which created a specific professional social insurance scheme for artists (*Künstlersozialkasse* – KSK or 'the Artists' Social Security Fund). In 2023, 192 573 **self-employed artists** paid contributions into the fund which equal those that are paid for the employees in the general social insurance schemes. However, the employer's contribution that is applicable in the general insurance scheme is replaced by levies that are paid by those that use the artistic works and by governmental subsidies. In order to participate, artists must have an annual minimum income of at least EUR 3 900. The social insurance scheme provides for a statutory pension, health care and a long-term nursing care allowance but does not contain a specific protection against unemployment. In spite of the existence of a definition of 'artists' for the purposes of determining the personal scope of a specific social insurance branch for the persons concerned, German stakeholders and research nevertheless point at the need to regulate and improve the concept and status of artists in the country.<sup>86</sup>

In Latvia, there is no specific legislation regulating the status of 'artists' who, in what regards their employment status, fall under the general legislation. They are either an employee to whom labour legislation applies or self-employed subject to civil (contract) legislation. In Latvia there is only one legal act concerned with artists who work in the public sector. The Law on Pensions for Artists of State and Municipal Orchestras, Choirs, Concert Organisations, Theatres, and Circuses and on Allowances for Ballet Dancers<sup>87</sup> regulating the right to long-service pensions of the artists employed by state and municipal orchestras, choirs, concert organisations, theatres (Opera), and circuses.

**Belgium** introduced on 1 January 2024 **new** '**regimes**' **that concern professional and amateur artists respectively.**<sup>88</sup> In Belgium 'artists' are not considered as a separate employment status and professional artists are either employees or self-employed, while they may be authors as well and receive copyright related payments. Both arrangements have been initiated under the umbrella of the Federal Public Services of Social Security and replace previous mechanisms that concern professional artists on the one hand and amateur artists on the other: the 'declaration of an artwork' ('*Kunstwerkattest*') for professional artists and the 'amateur arts allowance' (*amateurkunstenvergoeding*, 'AVK').<sup>89</sup>

The **Artwork Commission** ('Working in the Arts' Commission) has been set up by the Federal public services for social security and is composed of art experts, representatives of the various social security institutions, employers' organisations and trade unions. Its main objective is to issue **'certificates of an artwork'** (replacing the former 'artist certificate') to **professional artists** (including artists who perform technical artistic services and support artistic services provided that they have effectively contributed to the creation of an artwork), who provide artistic services and are remunerated for these services, but who are not qualified as 'employees'/'workers' because of the fact that they do not work under the 'direct supervision' of an employer in accordance with the concept of worker in the Belgian labour legislation. In such instances, artists, in spite of being self-employed may **choose to be part of the social insurances for employees** when they have obtained a 'certificate of an artwork and the commissioners/principals are considered as their employers'. The Artwork certificate also grants the professional artists a special 'Artwork allowance' ('Allowance for working in the arts'), which is a type of **unemployment benefit** 

<sup>&</sup>lt;sup>85</sup> Noteworthy in this regard is that in Federal States cultural policies are typically a competence of the decentralised structures (e.g., the communities in Belgium, the Lander in Germany, etc), which may imply different approaches in the Member State concerned, depending of course also on how the competences on labour market policies, social security etc are allocated.

<sup>&</sup>lt;sup>86</sup> Manske, A., (2023), Neue Solidaritäten, Bielefeld.

<sup>&</sup>lt;sup>87</sup> Valsts un pašvaldību profesionālo orķestru, koru, koncertorganizāciju, teātru un cirka mākslinieku izdienas pensiju un baleta mākslinieku pabalsta par radošo darbu likums, Official Gazette No. 106, 7 July 2004, available in Latvian at <u>https://likumi.lv/ta/id/90806-valsts-un-pasvaldibu-profesionalo-orkestru-koncertorganizaciju-teatru-un-cirka-makslinieku-izdienas-pensiju-un-baleta-maks</u>

<sup>&</sup>lt;sup>88</sup> Source: reply received from FOD Sociale Zekerheid, Belgium in reply to the survey.

<sup>&</sup>lt;sup>89</sup> Under the former regime 'kleine vergoedingsregeling' for amateur artists 9 703 persons were granted the Artist Card (2023) and 543 professional artists were granted the Artist Certificate/visum (2022). Source FOD Sociale Zekerheid, Belgium.





for artists, with more favourable conditions. Three types of 'certificates of an artwork' exist including one for starters. The 'Amateur arts allowance' (AVK) on the other hand regulates artistic services rendered by amateur artists<sup>90</sup> for up to 30 days/year and with a maximum daily payment of EUR 70,22. The system is operated through a digital platform on which the artists and the buyer need to register. When commissioning an artistic service, the buyer needs to select the type of artistic services from a closed list. Artistic services are defined as an activity that constitutes a necessary contribution to an artistic creation or performance in the domain of the arts, e.g. visual and audiovisual arts, music, literature, performance, theatre, choreography and comics (eight domains). Technical and supporting activities are excluded from AVK eligibility. The income received is exempted from social security contributions and income tax for the amateur artist, whereas buyers need to pay a limited solidarity contribution of 5% when they have paid more than EUR 500 of allowances in a given calendar year. Both mechanisms only concern artistic services and exclude technical or supporting services (e.g. stage builders, light technicians, casting director, etc.) and only in eight domains which exclude e.g. fashion and architecture.

**Portugal** introduced since the 1 January 2022 the **Statute of Cultural Sector Professionals** by means of Decree-Law n°105/2021.<sup>91</sup> It specifically regulates (1) the registration, (2) employment and service provision contract regime and (3) social protection of the professionals in performing arts, audiovisual, visual and literature, **regardless of their employment status** as employees or as self-employed. The Statute has a wide personal scope and covers authorial, artistic, technical-artistic functions and cultural mediation, acknowledging and addressing thereby the unique operational dynamics characterising the CCS. The following types of contracts are listed under the Statute: internship contracts, employment contracts for indefinite periods of time, fixed-term employment contracts, undefined term contracts, multiple employer contracts, service provision contract promise. Professionals are required to **register as professionals in culture** ('RPAC'). The Statute finally also introduces a special contributory social protection scheme ('the cultural activity suspension allowance'), which grants them a special benefit, comparable to the unemployment benefit in cases the cultural activity is suspended (as a consequence of an interruption, sickness, parenthood or an occupational disease). The scheme also provides for a long-term allowance for professionals above the age of 55 under certain prior contribution conditions. The scheme is financed through simplified social security contributions through tax withholdings at the source.

'Artists' or some specific categories of CCS professionals are in **the labour legislation** of some Member States conceived as workers/employees. In **France**, the Labour Code<sup>92</sup> contains a **legal presumption** of the worker (employee) status for **performing artists**, implying that they are protected by labour law, even if they are under very short contracts.<sup>93</sup> The legislation explicitly determines that the presumption of the existence of an employment contract applies regardless of the method and amount of the remuneration, as well as the qualification given by the parties to the contract, and even when the artist retains the freedom of expression in art, owns all or part of the materials used or employs one or more persons to assist, as long as the artist is personally involved in the show. The law contains a list of artists who benefit from the legal (rebuttable) presumption: lyric artists; dramatic artists; choreographic artists; variety artists; musicians; singers; complementary artist; conductors; arranger-orchestrator; stage directors, film directors and choreographers, for the material execution of their artistic concept; circus artists; puppeteers; and persons whose activity is considered as a performer's profession by the extended collective agreements for the performing arts.

<sup>&</sup>lt;sup>90</sup> Unlike what the name suggests, professional artists can also rely on the 'Amateur arts allowance scheme' under the same conditions as amateur artists.

<sup>&</sup>lt;sup>91</sup> The law has been complemented by several other pieces of legislation: Decree-Law N° 64/2022 on the Amendment to the Satute of Cultural Sector Professionals, Portaria n°29-B/2022 regulating the registration of the cultural sector professionals, Portaria n°29-C/2022 on the Special Social Security Fund for the Cultural Sector Professionals

<sup>&</sup>lt;sup>92</sup> Article L7121-3 and -4 of the French Labour Code.

<sup>&</sup>lt;sup>93</sup> According to the ILO Report (2023), some 41% of CCS professionals are active as self-employed in France in spite of the legal presumption on the status of employee in the national Labour Code.





The French law also contains a **closed list of CCS sectors** (e.g. live performance shows, cultural activities, audiovisual, films and musical events) in which a **specific category of fixed term employment contracts** can be used (the '*Contrats à durée déterminée d'usage*' or 'contracts with a fixed duration of usage' (the 'CCDU')) under certain conditions (temporary nature) and for certain occupations (performers, technicians and administrative staff). CDDU can be concluded even when it concerns only one single performance. Unlike the typical fixed-term employment contracts, the CDDU are quite flexible and successive CDDU can be concluded without any limitation. The CDDU/CDD are the most dominant form of employment contracts in the CCS in **France**. In the music industry, singers often conclude CDD 'exclusive recording contract' for a certain duration which may not be precisely determined in advance, but which is subject to the achievement of a certain objective (recordings of a single, album, etc). CCW may also be contracted under an **open-ended** or **on-call employment contract** (*'contrat de travail intermittent*'), which is an indefinite term contract, which allows the artist-employee to alternate periods of activity and inactivity. The employee's minimum annual working time is set out in the contract, but it may be exceeded by up to one third of its time. In the case of the on-call workers, the employer must pay wages at least twice a month and no more than 16 days apart. A salary is therefore considered to be unpaid if it is not paid within half a month of the last salary being paid.

Cultural and creative professionals in **France** have also a **special unemployment benefit scheme** (the 'intermittent du spectacle' scheme as set up already in 1936) with lower contribution requirements than in the general economy: CCS professionals are entitled to 8 months of unemployment benefit when they have worked at least 507 hours in the previous 10 months (applicable to actors as the number differs between CCSs professions) in comparison with 610 hours (122 days) in the past 28 or 36 months (for persons below and above 50 years of age respectively) in the general system.

Unlike what is the case for the concept of 'artists', Member States have **defined concepts of 'authors'**, but this concept is regulated under the **national copyright legislation** and has no direct link with the employment status of the individual concerned.

In **Latvia**, the definition of an 'author' is provided only by the Copyright Law, implying that the concept of authorship is determined only for the purposes of copyrights. Article 1 of the Copyright Law defines 'an author' as 'a natural person, who has *created a particular work* (piece) as the result of his/her creative work'.<sup>94</sup>

The same applies in **Portugal**, where authors are defined as individuals responsible for the creation of original literary, musical, artistic, or other copyrightable works. Authors are considered the originators of intellectual creations, whether it to be a novel, a musical composition, a painting, or any work that is eligible for copyright protection. The rights of authors are extensively protected by copyright law, emphasising their entitlement to control the reproduction, distribution, and public performance of their works. Authors enjoy exclusive rights over their creations, including the right to reproduce, distribute, communicate to the public, and adapt their works. These rights ensure that the authors have significant control over the commercialisation, exploitation and dissemination of their intellectual property, allowing them to benefit financially from their creative endeavours. They additionally enjoy the moral rights, safeguarding their reputation and integrity by granting them the right to be attributed as creators of their work and to object to any derogatory treatment of their works. The Portuguese copyright law also regulates the 'ancillary rights' provisions which extend the protection to performers, producers of phonograms and audiovisual content, and to broadcasting organisations.<sup>95</sup> **Belgium, France and Germany** have similar definitions and concept of authors. In the box below, the French approach on the concepts of artists and authors is presented.

 <sup>&</sup>lt;sup>94</sup> Autortiesību likums, Official Gazette No.148/150, 27 April 2000, available in Latvian at <a href="https://likumi.lv/ta/id/5138-autortiesibu-likums">https://likumi.lv/ta/id/5138-autortiesibu-likums</a>
 <sup>95</sup> Decree-Law No. 63/85.





# Box 12. The concept of 'artists' and 'authors' in France

In France 'artists' are defined under the Labour code and in social security legislation.

The **Labour Code** establishes a list of artists which are presumed to be working under an employment contract (Art. L7121-1 of the Labour code).

In the framework of **social security law**, artists are defined through a list of activities: 'Artists who are authors of literary and dramatic, musical and choreographic, audiovisual and cinematographic, graphic and plastic, and photographic works, are compulsorily affiliated to the general social security scheme for social insurance and receive family benefits under the same conditions as salaried employees (art. L382-1 of the Social Security Code).

Under **intellectual property law**, a distinction is made between the 'authors' ('copyrights') and the 'artistsperformers' ('neighbouring rights'). According to the Intellectual Property Code, 'in the absence of proof to the contrary, authorship belongs to the person or persons under whose name the work is disclosed' (art. L113-1) whereas 'the author of an intellectual work enjoys, by the mere fact of its creation, an exclusive intangible property right that is enforceable against all persons' (art. L111-1). The quality of author belongs to the person who creates an original intellectual work.

The artist-author is a professional belonging to one of the following professional branches:96

- Writers: authors of literary or scientific works, dramatic works, translations, adaptations, illustrations and original software;
- Authors and composers of music: authors of musical compositions, choreographic works and pantomimes;
- Graphic and plastic arts: authors of original graphic or plastic works (paintings, collages, paintings, drawings, engravings, etc.), stage designs for live performances, exhibitions or spaces, and works of design;
- Film and audiovisual industry: authors of cinematographic and audiovisual works, translations, subtitles
  or audio descriptions;
- ▶ Photography: authors of photographic works or works produced using techniques similar to photography.

**Collective agreements** refer to a list of artistic occupations.

A performer ('artiste-interprète') on the other hand is 'the person who represents, sings, recites, declaims, plays or performs in any other way a literary or artistic work, a variety show, a circus act or a puppet show' (art. L212-10f the Intellectual Property Code).

The copyright remuneration through royalties is specific to authors: it corresponds to the remuneration that an author receives in return for the exploitation of his/her economic rights deriving from the intangible property of his or her works. Only artistic activities and activities that are an extension of the artistic activity (the so-called ancillary activities) may be remunerated in the form of copyrights royalties, i.e. : income from the creation, use or dissemination of the work: commissioning of texts, sale of works, public readings and performance readings, creation grants and residency grants; income from ancillary activities (public meetings and debates directly linked to the author's work; courses given in the artist-author's studio or workshop; artistic or writing workshops; artistic workshops held in public or private establishments or organised by associations, provided that the

<sup>&</sup>lt;sup>96</sup> See: <u>https://bpifrance-creation.fr/activites-reglementees/artiste-auteur</u> (Retrieved on 18 April 2024).





workshop can only be run by an artist).<sup>97</sup> These activities must be carried out independently, and without the subordination that characterises a salaried employment activity.

The example of the payment of a choreographer illustrates the different types of remuneration for authors and performing artists in France.

Source: country case study France

# 4.3 Extent and types of undeclared work in the cultural and creative sectors

# **4.3.1 Introduction**

Research and country case studies seem to indicate that the **fight against undeclared work in the CCS has not been considered as a high priority** for national policy makers and has **not been on the top of the (strategic and/or operational) agenda for enforcement agencies in most Member States** (e.g. Germany, Latvia). In **Belgium** for instance, the Social Information and Investigation Service (SIOD/SIRS) reports that only 1,5% of the coordinated inspections which have been conducted in the first quarter of 2024 have been targeting the CCS (compared to 24,6% in construction sector and 22,2% in HORECA).<sup>98</sup> This finding was confirmed during the Thematic Review Workshop (Brussel, May 2024), in which enforcement agencies of thirteen Member States participated.

However, in **France**, live performance has been identified by the inter-ministerial anti-fraud committee as **one of the sectors targeted by the national plan to combat undeclared work** for the period 2023-2027. Depending on the territorial assessment, inspections will be targeted at the sectors that are most affected, such as the sector of the live and recorded entertainment.<sup>99</sup> Given the fact that **France** accounts for a large share of CCW and businesses in the EU, the inclusion of the CCS into the sectors for the fight against undeclared work, points at the existence of various types of undeclared work that require the attention of the enforcement agencies. Also in **Germany**, the legislation aimed at combating undeclared work identifies some CCS related subsectors as particular 'sensitive', next to the more 'typical' economic sectors that are affected by undeclared work such as the construction sector, meat industry, personal transport sector, etc: the **fairground and amusement sector** and the businesses involved in the **setting up and dismantling of trade fairs and exhibitions.**<sup>100</sup>

At the same time, the **(public) available data and statistics** on undeclared work in the CCS remain **limited** in Member States and little research has examined the phenomenon. Nevertheless, there is some evidence that undeclared work practices in the CCS are not a negligeable phenomenon.

### Box 13. Inspection outcomes in some Member States

► In Belgium, the Social Inspection and Investigation Service (SIIS)<sup>101</sup> reports that 853 'coordinated' inspections<sup>102</sup> were carried out in the CCS in 2023, out of which 354 resulted in the determination by the inspection agencies of at least one infraction or offense (41%). Most recent data from the 'SIOD' reveal

<sup>&</sup>lt;sup>97</sup> On the nature of activities which can be subject to royalties remuneration, see: <u>https://fill-livrelecture.org/wp-content/uploads/2020/02/guide auteurs remuneration-maj2020-jv-web.pdf</u> (Retrieved on 9 April 2024).

<sup>&</sup>lt;sup>98</sup> Results of the social inspections combating social fraud in Belgium – Quarter 1, 2024.

<sup>&</sup>lt;sup>99</sup> https://travail-emploi.gouv.fr/actualites/l-actualite-du-ministere/article/presentation-du-plan-national-de-lutte-contre-le-travail-illegal-2023-2027.

<sup>&</sup>lt;sup>100</sup> Federal 'Act to combat Undeclared Work and Unlawful Employment'.

<sup>&</sup>lt;sup>101</sup> 'SIOD/SIRS' or the 'Social Inspection and Investigation Services'. 'SIOD/SIRS' or the 'Social Inspection and Investigation Services'.

<sup>&</sup>lt;sup>102</sup> A coordinated inspection refers to an inspection in which at least 2 of the 5 'social inspections' which in Belgium are responsible to tackle social fraud are involved.





that during the first quarter of 2024, 52 coordinated inspections were conducted in the CCS in Belgium. 104 persons were interrogated, 34,6% of whom were self-employed. In 11 inspections (or 21%), infringements were detected that pointed at undeclared work. The types of undeclared work varied: non-compliance with the mandatory prior notification by employers based in Belgium when they employ a worker (DIMONA), non-compliance with the prior notification in cases of a posting by a company based outside the territory of Belgium and of self-employed (LIMOSA), fraudulent claims of unemployment benefits when earning income from work, undeclared working hours when being engaged under part-time contracts, etc.

- ► In Latvia, the state labour inspectorate carried out 30 inspections in the CCS in 2023. In 11 cases (36%) infringements were detected (absence of written contracts and/or failure to provide the necessary information to the State Revenue Agency).
- Data provided by the Social Security Authority from Greece reveal that from the 584 CCS workers who were investigated during on-site inspections in 2023, 5,1% were found to be in a situation of (fully) undeclared work. However, additional, and more thorough inspections of 1 165 workers in the CCS, showed that 35,6% were in a situation of underdeclared work.<sup>103</sup>

#### Source: country case studies and workshop (Brussels 14-15 May 2024)

In spite of its rather low relative importance for national policy makers and enforcement agencies in their priority setting and of the limited available data and statistics, **participants to the Platform's Thematic Review Workshop** (Brussels, May 2024) confirmed that in accordance with their experiences, there is **significant undeclared work in the CCS** in Member States. Undeclared work in CCS can take various forms and is often **occupation or subsector specific**: journalists, web designers (videogames) and performers were mentioned among the professional groups that are mostly affected by **bogus self-employment** whereas various **other forms of undeclared work** exist among the creative professions, circus artists, DJs and supporting (including technical) staff. **Large events** (e.g., festivals, concerts, fairgrounds, etc.) in the live performance sector, which rely on substantial volumes of technical and supporting staff, and cultural and creative (related) services delivered through **digital platforms** were identified as particularly prone to undeclared work <sup>104</sup>. In what regards the former, national enforcement agencies from some Member States observed a growing trend of undeclared work performed by third country nationals (e.g. stage building) whereas for the creative work related (supporting) services that are delivered though the digital platforms the main challenge identified is relating to the detection of undeclared work (e.g. testing in video game development, graphic designers, web developers, etc.).

### Box 14. Challenges for CCS inspections

National enforcement authorities face a number of challenges in relation to the inspection of the CCS. The findings from the country case studies and the workshop revealed that several of these challenges are typical of the CCS and especially of the live performance subsector:

- ► Atypical working hours that are performed outside the regular business hours;
- Very short performances / stays of performers;
- Occasional organisers of events;

<sup>&</sup>lt;sup>103</sup> Presentation by the National Social Security Fund and the Hellenic Labour Inspectorate at the workshop on undeclared work in the cultural and creative sectors, 14-15 May 2024, Brussels.

<sup>&</sup>lt;sup>104</sup> Information derived from country case studies and workshop (Brussels 14-15 May 2024).





- Performances delivered at locations that are off-limit for enforcement authorities (e.g., private households);
- Complex contractual relationships, often involving intermediaries or third party payrolling companies;
- Limited mandate of labour inspectorates to establish employment status;
- Invisibility of some CCS activities (e.g., small venue operators, services delivered through digital platforms;
- ► Limited inter-operability between the different databases of national enforcement authorities and with the existing registration and authorisation systems.

# 4.3.2 Bogus self-employment

Creative professionals often rely on a degree of autonomy and need for flexible working patterns. In combination with an entrepreneurial approach, these factors may point at a **genuine self-employment status**. This applies also, but to a far lesser extent, to the 'performing functions' (e.g. dancers, musicians, etc). The situation of the more technical and supporting CCS occupations on the other hand is comparable to other economic sectors. Research indicates that Member States treat technical supporting functions differently. In some Member States they are included into the (social/labour) 'status' of professional artists (e.g. Portugal) whereas in other Member States they do not belong to the category of artists (e.g. Belgium) and are not entitled to the same rights and protection.

Research<sup>105</sup> reveals that in the CCS, a substantial number of professionals who are technically contracted as selfemployed are **de facto in dependent employment** and hence in 'bogus self-employment'. The principal cause is the project-based financing of the CCS organisations which continuously depend on public and private funding to finance their operations while requiring the constant availability of the CCS professionals to receive such financing.<sup>106</sup> This is leading to project-based employment in CCS and is contributing to an increased reliance on non-standard forms of work to save costs.

Bogus self-employment among all self-employed in the CCS is estimated to range between 1,6%-10,8% depending on the measurement methodology that is applied and statistical data that are used as reference.<sup>107</sup> As a result, the CCS is among the economic sectors with the highest shares of bogus self-employment in the EU.

The country case studies conducted in the frame of the present study indicate that **there is undoubtedly bogus self-employment in the CCS in Member States but there is little hard evidence** or data available on its prevalence. In **Portugal**, reference in the country case study, is made to the freelance artists, performers, and to small scale producers, which are subject to possible misclassifications regarding their employment status. At the Thematic Review Workshop (Brussels, May 2024) participants representing national enforcement authorities confirmed this finding. In their view and experience, there is considerable bogus self-employment in the CCS. Some CCS occupations and subdomains seem to be particularly affected: journalists, performers, web designers (videogame developers) but also some technical support functions.

Bogus self-employment usually refers to the **misclassification of a dependent employment relationship as self-employment**. Such a misclassification may trigger an assessment of the employment relationship and result in a corrective measure by enforcement agencies or ultimately by a judgment of the competent courts. In the CCS,

<sup>&</sup>lt;sup>105</sup> DeFillippi, R. (2015).

<sup>&</sup>lt;sup>106</sup> EP study (2023).

<sup>&</sup>lt;sup>107</sup> Williams, C., (2018); EP study (2023).





bogus self-employment may also occur in a different way by using contracts transferring the economic copyrights from the authors. This type of practices has been reported in the case studies and interviews (e.g. Belgium and France). Contracts that aim at buying out the authors and transferring the economic rights may be concluded in parallel with an employment contract (fixed-term, indefinite, etc.) or with a contract for services. Whereas concluding a contract with authors is often legal and conform the national copyright legislation, the conclusion of such contracts may often be more advantageous and less costly for the buyers for various reasons. In **France**, such copyright payments trigger lower social contribution rates, whereas in **Belgium**, the VAT rate applicable to copyright payments is substantially lower (6%) that in the case of services (21%). The country case studies reveal that in some instances such contracts are concluded in order to replace employment contracts and/or service contracts and/or to ultimately lower the costs for the buyer. An example (e.g. France) is the case of a journalist or content provider whose employment contract has been ended and replaced by a contract by means of which they are paid in copyright revenues. Another case that has been reported on in France is the practice of concluding service contracts with CCW and avoid the conclusion of copyright contracts as copyright payments are still subject to social security contributions, whereas it is the self-employed CCW who will be responsible for their social contributions that are levied on the fees.

A matter that may only be indirectly relevant when examining bogus self-employment was raised by EAEA at the workshop<sup>108</sup> and concerns the live performance subsector: the difficulties in establishing an employment relationship in cases when third party payrolling companies are involved and performers work for sometimes very short duration at small venues without the clear 'presence' of a direct counterpart who may possibly be qualified as an employer in some specific instances. The absence of a direct counterpart at the place of work may also have consequences with regard to the compliance of legislation on working conditions and occupational health and safety (OSH).

# 4.3.3 Absence of written contracts and cash payments

Desk research and interviews revealed that there is some indication on work that is performed by cultural and creative workers **without any written contract**. This does not necessarily imply that the work is not paid for by the client or employer. However, as may be indirectly deducted from the information obtained through interviews and desk research, **considerable time is performed without an 'adequate' financial compensation** by CCW, which may in some instances imply that no contract has been concluded for these working hours and/or point at an under-declaration of the performed hours.

### Box 15. Absence of written contracts

- The State Labour Inspectorate in Latvia carried out 30 inspections in the course of 2023 in the Arts, entertainment and leisure industry. 11 inspections revealed infractions and 21 persons were identified without having a written contract and/or without submitting the correct information to the State Revenue Agency.
- In Portugal, there is evidence of assignments that are being undertaken without the conclusion of written contracts in the CCS. The practice is more prevalent in certain occupations and subsectors where informal and verbal agreements are common, often due to the nature of the work or the relationships between the parties involved:

<sup>&</sup>lt;sup>108</sup> Workshop on undeclared work in the cultural and creative sectors, 14-15 May 2024, Brussels.



- Freelance artists (freelance writing, visual arts, music, performing, etc.), often engage in projects or performances without written contracts, e.g. in cases of one-off gigs, short-terms projects, assignments for acquaintances, etc.
- Small-scale productions: independent filmmakers, photographers, content creators working on smallscale productions or personal projects, especially when collaborating with close associates or working on low-budget initiatives.
- Informal collaborations between artists, designers, musicians, and other creatives are common. These collaborations may involve joint projects, exhibitions, or performances where the parties rely on mutual trust rather than formal contracts.
- Emerging and DIY (Do-it-Yourself) subcultures: subcultures such as zine-making, underground music scenes, and street art often operate outside traditional institutional frameworks and may prioritise DIY ethos over formal agreements. Participants may engage in creative endeavors as a form of selfexpression or community building rather than for commercial gain.
- Community based arts initiatives: mural painting, public art installations, grass-roots cultural events lay involve collective participation and community collaboration without the need for formal agreements.
- ▷ Whereas the absence of written agreements may offer flexibility and spontaneity in creative collaborations, it may also present risks and challenges, such as the ambiguity regarding ownership rights, compensation arrangements, and dispute resolution mechanisms.
- ► In Flanders (**Belgium**), informal contacts with self-employed professionals in the audiovisual subsector reveal that, especially for very short assignments, no written contracts are being concluded.

#### Source: country case studies

At the same time, country case studies also point at the prevalence of various CCS related activities which are taking place more **informally**, as a consequence of inter-personal relationships between the CCW themselves or with their private and professional networks, or as a result of community-based initiatives. The interviews also revealed the existence of some informal economy, the acceptance of cash payments and unregistered performances. This is very often linked with small-scale activities and/or with small private venues. The existence of informal work has also been signalled by EAEA as one of the key challenges especially for gigging musicians and small live performances in small venues.<sup>109</sup>

# 4.3.4 Un(der)paid services and activities

Research and literature on the working conditions in the CCS mention numerous examples of (economic) activities that cultural and creative workers undertake **without receiving any form of payment or financial compensation**. A distinction needs to be made between the type of activities undertaken (creation, performance, technical or administrative, educational, managerial, etc.) and the way the CCW are engaged to make the artwork public and/or to exploit the work they have created (work on commission or at own initiative).

The time that is spent by creatives on the creation itself (composing, writing, development of screenplay for a documentary, sculpting, painting, etc.) is often time that is spent without a direct financial compensation unless it is undertaken on (and is part of) a direct commissioning or assignment by a client or employer, or in the frame of a governmental/public subsidy scheme that considers this time and the related cost eligible. For instance, in

<sup>&</sup>lt;sup>109</sup> Presentation by FIA (EAEA) at the workshop on undeclared work in the cultural and creative sectors, 14-15 May 2024, Brussels.





**Belgium**, representatives of the Flemish organisation of the independent audiovisual producers (VOFTP), consider the unpaid or unfinanced creative development time for audiovisual productions as one of the key structural challenges in the sector, because the development costs are rarely and/or insufficiently covered by the production budgets. The Flemish Audiovisual Fund (VAF) supports the development of screenplays for films and documentaries, but resources are very limited and only a few projects can be supported on an annual basis.

On the other hand, the creatives/authors (e.g., audiovisual producers, broadcasters etc) are entitled to income generated through the economic exploitation of their artworks (based on their neighbouring rights), which is most often paid through the CMO's they are member of. The copyright income schemes for authors were originally set up to compensate, at least in part, for the creative development time authors spend on the creation of their artworks (e.g. the writers, composers, etc) without any other direct remuneration. Creatives can also, in principle, be directly paid by their clients through a transfer of (part of their) economic rights on top of what they obtain through their CMOs for the unalienable rights (which are protected in legislation and cannot be transferred as is for instance the exploitation of the artworks through the cable transmission).

Research findings indicate that CCW in general spend time on various types of activities for which they do not receive a financial compensation. In the live performance subsector such 'unpaid' activities include networking, writing of funding proposals, conceptualising new projects, finalising projects, administration, etc.<sup>110</sup> A similar phenomenon can be discerned in the audiovisual subsector. Musicians often spend substantial time in practicing their professional skills. Film and documentary directors and screenwriters perform services (or 'work') which is not or not entirely remunerated (e.g., development work, screenwriting, pre-production preparation but also peer coaching and even teaching activities).

## Box 16. Examples of unpaid work in some CCS subsectors

- ► 80% of the directors in the audiovisual sector were involved in project development (research, prospecting, concept, etc) during 2016, out of which 34% did not receive remuneration and another 36% were sometimes remunerated. 65% of directors were involved in the preproduction, out of whom 32% were not remunerated, whereas another 29% did not get the full remuneration. Similar figures apply to screenwriters. Only 77% of screenwriters who did write on commissioned work, received full remuneration, while 70% of screenwriters who wrote on their own script or treatment received no or only partial remuneration.
- 53% of audiovisual directors also teach, out of whom only 60% receive a remuneration. Almost half of the directors do event appearances (movie introductions, jury participation, etc.), 59% of whom did not receive a remuneration. Directors are often also engaged in other type of work for which they are not remunerated: e.g. coaching or adaption of work of others, production, technical work, script editing or management. Similar figures apply to the screenwriters (with the exception that they are usually not involved in technical work).
- The country case study for Germany reveals that in the non-public sector of performing arts, i.e. the so-called 'free scene' (1) over 70% of dancers and actors in Germany work partly without pay, especially in the beginning of their careers, when they are expected to perform without pay in order to gain experience and reputation, and (2) in the live performance sector a lot of work performed is unpaid for such as maintaining correspondence and networking, fund acquisition, touring management, accountancy, etc.<sup>111</sup>

 <sup>&</sup>lt;sup>110</sup> See: <u>https://darstellende-kuenste.de/sites/default/files/2023-08/230824\_DP\_Unterm\_Durchschnitt\_0.pdf</u> (Retrieved on 11 April 2024).
 <sup>111</sup> See: <u>https://darstellende-kuenste.de/sites/default/files/2022-11/221117\_DP2\_In\_search\_of\_fair\_systems.pdf, page 51 (Retrieved on 11 April 2024).</u>



- In Latvia, the CCS are not considered as risk industries from the perspective of the Labour Inspectorate. Those who work in the private sector are either self-employed or are paid through copyrights as authors. However, there is some indication of undeclared work in sectors that support the organisation of cultural events such as security, services and technical support.
- In France, the country case study mentions practices in the CCS of organisations that are concluding contracts which do not cover all the tasks that are being performed by the CCS (e.g. it covers only part of the performances) or work contracts that are concluded with artists who are underpaid either by means of a reduction of the number of 'cachets' or by paying the exact working time (leading to a remuneration below the one that is required by the collective agreements that regulate the 'cachet' payment system. See also below.
- In smaller venues or theatres, the following practice is sometimes applied in France in order to reduce the labour costs: only 50% of the performances are paid and workers are remunerated according to the working time (not based on "cachet"), the other performances are done on the basis of a 'volunteer contract'.

#### Source: country case studies and Willekens, M. et al (2018)

Nevertheless, there seems to be a growing awareness on the issue of unpaid work among stakeholders and policy makers in Member States. In Germany, rehearsals and performances are typically considered as part of the remunerated services or artistic work activities in the live performance sector and this is also confirmed by interviews with the EU umbrella organisations. Moreover, artists (e.g., dancers, orchestras, theatre actors, etc) are more and more requiring written contracts and adequate remuneration for their rehearsals and performances.

# Box 17. Examples of policy measures aimed at tackling un(der)paid work in the CCS in Germany, France and Greece

- In its data-report 2023, the German Cultural Council states that clients of self-employed artists need to be made aware about the fact that when relying on the skills of artists, a range of costs need to be covered that are not necessarily immediately visible when booking the service or the performance. Costs, that are self-evident in craftsmanship and arts business such as working space and tools, ancillary costs such as electricity and heating, working clothes, educational material, insurances, and others need to be covered as much as preparatory working days.
- The German federal association for communication design and the organisation of illustrators have also started to highlight these costs when using artistic work.
- The German Ver.di trade union which also represents workers in the CCS is involved in some collective negotiations in the live performance sector and in the setting of minimum fees and honoraria for mainly technical staff. However, at federal level the collective agreements (NV Bühne/TVK) for performing artists, are negotiated by Deutscher Bühnenverein on the employers' side and trade unions Genossenschaft Deutscher Bühnen-Angehöriger (GDBA), Bundesverband Schauspiel (BFFS), Vereinigung duetscher Opern- und Tanzensembles (VdO) and Inisono (musicians union).
- ► In its most recent suggestions for basic honoraria, *Ver.di* aims at addressing the unsatisfactory situation by including preparatory time and operating costs for artistic performance in the calculation of minimum fees or honoraria. *Ver.di* proposes to increase the minimum fee established in the collective agreement





for a live performance (*Tarifvertrag des Öffentlichen Dienstes*, TVÖD) from EUR 300 to EUR 500 covering thereby also the preparatory work and time that is spent by the individuals concerned.<sup>112</sup>

- Since 2016, the French Centre National du Livre ('National Centre of the Literature' 'CNL') has made support for literary events conditional on the remuneration of guest authors. A minimum remuneration is defined by CNL.<sup>113</sup>
- In Greece, specific legislation<sup>114</sup> determines that the participation of actors, dancers, musicians, singers, technicians, and other workers with specialties necessary for conducting rehearsals, who are employed in theatres, music theatres, dance theatres, music and dance productions and in rehearsals before the start of performances is considered to be dependent labour. Employment contracts must be concluded before the rehearsals take place and these contracts must determine the place where the rehearsals will take place, the minimum number of rehearsals that are agreed and the remuneration that will be paid for these rehearsals.<sup>115</sup>

Source: country case studies and workshop, Brussels, 14-15 May.

# 4.3.5 Fraudulent application of existing national regulations

In the previous chapters different practices have been presented which concern the **un(der)declaration of work**, **unreported working hours** and **undeclared income** in the CCS. A typical example of a fraudulent practice that has been mentioned in the country case studies is a situation in which a CCW, while benefiting from unemployment benefits (e.g., Belgium and France) or from sick leave payments (e.g., Germany) works and receives income from work that is not declared. For instance, one of the eleven cases of undeclared work that were detected in the first quarter of 2024 by the 'SIOD/SIRS' in **Belgium** concerned a case of a fraudulent unemployment benefit claim of a person who was earning income from work which was not declared.

Two examples of abuse and fraudulent application of national regulations that are specific to individual Member States are presented below in relation to **France**, a Member State which has a very large national share of CCS in terms of economic value added and size of employment. France has wide experience in the enforcement of national and EU rules and has included the CCS as one of the priority areas in the national fight against undeclared work.

### Box 18. Abuse of the national rules on 'cachets' - France

The French remuneration system of the 'cachets' (fixed-fee remuneration) is prone to fraudulent practices in various ways. There is first of all a **risk of underpayment for artists who are remunerated in 'cachets'**. When they are paid in 'cachets', the applicable collective agreements in the artistic-related sectors provide for a minimum amount. For instance, the collective agreement that applies to the private sector performing arts companies (in its version applicable as of 1 February 2024) is stipulating that a dramatic artist who gives up to 24 performances over a period of 3 months in a theatre not exceeding 200 seats is paid at least 118 'cachets', amounting to an equivalent of EUR 2 000/month (corresponding to the monthly salary applicable when the contract is concluded for a period of at least 2 months or 60 calendar days).

Source: country case study France

<sup>&</sup>lt;sup>112</sup> See: <u>https://kunst-kultur.verdi.de/schwerpunkte/mindeststandards/basishonorare/++co++60ee9926-f93f-11ed-87b2-001a4a160111</u>.

<sup>&</sup>lt;sup>113</sup> See: <u>https://centrenationaldulivre.fr/</u> (Retrieved on 11 April 2024).

<sup>&</sup>lt;sup>114</sup> Article 111, Chapter B of Law 5039/ 2023.

<sup>&</sup>lt;sup>115</sup> Information provided by the Hellenic National Labour Inspectorate at the workshop on undeclared work in the cultural and creative sectors, 14-15 May, Brussels.





#### Box 19. Abuse of the national unemployment benefit scheme for artists - France

The French 'intermittent du spectacle' unemployment benefit scheme grants unemployment benefits to professionals in the performing and audiovisual sectors for up to eight months when they have worked a minimum number of hours in the reference period of 12 months . In 2018 some 127 000 beneficiaries (equally divided between artists and art technicians) claimed the benefit for at least one day. The required number minimum hours differ between the CCS professionals (for actors it is 507 hours). Furthermore, a special remuneration system is existing ('the cachet') in the CCS sector (mainly performance sector), which de facto is a one-off, lump sum payment for one show or performance. The payment of the lump sum is fixed regardless of the hours that have effectively been worked but for the purposes of the unemployment benefit scheme and the reporting on the 'collected' hours of work, one 'cachet' corresponds to 12 isolated hours of work. This in practice means that an actor who has been paid 42 'cachets' or lump sums in the past 12 months (which corresponds to approximately 42 performances in that reference period) is entitled to an unemployment benefit during 8 consecutive months.

Research and available reports, while recognising the importance of the scheme for CCS professionals, point at the **complexity of the schemes and possible cases of abuse and fraud**, such as the overreporting of hours not worked or having worked in other economic sectors with the objective to benefit from the more generous 'intermittent du spectacle' unemployment scheme.

Source: country case study France

# 4.3.6 Professional versus amateur artists

Research reveals that Member States distinguish between the **professional and amateur artists** (CCW). This however does not necessarily mean that the national legislation of Member States contains a clear definition of the two different concepts. Moreover, **there may be a grey zone**, making it difficult to establish whether (and which) labour, social protection and tax law provisions apply in individual situations.

Professional artists are typically defined as those who are engaged in artistic activities on a full-time or on a 'substantial' basis and whose main professional income is derived from artistic activities and works. Amateur artists pursue artistic activities as a hobby rather than as their main source of income. Member States apply different mechanisms to establish the professional status of an artist. The income that is generated by the two categories, in cases where amateurs are allowed to receive payments for their services and/or artworks, is treated differently from the perspectives of national labour, social security and tax legislation. Professional artists are typically subject to income tax which is levied on the income that is generated through their artistic activities, similar to other self-employed. They may also be eligible to tax deductions or incentives. The income is ancillary or below certain ceilings.

The demarcation between professional and amateur artists in Member States is not always clear-cut. The status of amateur artists may pose certain challenges in terms of their access to funding, opportunities and 'professional' recognition of their artworks. The distinction can in certain cases also be ambiguous, which may lead to uncertainties in applying the legal and regulatory frameworks to those who are engaged in artistic activities.

#### Box 20. Amateur artists in France

Since the adoption in 2016 of the law 'à la liberté de la création, à l'architecture et au patrimoine', there has been a legal definition of the 'amateur artist' in the French law, which clearly distinguishes amateurs from professional artists: An amateur artist in the field of artistic creation is any person who practices an artistic activity on a non-professional basis, either alone or as part of a group, and who does not receive any





remuneration for this activity. An amateur artist may be reimbursed for expenses incurred in connection with his or her activity on presentation of supporting documents. The public performance of a work of the mind by an amateur artist or by a group of amateur artists and organised on a non-profit basis, including as part of amateur practice festivals, is not covered by the legal presumption that performing artists are salaried (articles L. 7121-3 and L. 7121-4 of the Labour Code). The public performance of a work of the mind by an amateur artist or by a group of amateur artists falls within a non-profit-making framework, including when it is carried out with recourse to advertising and the use of professional equipment. The non-profit framework does not prohibit the introduction of ticket sales. The revenue allocated to the amateur artist or group of amateur artists is used to finance their activities, including those of a charitable nature, and, where applicable, the costs incurred for the performances concerned.' (Loi 2016-925 of 7 July 2016 relative à la liberté de la création, à l'architecture et au patrimoine, art. 32).

Since the amateur artists are not workers, there is no social security, taxation, or labour law obligations to fulfil.

#### Source: country case study France

Some country case studies refer to existing practices of **engaging amateur artists instead of professionals**. When doing so, the organisations may circumvent the national legislative framework concerning working conditions, social security and taxation, which are applicable to professional artists. The French case study mentions the example of show producers, especially in small places like bars or tiny theatres, who prefer to have recourse to amateurs rather than to professional artists (whom they would have to pay with 'cachets') in order to avoid costs related to social security, taxation or labour law. This practice is experienced as an 'unfair competition' (race to the bottom) by professional artists.

# 4.3.7 Interns, trainees and volunteers in the CCS

Several stakeholders interviewed in the framework of the country case studies confirmed that **internships** in the cultural and creative sectors are very much sought after by youngsters, as it is often a requirement part of the arts education. These internships can take place in a variety of fields including art, design, film, music, literature, theatre, and many other creative disciplines. Interns can work in museums, galleries, production companies, publishing houses, agencies, and other cultural organizations. The tasks can range from administrative tasks to support for creative projects. Whereas there is no hard evidence on the unlawful conclusion of internship contracts in the CCS in Member States, some country case studies refer to its existence. Interns and trainees are sometimes engaged in the CCS with a view to avoid employment and social security costs or as 'cheap' labour in replacement of workers.

### Box 21. Interns in the French CCS

Interns are widely spread in the French entertainment sector. Several websites are dedicated to such offers.<sup>116</sup> In line with the French legislation, internships can only be offered when these are part of an established educational curriculum. However, as is the case in many sectors of activity, probably even more in the attractive entertainment sector where internships may be seen as the way to enter the sector, there is a risk of **bogus internships**. From a legal point of view, an intern could claim before courts the reclassification into employment contract if it is established that, in fact, they worked under the authority of the organiser and provided a service equivalent to that of an employee.

<sup>&</sup>lt;sup>116</sup> For instance: <u>https://www.jobculture.fr/contrats-culture/stage-culture/</u> (Retrieved on 11 April 2024).





Even if rules are set by law to establish the maximum number of interns per company,<sup>117</sup> no study shows that these limits are duly respected.

In order to reclassify a traineeship as an employment contract, judges will refer to a number of indicators, for example: too many trainees in the company (Douai Court of Appeal, 30 September 1988); the absence of a tutor, leading to the presumption that the trainee is an employee because he can work independently (Douai Court of Appeal, 30 September 1988); the trainee works overtime, performs the same tasks as other employees and does not receive any training (Cour de cassation, 6 July 1993, no 91-41540). In practice though, cases brought before courts are rare.

To date, the main debate concerns the **remuneration of interns**. According to French law, a minimum remuneration, which is not a salary (it is called 'gratification') must be granted to interns whose internship lasts at least two months.<sup>118</sup> The amount of the gratification is low (circa EUR 4,00/hour) which encourages employers to 'recruit' interns instead of employees (situation of bogus internship).

Source: country case study France

Research and country case studies furthermore reveal that the CCS in Member States largely depend on **volunteer work** especially in what regards the event organisation (e.g. festivals, etc.) and the operations of various cultural associations of various kind. In **Belgium**, the Tomorrowland festival engages volunteers (mainly through the involvement of cultural associations), job students and flexi-jobbers for various tasks such as the waste collection, stewardships, camping logistical support, etc. Similarly, the Roskilde rock festival in **Denmark** relies on some 30 000 volunteers who are engaged to work for at least 24 hours during the 4-days festival. In **Latvia**, national research indicates that around 10% of the population is involved as 'amateur' artists in choirs, dance groups and amateur theatre while 28% are hobbyists in photography, painting, music and craft.<sup>119</sup> Every 5 years more than 40 000 amateur artists take part in the national Singing and Dancing Festival.

# Box 22. Voluntary work in Germany

In Germany, young people have the option of doing a **voluntary social year** after they leave school. This can be done abroad, in a developing country, in the social sector and also in the CCS. Different organisations are specialized in helping young people finding volunteer work in cultural organisations. Websites below are only examples. The performing arts (theatres/ballet institutions/operas), music institutions, event organisations and museums are all offering volunteering opportunities for a year. By far most places seem to be offered by theatres.

- https://kinderundjugendkultur.info/fsj-kultur/infos/aktuelle-einsatzplaetze/
- https://freiwilligendienste-kultur-bildung.de
- https://www.ein-jahr-freiwillig.de/einsatzfelder/kultur
- https://freiwillig-ja.de/stellenangebote/586800/freiwilligendienst-im-theater-altes-hallenbad
- https://theater-nordhausen.de/freiwilligendienst

#### Source: country case study Germany

Whereas there is no hard evidence on the unlawful engagement of volunteers in the CCS in Member States, some country case studies refer to its existence, especially in the **(large) event organisation** (e.g. festivals, fairs, etc) and at **small venues**. In **France** for instance, there is some indication that contracts are sometimes concluded

<sup>&</sup>lt;sup>117</sup> See: <u>https://www.economie.gouv.fr/entreprises/recruter-accueil-stagiaire-regles-gratification</u> (Retrieved on 11 April 2024).

<sup>&</sup>lt;sup>118</sup> See: <u>https://www.economie.gouv.fr/entreprises/recruter-accueil-stagiaire-regles-gratification</u>.

<sup>&</sup>lt;sup>119</sup> Academy of Culture, Pētījums par kultūrizglītības īstenošanas pēctecību profesionālās ievirzes, profesionālās vidējās izglītības, augstākās izglītības programmās un sagatavoto speciālistu skaita atbilstību kultūras nozares un radošo industriju darba tirgus prasībām (Research on cultural education and the labour market) 2017, available in Latvian at





with volunteers or for voluntary work (sometimes in addition to an employment contract), while these contracts are to be considered as dependent employment. From a legal point of view, the classification as a volunteer activity is often questionable. In French law, there is no specific legal status for volunteers. In practice, many of the volunteers could be seen as workers, as their 'pro bono' activity is, in fact, carried out under the organiser's authority. To determine whether there is an employment contract between the organiser and the 'volunteer', the French social security authorities focus on the factual circumstances and the nature of the relations between the parties, irrespective of the name given by the parties to their relationship. They seek to determine whether the person receives remuneration and provides a service within the framework of a relationship of subordination.<sup>120</sup> The French country case study also makes anecdotal reference to an unlawful practice that sometimes occurs in small venues or theatres in order to reduce the labour costs: only 50% of the performances are paid according to the working time (not based on 'cachet'), while the other performances are done on the basis of a 'volunteer contract'.

Closely connected with the status of volunteers in the CCS are the activities and operations of the **cultural associations** (e.g. brass bands, popular dance groups, etc) and amateur sports clubs, which depend on the active involvement of volunteers for the administrative and supporting tasks. Volunteer work for cultural associations is regulated by national legislation of Member States including by national fiscal rules concerned with the possible earnings or reimbursement of costs for these volunteers or collaborators.

In **Belgium**, volunteers are entitled to a lump sum reimbursement of costs for up to EUR 41,48/day with a maximum annual ceiling of EUR 1 659,29 (2024 figures) while they may also get reimbursement for their transport costs under certain conditions. A specific type of employment contract also exists for workers of cultural associations in Belgium: when work is performed for less than 300 hours/year, no social security charges are levied while the income tax is limited to 10%. The requirement is that the work is performed outside of the regular business hours and/or during weekends.

# 4.3.8 Occasional organisers

Country case studies (e.g. France, Belgium) refer to the **role of the 'occasional employers'**, organisations of varying nature (e.g. cities, local authorities, individuals, associations, etc.), whose main economic/business activity is not the organisation of performances or the production or broadcast of shows, but the organisation of events, exhibitions or screenings of artistic works on an occasional or irregular basis. The latter may concern the exhibition of the artworks or the organisation of a live performance or production in which CCW are engaged.

The country case study of **France** considers the role of occasional organisers as **one of the main challenges of undeclared work in the CCS**, as many of the occasional employers are reportedly ignoring the correct application of the national legislation and regulations in force, most often unintentionally. This may be contributing to illegal employment practices. It also points to the role intermediaries (booking agents, managers, producers, etc) may have in the contractual arrangements and their responsibilities with regard to the correct application of the national legislation.

# 4.3.9 Street musicians (Buskers)

Street performance (music, animation, etc.) is most **often subject to local authority authorisations**. Rules and practices vary considerably across the EU and in Member States. For instance, the city of Brussels (**Belgium**) issued 191 authorisations in the year 2022, while another 40 were granted by the local public underground

<sup>&</sup>lt;sup>120</sup> See for example: <u>https://www.urssaf.fr/portail/home/employeur/employer-du-personnel/le-statut-social-du-salarie/lassujettissement.html</u> (Retrieved on 02 September 2024).





transport services (metro).<sup>121</sup> Applications must be made to the city council and auditions before a jury are compulsory unless the performer has an official diploma in arts. Authorisations are in principle valid for two months but are renewable after application. In the city of Gent (Belgium), some 600 authorisations are being issued per year and they have a validity of 12 months. There are plans to abolish the requirement to have an authorisation for buskers. The local authorities regulate the working conditions for buskers in various ways. For example, in the city of Brussels performances cannot be held on uneven hours while most local authorities will determine at what public places street performances can take place and/or are prohibited.

The income that street musicians and performers earn is in principle subject to national personal income taxation. A different matter is whether it is subject to VAT. The CJEU ruled that, the income of buskers is not subject to applicable VAT rules as they are in principle not requesting to be paid for the 'services' they are providing.<sup>122</sup> The main question is whether and to what extent the income in cash that is earned by street performers is actually declared to the tax authorities and under wat employment and/or fiscal status this is done. Research undertaken by Tilburg university among buskers in the city of Cologne (**Germany**) reveals that street musicians are earning on average between EUR 23 and EUR 27 per hour.<sup>123</sup> Noteworthy in this regard is that these quoted hourly rates are exceeding the minimum hourly gross rates applicable in Germany in several economic sectors during the same reference period: EUR 12,85 (unskilled construction worker) or EUR 18,41 (teaching).

# 4.3.10 Digital platforms, crowdsourcing and collaborative online platforms

The rise of the digital labour platform economy has seriously impacted the CCS and the ways cultural and creative activities are being provided. Online platforms function as intermediaries between the buyers of services (e.g. graphic design, content creation, etc.) and the individual service providers. The actual location from where the work is performed does not play any particular role. The platforms themselves can be based within or outside the EU as is the case for the CCW who are providing the services and the buyers. This triangular relation challenges the traditional concepts applied in (national) taxation, social security, and labour law but also the prevailing EU legislation concerned with the cross-border mobility and provision of services. The services including payments remain largely 'invisible' and are difficult to detect for enforcement agencies.

Online marketplaces on which **artworks** (e.g. paintings, sculptures, crafts work, etc.) are being sold pose new challenges for tax authorities which are in charge of monitoring the financial transactions.

Crowdsourcing and collaborative platforms on the other hand have facilitated the collective endeavours where **individuals contribute with their skills and experiences to create and produce artistic works**. There are crowdfunding and crowdsourcing platforms of various size and modes of operation, which ultimately aim at the realisation of creative and artistic works and services (e.g., production of audiovisual content, etc.). Income is generated from the wider public and this income is used to produce artworks (e.g. audiovisual content), but it is not always clear whether and how this type of revenues is declared by all individuals involved in accordance with the national legislation that is applicable to them. More research on the various types of crowdsourcing and their impact on possible forms of undeclared work is recommended.

Of relevance in this context is the position of '**influencers'** who earn money often through social media by means of promoting brands and products to their audiences and 'followers'. In **Belgium**, three famous influencers were charged by the Belgian fiscal authorities to pay EUR 400 000 in unpaid income tax in May 2023. They had not declared all cash earnings nor the (often expensive) branded products they had received from sponsors. Little

<sup>122</sup> See for example: CJEU case law: <u>https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-521/19&jur=C</u>.

<sup>&</sup>lt;sup>121</sup> 2022 was a year still affected by the Covid-19 pandemic, which has impacted on the number of authorisations granted on an annual basis.

<sup>&</sup>lt;sup>123</sup> Stäbler, S. and Mierisch, K.K., (2021).





research has been conducted on the income streams of individuals who almost exclusively work online and on social media and on the existence of possible forms of undeclared work.

# 4.4 Measures aimed at preventing and tackling undeclared work in the cultural and creative sectors

During the research undertaken under the present study and in particular in the framework of the five country case studies, **some national measures** have been identified which are aiming at the prevention of undeclared work in the CCS in Member States. They are initiated by public authorities and/or by representative bodies and stakeholders.

In France, a national and several **regional prevention agreements** to combat undeclared employment in the audiovisual, film and performing arts professions have been signed between administrative authorities and several professional organisations. Illegal practices are listed in this agreement:

- the use of undeclared employees;
- the incomplete declaration of hours actually worked;
- the misuse of unemployment certificates to defraud social security funds resulting in the payment of social security contributions only, to the exclusion of wages;
- the illegal supply of employees and the illegal subcontracting of labour.

The agreement sets preventive measures, inspections processes and training programmes for entertainment organisers.<sup>124</sup>

In 2016, a **Guide to social obligations** relating to the employment of artists and technicians in the performing and recorded arts sectors<sup>125</sup> has been issued by the Ministry of labour and the Ministry of social security in **France**.

In EU Member States **various registration systems** exist which have relevance for the CCS. Such registration systems aim at collecting data and information on the (professional or amateur) CCW. In **Portugal**, professionals are required to **register as professionals in culture** ('<u>RPAC</u>'), which is a prerequisite to have access to the 'cultural activity suspension allowance', which is a type of unemployment benefit specifically designed for artists. The register is hosted by the Ministry of Culture. Participants from the labour inspectorate stressed the potential of the register for inspection purposes, but that to date this has not yet been explored. In **Greece**, professional CCW can register on the online <u>national register</u> of art and cultural workers, which is hosted by the Ministry of Labour and Social Affairs. The register contains a detailed list of CCS occupations and serves as a good basis of data analysis on the different CCS subsectors and occupations. In **Belgium**, a digital platform\_has been created in support of the new 'amateur arts allowance' mechanism that was introduced at the start of 2024. Buyers of occasional and small artistic services provided by amateurs, or eventually professionals, must register the activity (including its timing and scope) and identify the (amateur) artist(s) who will be engaged in the performance.

In **France**, the 'Guichet Unique du Spectacle Occasionnel' ('GUSO'), created 20 years ago to combat undeclared work in the live entertainment industry, is the **single portal for occasional entertainment**. Initially reserved in 2004 to employers who organise less than six shows a year, GUSO became compulsory for all organisations whose main business activity was not organising shows: associations (43%), private individuals (26%), industrial

<sup>&</sup>lt;sup>124</sup> See: <u>https://www.culture.gouv.fr/Regions/Drac-Occitanie/Actualites/Actualite-a-la-une/Convention-regionale-de-prevention-pour-la-lutte-contre-le-travail-illegal-dans-le-cinema-l-audiovisuel-et-le-spectacle-vivant-en-LR (Retrieved on 02 September 2024).</u>

<sup>&</sup>lt;sup>125</sup> Available on the website of the French Ministry of Culture: <u>https://www.culture.gouv.fr/en/Thematic/Theatre-shows/For-professionals/Regulations-aid-schemes</u> (Retrieved on 02 September 2024).





and commercial companies (15%) and public-sector bodies (11%). 80% of these employers recruit artists - the vast majority of them musicians - and 20% technicians. The GUSO scheme has enabled employers whose main activity is not organising shows to make a single declaration to social security bodies. To recruit and pay non-permanent workers (usually employed under 'CDDU' contracts), an association must register with the GUSO service. The scheme is free of charge and compulsory. It was set up to simplify the formalities involved in hiring, declaring and paying social security contributions for both the association and the employees concerned. In 2018, the scheme recorded just over 645 000 single declarations (+3% on 2017), and almost 80 000 different occasional employers.

In **Spain** a mandatory **authorisation by the Labour Inspectorate** is needed when youngsters below the age of sixteen are engaged in the CCS. Before granting such authorisation, checks are conducted on the health and safety, as well as the professional and human development of the minors involved. Similar authorisation systems for minor exist in other Member States (e.g., BE, PT, etc.)

Finally, in **Belgium**, the **Social Information and Investigation Service** (SIIS) is an example of inter-institutional cooperation aimed at sharing data between labour and social security inspectorates, with the main mission being to tackle social fraud. The SIIS is responsible for (scientific) data analysis and the development of strategic and operational inspection plans. It has access to various databases that are run and maintained by different social security and employment institutions. Through regular and systemic data examination and analysis, including in the CCS, the SIIS gains evidence-based insights into the prevalence of various types of undeclared work and fraudulent practices in the CCS. This analysis enables the performance of risk analysis, which can be used to target inspection actions in specific subsectors and locations and/or concerning specific occupations.

## Box 23. Online Information Toolkit – Belgium (Flanders)

What's right is right is an **online knowledge website**, which aims at **promoting fair work practices in the CCS** by providing a framework of principles and agreements, and tools to facilitate the principles and agreements. The platform is hosted by oKo (*Overleg kunstenorganisaties*, sector and employers association in Flanders and Brussels) and is realised with the input and contribution of trade unions, guilds and other organisations (see <u>Juist is Juist</u>). The site contains a toolbox that CCS organisations and professionals can use, and which consists of wage and fee calculators, model contracts, guidelines, diagrams and manuals.

The site contains downloadable templates of model contracts and agreements (in Dutch and English) that can be used in the CCS:

- Cooperation agreements for the realization of an artistic project
- Model contract for artwork purchase
- Model contract coproduction collaboration
- Model contract coproduction with co-financing
- Model contract Curator
- Model contract exhibition with sales brokerage
- Model contract for a work on commission
- Mode contract for an exhibition
- Model contract performing
- Model contract residency
- Model contract work on loan

Source : country case study Belgium





# 4.5 Undeclared work in a cross-border context

As has already been mentioned (see Chapter 2.4), little research has been conducted on the cross-border mobility of cultural and creative workers in the EU. A vast majority of CCW in the EU remains professionally active in the country of residence and is not particularly mobile. This is obviously due to the connection these CCW have with the 'cultural' environment they are operating in, including because of linguistic factors. The majority of writers, journalists, sculptors, photographers, screenwriters, graphic designers, conservators, and the like are locally active in Member States.

The main exception is the 'live performance industries', a concept that is cross-cutting the typical demarcation of the CCS subsectors and is implying 'stage productions' or 'venue productions' in the subsectors of music (festivals, concerts, etc.) and the performing arts (theatres, etc.). Research has revealed that a specific category of cultural and creative professionals in the live performance sector, are considered as **highly mobile workers** as they frequently move temporarily<sup>126</sup> across the EU for professional reasons, often for very short stays. Highly mobile workers are generally conceived as workers whose place of employment is not a particular Member State but rather 'the EU' given the frequency of their cross-border movements and the short duration of their assignments.<sup>127</sup> Cross-border mobility also exists in the other CCS subsectors but there is no hard evidence of its prevalence nor about its relative importance compared to other economic sectors.

Third-country nationals who are active in the CCS are also moving within the EU in order to deliver professional CCS activities. They may have a legal residence in the EU or may enter the EU specifically for the purposes of their artistic work during a temporary period.

Many different situations of short-term mobility can be thought of: touring music bands, DJs, theatre groups, dancers, comedians, painters, journalists, documentary makers, photographers, stage builders, light technicians, camera and sound technicians, and many more who are travelling abroad to work or provide services for periods of various duration. In such situations several stakeholders are usually involved in the contractual arrangements: the mobile worker, the (touring) company, the venue operator, festival organiser but also intermediaries such as booking agencies and managers. Establishing the correct national social security, labour and fiscal legislation which is applicable to these highly mobile workers in the CCS is hence a challenge.

Cultural and creative workers who are moving within the EU in order to perform CCS activities (services) or exhibit their artworks for temporary periods are subject to the EU rules concerned with the free movement of workers and free provision of services. Other EU legislation may also be triggered such as the EU rules on (1) value-added tax (VAT), (2) mutual recognition of diploma's, (3) entry, stay and residence conditions, (4) social security coordination of workers (including self-employed, (5) contractual relations, <sup>128</sup> and (6) the posting of workers rules within the context of the free provision of services.

The application of the prevailing **EU rules on free movement of workers and/or services** to the cross-border CCS in the EU is particularly challenging given the **prevalence of atypical forms of work and a very high number of self-employed** and of possible cases of misclassification (bogus self-employment) in some CCS subsectors. Genuine self-employed providing services in other Member States than the one where they have been established, fall within the scope of the EU provisions concerning the free movement of services. Workers employed by cultural organisations may be posted to other Member States for temporary periods. The EU posting rules require that the posting company in the sending Member State applies the key working conditions including remuneration that is paid in the hosting country in accordance with its national statutory legislation and the collective agreements that are universally applicable. Most Member States operate **online prior notification** 

<sup>&</sup>lt;sup>126</sup> 'Temporary labour mobility' is to be distinguished from the more traditional concept of 'labour migration'.

<sup>&</sup>lt;sup>127</sup> De Wispelaere F., et. al. (2021).

<sup>&</sup>lt;sup>128</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).





**schemes**<sup>129</sup> by means of which posting companies have to inform and declare to the authorities in the host Member State that they are sending personnel for a temporary period of time to work on its territory. Such a posting presupposes that the sending company has concluded a service contract with a local client (e.g., venue operator, festival organise, etc) in the host Member State. Several Member States operate also prior notification systems for self-employed who are established abroad and are going to provide services on their territory. Such national prior notification systems are often limited to some specific 'risk' sectors (e.g., in **Belgium** the prior notification for self-employed is only mandatory in the construction, cleaning and meat industries). Prior notification systems allow host Member States to monitor incoming flows of mobile workers and the self-employed while the collected data can serve as a basis for risk assessment in the national enforcement strategies and operations.

Under the prevailing EU social security coordination rules, **PD A1 documents are issued** by competent social security institutions in the sending Member States, in situations when workers and/or self-employed are temporarily working in another Member State, proving the social security affiliation with the former. From a social security coordination perspective, CCW can either be posted or working simultaneously in different Member States. Only one single national social security legislation is applicable, which generally is the legislation of the country where the CCW is professionally active.

The fulfilment of these prior notification requirements for the posting of workers and in some (host) Member States also for the self-employed, the application for PD A1 forms and compliance with the prevalent rules on respecting the working conditions including pay of the host Member State (in the case of posted workers) have been reported as very **complex and cumbersome** in studies concerned with cross-border mobility in the CCS.<sup>130</sup> In addition, there seems to be a lack of knowledge on the applicable social and labour legislation among the (most often) micro and small sized organisations and CCW.<sup>131</sup> This may in part be due to the absence of clear information and result in a compliance gap.

Some Member States have **softened the administrative formalities** imposed on incoming posted CCW and their sending organisations. **Austria, Belgium, Denmark, France, and the Netherlands** have granted an exemption from prior notification to artists, but not Germany and Italy which are also important host Member States in the CCS.<sup>132</sup> Touring companies (e.g. theatre or dance groups, stage production companies, etc.) traveling around the EU are consequently confronted with different national administrative approaches regarding these national prior registrations. In addition, CCS organisations which post their workers to other Member States are obliged to comply with the mandatory terms and conditions of work including remuneration of the host Member States. Wages applied in the home basis have to be compared with those of the host Member State and eventually corrected in case of differences when these are in favour of the worker. Applying the EU posting rules in cross-border CCS is considered a critical challenge for the CCS organisations and highly complex. For instance, what is the wage a live performance group employing artists in Belgium is considered to pay to these workers when they are posted for a week to France where they would have been paid under the local 'cachet' mechanism and contracted by a 'CCDU'?

The requirement to have PD A1 forms to prove social security affiliation, even for very short stays is also considered as burdensome, time consuming and costly for the CCS, which is characterised by a high prevalence of SMEs and self-employed. The application itself of the EU coordination regulations on the cross-border mobility in the CCS is also reported to be a challenge especially when it concerns the determination of the applicable national social security legislation in cases of postings or simultaneous work in different Member States in

<sup>&</sup>lt;sup>129</sup> Art. 9(1) of Directive 2014/67.

<sup>&</sup>lt;sup>130</sup> De Wispelaere, F., et.al. (2021).

<sup>131</sup> Ibidem.

<sup>&</sup>lt;sup>132</sup> Ibidem.





combination with establishing the employment status for individuals who are often engaged under atypical employment contracts (in different Member States) or under a combination thereof.

In addition to the application of the applicable labour and social security legislation, the cross-border provision of services by CC organisations is also affected by **possible double taxation**, as many Member States in which cultural services are provided by companies established in other Member States apply a **withholding tax** imposed on the fees that are paid by the local organiser or venue operator to the foreign company. The latter is hence often taxed on income in the host Member state and in the country of establishment. Additional complexities are also reported in relation to the **reversed-charge VAT procedures** applicable in the EU.

Of a particular nature is the cross-border mobility of **third country nationals** who are active in the CCS. The French country case study makes particular reference to the trafficking of foreign artists and/or technical or supporting staff, where the employer brings in third country nationals (from outside the European Union) without the prior agreement of the local employment agency and employs them without a work permit issued by the French authorities. Some cases have been brought before French courts.<sup>133</sup> Similar cases have also been reported in other Member States such as in **Belgium** where the labour inspection services discovered eleven illegal workers with Brazilian nationality while they were building the stage for a local dance festival. The workers concerned did not have the necessary residence and work permits and were obliged to sleep on the festival grounds. They were employed by a company established in Portugal which was subcontracted by a Belgian company which in turn was subcontracted by the principal company that was entrusted with the stage building contract.

## Box 24. Advice and information initiatives in the cross-border CCS

- The country case study for France and the interview with the EU umbrella organization in the live performance sector pointed at the important role that venue operators and event organisers have in informing CC artists and technicians who are coming from other Member States on the need to have a PDA1 form issued by the competent authority in the sending Member State and on the applicable French labour legislation and collective agreements in the sector. Public authorities<sup>134</sup> and private consulting businesses<sup>135</sup> provide information about the process of posting and recruitment of foreign artists. Infringement of immigration rules are particularly underlined.
- In Germany, the Touring Artist website was created in a joint effort by the International Theatre Institute, the International Society of Fine Arts, and the umbrella association of Dance Germany and financially supported by the federal State Secretary for Culture and Media. The website was launched to provide advice on contracts, taxes, security systems and more to internationally active artists and creative professionals who intend to perform services in Germany. They have also produced guidelines for the cooperation between artists and organisations.

 <sup>&</sup>lt;sup>133</sup> See for instance: <u>https://www.herveguichaoua.fr/jurisprudence-1259/spectacles-evenementiel/employeur-producteur/article/employeur-artiste-etranger-sans-titre-de-travail (Retrieved on 02 September 2024).</u>
 <sup>134</sup> See for instance: <u>https://www.cnd.fr/fr/file/file/1994/inline/Mobilites%20internationales%203%20-%20avant-apres%20le%20Brexit.pdf</u>

<sup>&</sup>lt;sup>134</sup> See for instance: <u>https://www.cnd.fr/fr/file/file/1994/inline/Mobilites%20internationales%203%20-%20avant-apres%20le%20Brexit.pdf</u> (Retrieved on 02 September 2024).

<sup>&</sup>lt;sup>135</sup> See for instance: <u>https://comcom.fr/content/uploads/fiches-expert/02\_Detachement-artistes-etranger-en-France-obligations\_fev2016.pdf</u> (Retrieved on 02 September 2024).



# **5.0 Conclusions**

This pilot study on employment characteristics and undeclared work in the CCS found that comparative data and research in Member States are scarce. Insights from country case studies, semi-structured interviews with stakeholders and the workshop<sup>136</sup> provided valuable insights and confirmed the main findings obtained from the desk research.

Despite the limited availability of sources and data, the findings presented in this study are to be taken with caution and larger-scale additional research is needed. The following points summarise these findings and provide an overview of the current understanding and insights gained from the available research:

- Concepts and definitions on the cultural and creative industries and on 'artists' differ among Member States. Moreover, there are substantial gaps in terms of the mutual recognition of qualifications and education by Member States while most CCS professions are not part of the Regulated Professions Database of the European Commission;
- The CCS is characterised by project-based financing, fragmented value chains, high levels of selfemployment and non-standard forms of work, precarious working conditions and low collective representation. There is significant diversity between the different subsectors (e.g., literature, music, visual arts, performing arts, AV and cultural heritage);
- So far, undeclared work in the CCS has not been a priority for national enforcement authorities in Member States, which have focused their resources on other economic sectors assumed to be more at risk of undeclared work;
- Data collection and analysis on undeclared work in the CCS remain very limited. This is particularly the case for the cross-border provision of services and mobility of CCW;
- The available data on undeclared work in the CCS obtained by national enforcement authorities demonstrate that despite the relatively low case load, there is evidence of significant levels of undeclared work in the CCS;
- ► The **types of undeclared work** detected by enforcement authorities are very specific to the different subsectors and to the occupational categories;
- Various types of undeclared work, mis-classification of work and related violations in the CCS have been identified in the frame of the present study: bogus self-employment, partially undeclared and underdeclared work, underpaid or unpaid work, cash payments, fraudulent social and unemployment benefit claims in combination with income from work, unlawful engagement of amateurs instead of professionals, reliance on interns and trainees when work has to be performed by professionals and illegal employment of third country nationals;
- Occasional employment, the informal economy and all types of CCS activities performed online and/or through digital platforms (digital labour platforms, online marketplaces for artwork sales, crowdfunding and crowdsourcing platforms, etc) are areas that require specific attention and research with a view to a more effective policy addressing undeclared work in the CCS.

<sup>&</sup>lt;sup>136</sup> The workshop on undeclared work in the CCS was held in Brussels on 14-15 May 2024.



- Enforcement authorities are not always sufficiently acquainted with the specificities and characteristics of the CCS, including the various payment modalities that are being applied (e.g. copyright payments, commissions, income from artwork sales, etc.);
- Clear regulatory frameworks, joint strategic inspection planning, various registration and authorisation mechanisms, and information provision by public authorities and stakeholders from the CCS were identified as key policy measures leading to a more effective fight against undeclared work in the CCS;
- Undeclared work in the CCS in cross-border settings is an area that remains largely unexplored by targeted data collection and comparative research. Only a moderate part of CCW is highly mobile, especially in the live performance subsector (e.g., music, performing arts, AV), while the majority of CCW cross borders only occasionally. The different national prior notification systems for posted workers, the mandatory PD A1 forms, double taxation risks, and the complex national (labour, social security and taxation) rules (and related administrative burden) are mentioned as the most important challenges by social partners. National enforcement authorities have very limited experience with cross-border cooperation and information exchanges in the cross-border CCS but confirm that undeclared work exists (e.g. third-country nationals engaged for the stage constructions) but that more research and mutual learning is required.

Based on the findings of this study, several **suggestions arise for improving the effectiveness of addressing and preventing undeclared work in the CCS sector**. Some of the proposed potential actions are related to:

- Facilitating and promoting information exchange and dialogue between national enforcement authorities on the concepts and definitions in the CCS, and on the list of occupations in the CCS;
- Promoting the collection of additional and comparative data from Member States on CCS in Member States, on the types of undeclared work in the different cultural and creative subsectors and on cross-border mobility and the provision of cultural and creative services;
- Conducting research and analysis on undeclared work in the CCS with specific attention to the six subsectors and other subsectors which were not under the scope of this study (e.g. video gaming, sports, new emerging subsectors).
- Including in the scope of the research the less visible forms of undeclared work (e.g. cultural activities organised by occasional employers, various digital platforms facilitating CCS activities and the sales of artwork, etc);
- Collecting information on good practices from national enforcement authorities in detecting, preventing and addressing undeclared work in the CCS;
- Collecting information on good practices from social partners and stakeholders in the CCS in the prevention of undeclared work in the different subsectors in Member States and in cross-border settings;
- Exploring cross-border information provision and cooperation between national enforcement authorities.





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