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

EAEA
EUROPEAN ARTS AND ENTERTAINMENT ALLIANCE

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INTRODUCTION

1. General introduction

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

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

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

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

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

The authors of this study would like to thank the ETUC and especially MM. Jean Lapeyre and Michel Mortelette whose interventions made it possible to undertake this study.

2. Main aspects revealed by the study

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

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

By social protection, we refer to norms relating to:
. social security (sickness insurance, maternity, disability, etc.);
. protection covering accidents at the place of work;
. unemployment insurance;
. pension schemes.

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

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

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

2.2. The need to take care with terminology used.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.9. Beyond the question of "status", and therefore of the legal framework of employment, there is frequently lack of written agreement.

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

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

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

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

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

2.11. Payment of remuneration is generally poorly protected.

There is great disparity in protection of remuneration.

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

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

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

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

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

2.13. Unemployment

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

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

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

2.14. Taxation

Taxation can play an important role in the cultural sector by supporting measures like total exemption of income tax for performers and authors in Ireland (!), reduced level of VAT on income from performances in France, or above all by measures for adapting overall rules to meet specific requirements in the cultural sector, such as:
. smoothing income tax over 3 or 5 years;
. deduction of all expenses connected with an artistic profession, including travelling expenses, stage clothing, places for rehearsal, professional insurance, musical instruments, and any material required to perform or prepare a show or a film etc.

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

3. Overall conclusion

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

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

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

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

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

PROFILE PER COUNTRY

AUSTRIA

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The general legal framework

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The legal framework specific to worker in the entertainment industry

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AUSTRIA

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PRESENTATION

The general legal framework

Workers can be paid according to one of the following three types of professional status: "employee",
"self-employed" or "civil servant". It is important to distinguish these three different types of individual contract which determine the worker's status.

1- STATUS

An employee works with a permanent service contract (Dienstvertrag) which is classified as a contract of employment. An employee can work under a contract of indeterminate duration or a fixed-term contract. Self-employed workers can work under a service contract (freier Dienstvertrag) which classifies them as a quasi-employee (arbeitnehmerähnliche Person) or under an order contract (Werkvertrag) which classifies them as self-employed. The main criterion used to distinguish between contracts is the degree of dependency. The law on the general social security system stipulates that employees are economically and personally dependent on their employer while quasi-employees are only dependent economically. Economic dependence translates the fact that the worker depends on the employer's production factors (office, equipment, etc.). Certain social rights are granted to such workers. However, they are not protected by labour law provisions. Workers who are employed under an order contract are classified as new self-employed (Neue Selbständige). They are considered as neither personally nor economically dependent. A worker who has several successive order contracts with the same contracting party may contest the grounds for the contract being renewed on the basis of an order contract, but the renewal in itself does not justify the contract being transformed into a service contract.

Workers who have permanent contracts of employment or fixed-term contracts of employment of at least one month and workers having several service contracts and a monthly wage of less than 278.34 EUR are classified as has being in "minimum employment".

It is important to note that collective agreements only apply to employees. Contracts of employment must respect the collective agreements in force, even if the employee is not a trade union member. It is possible to apply a company level collective agreement which concerns only one specific company. The categories of workers who can be employed at the same time as employees, quasi-employee or self-employed workers cannot benefit from the protection provided by the agreements and labour laws. In the entertainment and audio-visual sectors, there has been an increase in the number of order contracts which replace contracts of employment. In the theatre, daily order contracts are often used, especially for creative

workers. In addition, the members of self-employed theatre groups often form companies or non-profit associations.

2- INDIVIDUAL CONTRACTS

2-1 The contract

In Austria, there is no specific form laid down for contracts of employment. They can be written, verbal or tacit. Nonetheless, the form of the contract is covered by labour relation regulations (laws and collective agreements) in the entertainment and audio-visual sectors. The law on contracts of employment in the theatre (Bundesgesetz über den Bühnendienstvertrag), for example, stipulates that contracts of employment concerning artistic services do not have to be obligatory written but that an employee can request such. The collective agreement in force provides for all employees to be given written contracts.

In principle, the content of a contract is freely negotiable. However, the agreements applied in the entertainment and audio-visual sectors stipulate that certain elements must be fixed in the contract or stipulate the use of a standard contract. It is interesting to note that certain agreements contain a decision by both parties to the contract to submit any dispute to the Court of Arbitration set up by the social partners.

Although neither party to the contract may amend its terms and conditions, an employer's management prerogatives allow it to change the working conditions to the extent allowed by the nature of the working conditions, the contract of employment and the relevant collective agreements.

Fixed-term contracts are regulated by the general labour law. They are not subject to special conditions and there is a no maximum duration for fixed-term contracts. In the entertainment and audio-visual sectors, fixed-term contracts of employment are used for fairly short periods. Nevertheless, there must be objective reasons to justify the use of successive fixed-term contracts. However, this restriction does not apply to contracts of employment in theatres. The law on contracts of employment in theatres stipulates that a tour contract (Gastspielvertrag) applies if the worker does not participate in more than five performances. This contract is classified as a contract of employment. A collective agreement stipulates the specific terms and conditions of the engagement.

In principle, the deadlines fixed in an order contract must be respected. If one party is responsible for the non-performance of the contract, the other party may claim damages. The law on copyright in respect of literary and artistic works and related rights does not limit the transfer of rights

In cases where the contract is subject to the general social security scheme, all new employees must be declared to the relevant social security office.
In Austria, there are no specific cases when a contract must be registered by the contracting party with the public authorities.

2-2 The breach of contract

In the case of a permanent contract of employment, any dismissal must be justified. However, the dismissal can be contested when it results in a serious prejudice for the worker and when the employer cannot justify the dismissal on grounds related to the worker's behaviour or for

professional reasons. In principle, members of works councils can only be dismissed with the industrial tribunal's approval.
In the case of unfair dismissal, the employer can be condemned to pay compensation; the amount of compensation is determined by an industrial tribunal. In addition to possible compensation, the employer must also pay any wages due to the employee during his period of work.

2-3 The plurality of parties"
In general, there are no restrictions on workers having a second professional activity, unless there is an agreement to the contrary. A worker must not, however, take part or co-operate in any activity construed as unfair competition during his or her work relation.

2-4 The exclusive rights
In general, there is no obligation to grant exclusive rights under a contract. In practise, however, contracts covering literary works and screenplays and the recording of performances often include exclusive rights. As a rule, artists (creators and performers) are forced to accept "buy out" contracts.

2-5 The intellectual property rights protection
The law on copyright and related rights does not specify the situation regarding authors having a contract of employment. It is important to note that most authors are employed on the basis of order contracts.
The categories of workers protected by intellectual property rights are as follows: composers, directors, scriptwriters, playwrights, translators, decorators, costumers and performers (musicians, actors, dancers, singers, etc.).

2-6 The transfer of the contract in favour of a third party
In principle, contracts can be transferred provided that their terms and conditions are respected. Order contracts generally stipulate that the contracting party is authorised to transfer the rights acquired to a third party.

2-7 *The conditions subject to which a worker is eligible for retirement*
It is obligatory for all employees, quasi-employees and self-employed workers to belong to the social security scheme which includes a pension plan. The normal old-age pension is paid with effect from the insured person's 65th birthday (women : 60th birthday) and supposes that the insured person has contributed to the pension plan for at least 15 years (180 months). However, a worker can retire from the age of 61.5 (women: 56.6 ½) if he or she has contributed for at least 35 years and has ceased all professional activity.

2-8 *Compatibility with the different statuses*
In Austria it is possible to combine several statuses.

3- COLLECTIVE AGREEMENTS

Collective agreements are binding even if the worker does not belong to a trade union. Company level contracts and individual contracts may not vary the conditions of a relevant collective agreement branch unless the change represents an improvement to working conditions. It is important to note that only employees are protected by collective agreements

4- REMUNERATION

There is no minimum legal wage in Austria. However, most workers are covered by collective agreements which fix minimum wages. For workers who are not covered by a collective agreement, substitute formulas such as the minimum wage rate, apprenticeship status or allowances have been introduced. In the entertainment sector, self-employed theatre groups are not paid for rehearsals. In the audio-visual sector, debutants are often employed on a voluntary basis, which means in reality unpaid work.
The "amateur" concept does not play a major role in abuses as regards the payment of the minimum wage in the performing arts and audio-visual sectors.

The law on overtime provides for overtime pay. Overtime pay or time off in lieu are often provided for in collective agreements and can increase even further the maximum amount of working hours. In the entertainment and audio-visual sectors, all the collective agreements provide for overtime pay. The overtime rate is the normal hourly rate plus 50% (rate fixed by law). Certain collective agreements provide for even higher overtime rates. It is also possible to pay lump-sum overtime payments. Likewise, it is possible for workers to be given time off in lieu.

The law on employees (Angestelltengesetz) stipulates that payment must be made in equal parts on the 15th and last calendar day of the month. In practice, collective agreements stipulate that payment should be made on the last calendar day of the month in which the services were provided. Self-employed workers must ensure that their service contract or order contract covers the terms of payment.

In the event of bankruptcy, the employee can claim compensation. Nevertheless, the company can contest the payment of compensation on the grounds of its economic situation. There is no State wage guarantee system. However, collective agreements and company level agreements provide for the payment of compensation in the event of bankruptcy.

5 – WORKING CONDITIONS

5-1. The general system
Labour law fixing minimum working conditions is a compilation of isolated laws and applies only to employees. The collective agreements in force in the entertainment and audio-visual sectors improve the minimum standards fixed by the law or, in specific cases, provide for a dispensation if such is justified by the nature of the work. It is important to note that most labour law provisions and collective agreements cover only employees. Quasi-employees and self-employed workers are protected neither by the law nor by collective agreements.

The normal working week as defined in the law on working time is 40 hours. It is possible to agree a longer working day on condition that the average working time over a given period is not exceeded. The working day may not exceed 9 hours unless the collective agreement authorises an extension to 10 hours. Weekly rest is regulated by the law on the rest periods of workers, which stipulates that workers are entitled to an uninterrupted rest period of 36 hours which must include Sundays and start in general no later than 13h00 on Saturday. However, a series of dispensations applies to specific activities and certain categories of workers, notably in the entertainment and audio-visual sectors.

As regards health and safety at work, the law imposes certain obligations on employers who are obliged to ensure the safety and health protection of their workers with regard to all aspects of their work. Self-employed workers do not benefit from specialised medical supervision covering specific occupational risks. Self-employed workers can obtain useful information from different organisations concerning the prevention of health and safety risks in connection with their professional activities.

5-2. The regulations on paid holiday leave

All employees (employees with a fixed-term contract, a contract of indeterminate duration, part-time employees, etc.) are entitled to paid holiday leave. Self-employed workers are not entitled to paid holiday leave. Workers employed with a contract of indeterminate duration have at least five weeks annual paid holiday leave. Collective agreements contain even more favourable provisions for the different categories of employees.

5-3 The allowances in the case of accidents at work

Employees, quasi-employees and self-employed workers have compulsory insurance against accidents at work for everyone. As a rule, they receive sick pay with effect from the first day of their absence from work. As regards, fixed-term contracts of employment in the entertainment and audio-visual sectors, it is important to note that the collective agreements provide for wages to continue to be paid at least up to the end of the contract.

5-4 The role of the labour inspectorate

Austria has a system of specialised labour inspectors. The inspector's role is limited to ensuring the application of hygiene and safety rules. From the point of view of health and safety, the local authorities responsible for industry, trade and craft-industries control the working conditions of self-employed workers. These bodies can institute criminal or administrative proceedings and can impose sanctions.

6- SOCIAL PROTECTION

All employees, quasi-employees and, since 1 January 2001, self-employed workers, must belong to the general social security scheme, which provides pension and health insurance cover. Only employees can benefit from unemployment insurance. There are two different schemes for employees and quasi-employees, on the one hand, who belong to the general social scheme (ASVG) and self-employed workers, on the other hand, who belong to the special insurance scheme for entrepreneurs (GSVG).

The conditions for the different types of professional status vary as regards the contributions and services. Nevertheless, for all schemes, workers must have a minimum level of earnings in order to be eligible for protection. That can cause problems for workers in the entertainment and audio-visual sectors who do not have a permanent contract of employment. Nevertheless, in order to be insured when their earnings are below the necessary minimum, employees and quasi-employees can pay separate contributions themselves (the rates are 13.65 % for employees and 13.5% for quasi-employees). Likewise, an employer who employs employees and quasi-employees on a "minimum employment" basis with a wage higher than 418 EUR must pay contributions, even if the employee is not insured. In order to distinguish the quality of protection, it is important to note that employees are entitled to services (doctors, consultations etc.) and benefits, while quasi-employees are only eligible for services.

Self-employed workers are only eligible for social insurance cover when they have an annual income, estimated in advance, of 6395.21 EUR and they must pay a contribution of 77.91 EUR for insurance against accidents at work. Health insurance and pension plan contributions (24.9%) are paid directly by the contracting party. A self-employed worker who has another dependent job at the same time must earn 3554.57 EUR in order to benefit from insurance cover. In that case, the worker is covered simultaneously by both insurance schemes, ASVG et GSVG. This regulation has consequences for all workers in the entertainment and audio-visual sectors, especially performers who do not have a permanent contract of employment and who are often forced to conclude order contracts. A worker earning more than 6395.21 is classified as self-employed and is no longer covered against unemployment, even if he or she has contributed from time to time to the unemployment insurance scheme (during work under a contract of employment).

All employees, quasi-employees and self-employed workers must belong to the social insurance scheme which covers old-age pensions, disablement pensions, widow's pensions and orphan's pensions. The normal old-age pension is paid from the 65th birthday (women: 60th birthday) and supposes a minimum period of contributions of 15 years (180 months). However, a worker can retire from the age of 61 ½ (women: 56. 6) if he or she has contributed for at least 35 years and has ceased all working activities.

Since 1 January 2001, it has been obligatory for artists (creators and performers) to belong to an old-age pension plan (for the conditions see 4.1.). Likewise, a social fund has been established (Künstlersozialversicherungsfond) which provides artists with financial aid of 72.67 EUR a month towards the cost of their pension plan. Artists can obtain (upon request) this financial aid if they have annual earnings of less than 19 621.67 EUR. It is important to note that the original government bill which was intended to create a pension plan for artists (similar to the scheme which exists in Germany for example), had been criticised on several sides. The present fund represents a compromise which does not settle the question of the unemployment of self-employed artists.

Only employees are covered by the unemployment insurance scheme. Quasi-employees and self-employed workers are not covered. The contribution is 10.25 % of the employee's wages (the employer: 12.55%). To be eligible for unemployment benefits, an employee must have worked with contract of employment for at least 52 weeks during the 24 months preceding the claim for unemployment benefits. Workers who are not permanent employees, but who are classified as being in "minimum employment" can claim unemployment benefits if they have been unemployed for at least one month between the last and next period of "minimum employment" and if their wages have increased by 278.34 EUR.

7- TAXATION

Employees and quasi-employees are subject only to direct taxes and can make few deductions from their taxable income. Self-employed workers working under an order contract must in addition make a VAT declaration if their annual earnings exceed 21801.85 EUR. Artists benefit from a reduced rate of 10%. However, artists are often confronted with inconsistent decisions concerning the professional expenses which they can deduct. Nevertheless, a law has recently been enacted with a view to improving their situation. They can now estimate their taxes on the basis of their average earnings over the last three years. Previously, the reference period was the previous year. That created difficulties for artists whose earnings

fluctuate considerably; they sometimes had to pay high taxes for a year during which their earnings were very low.

BELGIUM

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6- TAXATION

BELGIUM

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PRESENTATION

The general legal framework

Employees can be remunerated in any one of three professional categories: « employee », « self-employed » or « civil servant ». However, the self-employed may cumulate the status of author with that of « employee ». Employees may be hired on the basis of general employment contracts (for indefinite or set durations, part-time employment contracts) or specific, well-defined employment contracts. Self-employed workers are hired on the basis of service agreements or « on invoice ».

1- INDIVIDUAL CONTRACT

1.1 The contract

Employment contracts do not require any particular form and may be in writing or purely oral. However, the written form is necessary for contracts covering part-time and fixed-term employment as well as for contracts covering a specific, well-defined task. Oral contracts qualify as being for indefinite durations.

The Social Security Act put into the same category entertainers and employees.. Royal Decree of 28 November 1969 extends employee social security to entertainment industry artists such as actors, opera singers, dancers, variety show performers, musicians, orchestra directors, ballet teachers etc.. The music collective agreement states that specific employment contracts can be used for works of creative authors. Under the labour code, directors are classified as employees. In practice, one must distinguish between television and the cinema. Television stations frequently employ directors under indefinite employment contracts.

As a rule, contract content is free. Part-time employment contracts must mention the part-time system and the agreed working schedule. Employment contracts for replacements must specify the reason, the identity of the employee(s) replaced and the terms and conditions of the replacement job.

Contracts are negotiable in the context of the law on employment contracts which affords employees a certain protection as regards duration, suspension or termination of individual contracts. Moreover, collective agreements serve as a standard contract since they determine which individual contracts are permissible and regulate normal and maximum working hours, the reasons of the job interruptions, free days, minimum wages and recovery and compensation for over-time.

Employers may not modify the terms of an employment agreement without the employee's consent. Similarly, terms and conditions that are based on legal provisions or collective agreements which are binding as regards employment contracts cannot be unilaterally modify.

The parties are not required to file a declaration of employment with the authorities in advance. However, (non EU) nationals and students must be declared to the labour office in charge of the work permit once they are hired.
In Belgium, there are no specific cases requiring the filing of employment contracts with a public register.

In Belgium, contracts for a definite duration are usually converted into contracts for an indefinite duration if they continue beyond their expiry date. Contracts with a definite duration are renewable. However, no more than four contracts of definite duration may be concluded in succession, each for no less than three months and with an overall duration not exceeding two years.
As regards copyrights and neighbouring rights, Belgian law requires that the duration of assignment be specifically established for each different type of use. However, there is no set limit. In practice, that means that rights may be assigned throughout the period during which a work is protected.

1-2 The breach of contract
Employers are not subject to any legal obligation in this respect. A contract can be terminated by the will of one of the contracting parties in the case of fixed-term contracts or where there is a serious ground for termination. Employee representatives (members of works' committees or safety and health committees), can only be dismissed on economic or technical grounds which are recognised as such by the competent equal representation commission.
The extraordinary compensation due to employees is equal to six months' pay.
The court may order an employer to re-employ an employee. In practice, re-employment is unlikely since in most cases it can be assumed that the relationship of trust between employer and employee has been broken.

1-3 The plurality of contracts
Generally speaking, unless otherwise specifically agreed, there are no restrictions preventing employees from exercising a second professional activity. However, an employee may not during the term of his employment engage in or cooperate with any form of unfair competition. The national « music » and « podiumkunsten » collective agreements, as they are known, cover live entertainment and apply to composer-performers as well as technicians (and directors in the case of the « podiumkunsten » agreement). Under these agreements, employees who are bound by an employment agreement are required to obtain the written consent of their employer before accepting to engage in any employed activity for third-parties that is incompatible with the agreed working schedule.

1-4 The exclusive rights
Composer-performers are often employed by television broadcasters in various capacities (singer, host, etc). In practice, such employment is based on an exclusive contract. Regarding audio-visual production contracts, it must be observed that, unless otherwise specified, the assignment of copyrights to the audio-visual producer is on an exclusive basis. Another form of exclusivity concerns scriptwriters who sell exclusive rights to an idea to a producer for a limited period of between 6 months and 2 years. Authors do not assign their rights before production begins. However, the rights to audio-visual works remain with the producer even if the work is not exploited while during of the contract.
The law on copyrights and neighbouring rights limits exclusivity in the sense that the scope and duration of assignment as well as the royalties must be expressly established for each type of use. Moreover, the assignment of rights to forms of use that are as yet unknown is not

valid. A television channel has adopted a regulation stipulating that ideas and concepts cannot be protected.

1- 5 The intellectual property rights protection

As regards audio-visual works, the director qualifies as main author and the natural persons who participated as authors. Scriptwriters and the authors of adaptations, writers of texts and graphic authors of cartoons or animated sequences constituting a significant part of such works and the authors of music, with or without lyrics, specially composed for the work are assumed to be co-authors of a group work, save evidence to the contrary.

As regards neighbouring rights, the protected eligible party are classified under the designations « author-performer » or « performer». Variety show artists and circus artists also qualify as « author-performers » or « performers ». The law precludes individuals considered by the profession as « *artistes de complément* » from such protection.
Where in the context of an employment agreement or status, a work is created by an author, or an author-performer provides services, property rights may be assigned to the employer provided that such assignment is expressly contemplated and that the work was created within the scope of the agreement or status. In practice, it is generally accepted that radio-broadcasting employees assign all property rights, even in forms still unknown, to their employer.

1-6 The transfer of the contract by the « contracting party » to a third party

Contracts are transferable in accordance with their terms.

1-7 The conditions subject to which a worker is eligible to retire

To subscribe to an employee pension plan, an individual must have worked 185 days per year (at least four hours per day) or at least 1480 hours per year (not work days !). Since 1 January 1991, salaried employees can draw retirement benefits when they reach 60. However, 65 is the general rule. The self-employed subscribe to a different pension fund. It must be observed, that retired authors-performers are entitled to cumulate their pension with income from their creative work.

1-8 The compatibility with different statuses

In Belgium, statuses may be cumulated. However, employees must indicate their primary contractual status. Where annual income from self-employed activities exceeds EUR 6197,34, self-employment is automatically considered the primary status.

2- COLLECTIVE AGREEMENTS

Collective bargaining agreements concluded in the context of an equal representation body can be declared generally applicable at the request of that body or of one of its participant organisations. Collective agreements with generally applicable status are binding on all employers and employees in the ambit of the equal representation body, provided that they are covered by the agreement. As regards live entertainment, the « music » agreement is generally applicable in Belgium but it applies to subsidised institutions only.

3- REMUNERATION

Working for free is not prohibited. Participants state that there is generally not much abuse in this field.
The current minimum wage was set by the industry-wide collective agreement concluded at the National Labour Conference on 2 May 1988. Minimum wages can be, and are, improved by sector or regional collective agreements concluded within the various equal representation bodies. The music and *podiumskunsten* collective agreements as well as the agreements and regulations applicable in public broadcasting establish minimum wages for each category of employee and level of seniority. Regarding live entertainment, seniority does not apply in the French-speaking community. Nevertheless, there are certain standards in practice: the association of audio-visual scriptwriters, for example, indicates that the price for a television film script ranges between EUR 25 000 and 28 000.
The notion of « amateur » does not play a significant role in minimum wage abuses in the entertainment and audio-visual industry.

Overtime is paid at a rate that must not be lower than 150% or 200% for Sundays and/or legal holidays. The law allows collective bargaining agreements to lay down rules for converting overtime pay into time off. In practice, the *podiumskunsten* agreement, for example, introduces a flexibility clause: if the time worked over one year overtakes an average of 38 hours per week, the employee is entitled to a compensation of 150% which is converted into additional leave. As of the 10th hour of work in one day, employees may be given 50% compensation by way of extra pay or leave. In practice, in film and television production, overtime is sometimes not compensated at all.

In practice, collective agreements provide that wages are to be paid by a certain calendar or business day following the last business day of each month worked or in which services were provided.

Commercial undertakings established in the Flemish community subscribe to a wage guarantee fund. Non profit organisations do not participate in that fund so a number of institutions in the arts sector are unable to offer such guarantees. This fund does not exist in the French-speaking part of the country.

4- WORKING CONDITIONS

4-1 The general system
The law safeguards employees as regards time worked (per day and per week), work at night and on Sundays, and safety and health at the workplace. The maximum working time is set at 9 hours per day and 45 hours per week; under generally binding collective agreements, weekly averages may be set allowing a maximum variance of 2 hours per day or 5 hours per week. Exceptions may be allowed when the nature of the work concerned so requires. Collective agreements in the audio-visual and entertainment sector regulate working hours, time worked per day and per week, compulsory rest periods etc. However, in both the audio-visual and the live entertainment sectors, a 12-hour working day is easily attained. Several trade unions observe that safety and health at the workplace must be improved.

The self-employed are covered neither by law, nor by collective agreements applicable in the entertainment and audio-visual sectors. Nevertheless, they have the benefit of specialised medical supervision tailored to their professional risks.

4-2 The regulation on paid holiday leave

All employees are entitled to paid leave (definite or indefinite duration, part-time, etc.) The self-employed have no protection. As regards indefinite term contracts, employees are entitled to at least 24 days' paid leave per year. Collective agreements set even more favourable rules for the different categories of employees.

4-3 The vocational training

In practice, employers in the audio-visual and entertainment sector offer their employees very little by way of vocational training. Nevertheless, the social fund of the Flemish community provides theatrical technicians with support for training. Self-employed workers have access to educational bodies which are particularly competent in the field of industrial safety and health.

4-4 The *compensation for industrial accidents*

Employees are protected by law and, as a general rule, compensation is paid by the employer from the first day of absence. Fixed term contracts are suspended during the employee's absence. The self-employed enjoy no protection.

4-5.The role of the Labour Inspectorate

Labour inspectors exercise a considerable influence on social relations. They play a particularly important role in safety and health conditions, the elabouration of employment agreements and social security contributions. As regards safety and health, the factory inspectorate checks the working conditions of self-employed workers.

5- SOCIAL PROTECTION

The social security system is based on professional criteria: depending on whether a person is a wage-earning employee, a self-employed worker or a civil servant employed by the State or by local communities, the financing terms and conditions for the payment of benefits will vary.

The general regime is financed by a system of basic contributions supplemented by special contributions designed to ensure the financial equilibrium of the general regime. Since 1969, it is mandatory for entertainment artists to subscribe to the employee social security system. It must be observed that musicians and more specifically show business artists performing less than 7 hours a day are considered as being employed for the full day if their gross salary for one day's performance is at least equal to the benchmark daily salary.

The situation of the self-employed is less favourable inasmuch as their social security contributions are very high and that there is no contribution requirement for their co-contractors.

All employees who are mandatorily subject to the general social security regime have health insurance.

Health insurance covers, in addition to the so-called policy holders, their beneficiaries, unemployed workers subject to checks, old-age pensioners, the handicapped, students, widows and orphans.

As for maternity insurance, maternity costs are covered by health and accident insurance. The latter covers benefits in-kind and, for women wage-earners, cash benefits. The beneficiaries are the insured women, their beneficiaries, insured women on unemployment and the invalid. The risk of invalidity is covered by health and disability insurance and can be drawn after the second year of incapacity for work.

For health and maternity insurance, employees must join a « mutual insurance » or register with a regional office of the auxiliary health insurance fund. Moreover, employees must be able to show that they have paid in subscriptions for 6 months. In case of illness, the insurance grants primary incapacity indemnities which are payable after the employer's payment obligation period ends: this period varies depending on whether the individual in question is a worker or an employee.
Regarding disability insurance, the requirements are the same as in the case of primary disability resulting from illness and benefits are payable as of the 2nd year of incapacity for work.

Since 1 January 1991, employees have been entitled to draw a pension at 60. In principle, persons drawing a pension must cease all professional activity other than authorised work which has to be declared in advance and which is subject to remuneration limits. Are taken into account all periods effectively worked, as well as assimilated periods (unemployment, illness, maternity leave, ...). It must be observed that author-performers and creator artists can cumulate their pensions with income from their artistic work.
A special rule was included in the employee social security regime in order to take into account the intermittent nature of an author-performer's work.

The old-age and survivors' pension system is financed by employer and employee contributions. The contribution rate is 8,86% for employers and 7,50% for employees. The contributions are calculated on the basis of total gross salary. Pension payments are equal to 60% of the paid salaries' average for a single person and to 75% for a couple.

All employees in the general social security regime and unemployed youths at the end of their training are insured against unemployment. Author-performers with employee status are entitled to unemployment benefits just like ordinary employees. An author-performer who declares his creative work as being his main occupation is not entitled to unemployment benefits. An author-performer who declares his creative work to be an occasional activity may combine it with the status of an employee entitled to unemployment benefits. In that case, the daily unemployment benefit will not be affected provided that his income is less than EUR 3304.
A regulation of 2001 is interpreted by the National Labour Office (Office National de l'emploi, ONEM) so that royalty revenues are taken into account for the purpose of calculating the « salary ».
In order to be entitled to unemployment benefits, a full-time worker must accumulate a number of working days as mentioned below.

- 312 in the 18 months before applying for benefits, for workers less than 36 years' old;
- 468 in the 27 months before applying for benefits, for workers between 36 and 50 years' old;
- 624 in the 36 months before applying for benefits, for workers over 50.

To be entitled to draw unemployment benefits, voluntary part-time employees must satisfy the following conditions: to have worked in a part-time job comprising at least 12 hours work per

week on average or at least one third hours less per week on average than the benchmark employee. In fixing the number of hours worked per week, the last period of at least four weeks during which the employee was voluntarily employed on a part-time basis by the same employer is taken into account; the hours per week are calculated on the basis of the number of hours during the period of full-time work, without taking into account the period before the last twelve months.

5- TAXATION

The direct income tax rates for the 2001 tax year are as follows:
- up to 6396 EUR : 25%
- from 6396,01 EUR to 8477 EUR : 30%
- from 8477,01 EUR to 12097 EUR : 40%
- from 12097,01 EUR to 27838 EUR : 45%
- from 27838,01 EUR to 41745 EUR : 50%
- from 41745,01 EUR to 61230 EUR : 52,5%
- from 61230,01 EUR 55%

For deducting professional expenses, it is possible to choose between lump-sum and effective deduction mechanisms. Salaried author-performers sometimes have to carry significant costs (agency charges, travel expenses, make-up, costumes). These circumstances are recognised by Belgian legislation which applies the same rules to salaried author-performers as to self-employed author-performers for the deduction of professional expenses.

DENMARK

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DENMARK

01/03/2002 original version : French

PRESENTATION

The general legal framework

The trade unions and the social dialogue play a very important role; State intervention is reduced to the bare minimum.
The distinction between the status of workers depends mainly (but not only) on the classification by the tax authorities:
- In the case of "category A" workers; the employer must deduct and pay all the social "taxes", which corresponds to the responsibility and administrative constraints of an employer.
- In the case of "category B" workers, the employer simply pays the gross amount of an invoice, without any deduction of social "taxes". The workers can then deduct from their income all their professional expenses, which is the most important aspect for certain categories of workers, artists and technicians. Employers obviously prefer this solution, including from a social point of view, since it allows them to avoid having to advance sickness insurance benefits (minimum 14 days) and to respect administrative obligations with regard to the tax authorities.

The payment of wages of "Category B" workers is not guaranteed in the event of the employer's bankruptcy; "Category B" workers are entitled neither to get paid holiday leave nor to pension benefits co-financed by the employers (under collective agreements).
"Category A" workers are covered by unemployment insurance if they are members of an unemployment fund recognised by the state. "Category B" workers are covered by unemployment insurance if they may themselves taxes similar to the "Category" A , through the same system.
"Category B" workers may, if they can prove that they have worked on a subordinated basis, benefit from the protection of the Labour Code, notably in the case of a breach of contract.

In fact, the criteria for deciding the applicable category are complex and their application can vary from one tax office to another. That cannot be decided contractually, but collective agreements can have an influence, in particular by favouring the classification of workers in "category A" since that is also in the interests of the tax authorities (which prefer employers to be responsible for declarations and payments).

All aliens (including EU citizens) must obtain a work permit to carry on a professional activity on Danish territory. The trade unions (including those in the artistic sector) are normally consulted as regards aliens from outside the EU. On the whole a work permit to aliens from outside the EU is only granted if no Danish national can do the same work and if the alien is going to work according to normal Danish standards. Aliens from outside the EU who are not engaged according the conditions equal to the collective agreements will therefore have great difficulties in obtaining a work permit.

A work permit is only granted if the trade union agreements are strictly respected (the policy is in any event very restrictive). Employers not covered by a collective agreement will therefore have a great deal of difficulty in obtaining a work permit for a foreigner who is not an EU national.

Changes to certain working conditions can constitute an infringement of the applicable collective agreement. In such a case, the courts can oblige the employer to pay compensation to the trade unions that are signatories to the collective agreement.
Only trade union organisations can petition a court to interpret collective agreements. In such cases the competent court is the Industrial Tribunal (civil courts are not competent to interpret collective agreements).
There is no specific legislation on the form and duration of fixed-term contracts. There are no restrictions on the number of times a fixed-term contract can be renewed. However, when an employer uses fixed-term contracts on several occasions for the same worker, the courts may consider that the employer is trying to circumvent the law on employees (fraud). In such cases, a fixed-term contract will be considered as a normal contract of indeterminate duration.
There is no general regulation protecting workers against unfair dismissal. Following an agreement between the social partners, 2 types of sanctions for unfair dismissal have been determined: the reintegration of the worker (which can be decided by the arbitration committee) and financial compensation.
The financial compensation due to the employee in the event of dismissal is limited to 39 weeks pay.
A trade union delegate may only be made redundant after prior negotiations with the trade union.

The collective agreement is binding on employers with regard to all the workers that they employ or, if stipulated in the collective agreement, only with workers belonging to the trade unions that are signatories to the agreement.
In practice, a trade union can only organise a strike within the framework of the re-negotiations of a collective agreement. At all other times a strike would be in conflict with the Main Agreement. The workers would have to pay a fine and so would the union, if the court of arbitration found that the union had in any way participated actively in organising the strike. Moreover, the Public Conciliation Service may possibly lead to a government decision on the basis of a consensus between a limited number of organisations.

The principle of the minimum legal wage is not in force in Denmark. Minimum wages are fixed by collective agreements at sectoral level.
The overtime system is regulated by way of collective bargaining. Overtime is usually paid at the normal hourly wage rate, plus an indemnity varying between 50 and 100 %. However, certain agreements give workers the possibility to take days off in lieu.
The number of working hours is traditionally fixed by collective agreements. The normal working hours per week is 37 hours. However this is negotiable.

The laws on health and safety in the workplace apply to all work carried out for an employer. Therefore, such a criterion does not exclude self-employed workers. Nonetheless, numerous rules imposed by the laws on health and safety in the workplace are relevant only in the context of a stable relationship between an employer and a worker, for example with regard to information, instruction and training. In consequence, the rules capable of applying to self-employed workers are by nature fewer than the rules applying to employees. Moreover, self-

employed workers are personally liable, in particular with regard to third parties and the use that they make of their own material.

The right to annual paid holiday leave is regulated by law. A longer holiday or better pay can be negotiated in the collective agreement.

There is no national system of vocational training, financed by employers, in the area of culture. Self-employed workers have access to various training bodies specialising in the field of health and safety in the workplace (to be paid for).

Labour inspectors have an important influence on health and safety issues. Moreover, the role of the Unions official is important as regards health and safety and other labour issues as the drawing up of contracts of employment and the social security contributions. From the point of view of health and safety, the labour inspectorate intervenes in order to control the conditions in which self-employed people work. The labour inspectorate has the same rights as regards employees and has the right to visit professional premises and also private addresses.

The Danish social protection system covers all the population and is mainly financed by social taxes. Sickness, maternity and disability risks are all obligatorily covered under the system. All people residing in Denmark are covered by health insurance as regards medical care.
In order to benefit from health insurance, workers must be registered on the population register and have a health insurance card. Employees must have worked for at least 120 hours during the 13 weeks preceding the sick leave. Self-employed workers must prove that they have worked for 6 months during the 12 months preceding their illness.
As regards maternity insurance: the conditions are those required in case of illness.
As regards disability insurance: Danes must justify at least 3 years of residency after the age of 15.
As regards accidents at work and occupational illness, the only conditions imposed is the existence of a contract of employment.

All residents in Denmark are entitled to receive the old age pension provided they belong to a social security system and have resided in the country for a sufficient period or time (3 years for Danes, 10 years for foreigners).
Early retirement is possible for people aged between 60 and 64, if they have paid their contributions during 25 of the last 30 years and if they are eligible for unemployment insurance. People are entitled to the full-rate pension if they can prove that they have lived in Denmark for 40 years. If their period of residency is less, they are entitled to $1/40^{th}$ of the pension per year of residency. Early retirement leads to a maximum pension equal to 2,595 DKr a week.
The unemployment insurance system is managed by private associations of employees or self-employed people. However, the State has imposed a system whereby in order to claim benefits unemployed people must look “actively” for work; because of the problems that this poses for certain artistic professions, a system of vocational retraining has been introduced.

1- STATUS

The legal framework specific to workers in the employment industry

According to DSF, collective agreements favour the classification of actors in "category A". If there is no collective agreement, a "grey area" develops, comprising actors employed in "category B" while they should really be classified as "category A" workers.
According to DAF, musicians employed for 3 successive days can be classified in "category B", but from the 4th day they will be classified in "category A"(!). Soloists are always classified in "category B", and that is in general what high-earning artists prefer, since the system of tax deductions is more advantageous. According to DMF, musicians (especially foreigners) employed for festivals should not be employed as "category B" workers, since more often than not they do not meet their obligation to pay social taxes.

The system of licences for artistic agents no longer exists (since 1993), and this activity is therefore totally unregulated. According to DMF, this does not pose any real problem, since the trade unions are very representative and can therefore intervene effectively in the event of any abuse.

According to TEF, there is a "grey area" which is that of "category B" workers who do not earn enough to be able to pay the social security contributions. This category can take advantage of the system when completing their tax declarations by overstating the amount of deductible professional expenses. (NB: for 100 net paid to a "category A" employee, between 160 and 180 needs to be paid to a "category B" worker to ensure that the latter has an adequate level of social protection). Consequently, there is a real social discrimination in terms of social protection between categories A and B.
According to FAF, technicians should, in any case, be classified as "category A" workers, even if they are employed only for one day; this is thanks to collective agreements. FAF recommends its members, including during training courses, not to work under "category B" status. However, certain technicians set up their own company, in order to deduct their professional expenses and recover the VAT. According to TEF, the development of employment in "category B" is very dangerous over the long-term, since it undermines the negotiation of collective agreements. The trend among 15% of self employed workers belonging to TEF is in favour of reverting to « category A » status.

According to FAF, the obligation of a written contract is still imposed by the collective agreements and by the law when the employment is for a period of more than one month (application of the EU Directive) .
Any infringement of this second rule can lead to a fine of 5,000 DKr (10,000 DKr if there was a specific prejudice). However, according to TEF, there are numerous cases of employment without a written contract in the sector of live performances.

2- INDIVIDUAL CONTRACTS

2-1 The contract
"Category B" workers are always employed under a fixed-term contract. In fact, this category is not compatible with employment under a contract of an indeterminate duration.

As concerns artists, there are no examples of the legal reclassification of successive fixed-term contracts into contracts of indeterminate duration, since this question is governed by collective agreements. But technicians have obtained a ruling from the Supreme Court authorising such; this was confirmed by the collective agreement covering the audio-visual production sector.
85% of actors are employed under fixed-term contracts.
According to DAF, there is only an obligation to have a written contract if it is a contract of employment and provides for a minimum of 8 hours work a week. The calculation of the number of hours includes the time spent preparing performances.

2-2 The breach of contract
The general provisions concerning the assignment of rights are applicable by analogy with the rights of performers. Thus, it is possible to cancel the contract if a recording is not used during the 5 years following its production.

2-3 The intellectual property rights protection
A survey has been published by DMF and DAF regarding contractual practices in the field of music publishing. This survey demonstrates for example that most contracts are concluded for a duration corresponding to the period for which a work is protected.

DSF and DAF have obtained from their members a mandate to manage those intellectual property rights which are not managed by the *collecting societies*, GRAMEX and COPYDAN.

In Denmark, 90 to 95 % of actors and musicians belong to a trade union.

3- COLLECTIVE AGREEMENTS

The collective agreements concluded by FAF fix the content of individual contracts. In reality, even producers not bound by these collective agreements respect the practices as regards contracts.
According to the collective agreements concluded by the trade unions representing technicians, contracts of an indeterminate duration can be cancelled subject to 1 month's notice by the employee, and subject to between 1 and 6 month's notice by the employer (depending on the length of service). Fixed-term contracts cannot be cancelled (any cancellation entails an obligation to pay the full amount of the remuneration due up to the expiry date of the contract).

DAF concludes only agreements that benefit members and non members (including aliens), and that covers category A, category B as well as self-employed workers. DMF has raised the difficulties encountered with regard to the re-negotiation of the collective agreement in force with the Royal Opera, which favours precarious employment of "assistant" musicians. DMF cannot currently terminate this agreement. (Details to be specified).

4- REMUNERATION

Television stations refuse to pay musicians on the grounds that their programmes promote their records. DMF has obtained an agreement whereby the producers of the records

concerned pay a fee to the trade union, which itself remunerates the musicians. But the 2nd TV channel, subcontracts the production of programmes to small companies, and these companies refuse to pay musicians. DMF has informed us that it has not succeeded in resolving this problem, mainly on account of a collective agreement which favours the non-remunerated promotion of solo artists and singers. DAF mention that it has among others a collective bargaining agreement with the private producers who deliver programs to the broadcasting companies. This collective agreement covers artists, singers, soloists, entertainers, rock- and pop bands, circus- and variety artists, etc..

If an employer pays wages below the minimum levels stipulated in a collective agreement by which it is bound, the trade unions can start legal proceedings, pursuant to the collective agreement, and petition the court to order the difference to be paid, as well as the payment of compensation for the prejudice suffered by the collective interests of an occupational group. The trade union generally passes the sum to the worker concerned. On the initiative of DMF, a regulation has been introduced whereby the payment of public-sector grants to the performing arts (worth approximately 50 million French francs annually) are subject to musicians being paid the minimum wage (in this case, necessarily the minimum amounts fixed by DMF, even if this is not imposed formally in this regulation).

The minimum wages of producers and technicians working as intermittent employees in the production of cinema films, TV films, documentaries, magazines and advertising films are subject to collective agreements. According to TEF, a practise exists whereby the remuneration includes an important part paid by way of a “bonus” subject to social security contributions, but which varies depending on the results. The payment of this form of profit-sharing is not paid in the event of the employer’s bankruptcy.

Certain collective agreements make it compulsory to state on programmes or posters that the performance amateurs.
For technicians, the overtime rate is generally 50% higher than the normal hourly rate (the maximum authorised is two hours overtime) and for night-work, 100% for hours worked above the maximum number of hours authorised and 75 % for Sunday work.

5- WORKING CONDITIONS

5-1. The general system
As regards safety at work, a safety delegate must be elected in any establishment where at least 10 employees (according to certain collective agreements, the threshold is 5 employees) work for the same employer.
When the artists employed in such an establishment are mainly intermittent workers, the delegate is generally a technician.
The rights and prerogatives of the delegate are as follows: supervise working conditions, promote good practices regarding safety among employees, participate in planning, participate in investigations in the case of an accident or illness, act as an intermediary between employees and the management, suspend activities in the case of imminent danger, receive compulsory safety training of 32 hours and be protected against dismissal or redundancy. A worker can refuse to carry out work that he or she considers dangerous, if the delegate supports them. The DMF trade union confirms that free-lance musician sand self-employed musicians are covered by the legislation on safety at work.

The trade unions representing technicians have obtained satisfactory protection for their member with regard to overtime, since a producer must ask the team for its agreement with regard to overtime. The minimum rest period between 2 days of work is 11 hours. The collective agreement fixes a break of 30 minutes per four hour period. The collective agreement covering technicians also stipulates a threshold of 5 employees for the appointment of a health delegate.
Important: if the establishment or building venue for the event is only rented for the performance ("garage" practice), there is nevertheless an obligation to designate a health delegate and a safety committee, which is very restricting for producers.

5-2 The regulation on paid holiday leave
For paid holiday leave, a contribution of 12.5 % is paid by employers to a national fund managed by the State. According to DSF, "category B" actors are not entitled to paid holiday leave.

5-3 The vocational training
vocational training, certain permanent orchestras are covered by collective agreements at enterprise level, which organise in-house vocational training. Moreover, DMF has obtained funding (the State, GRAMEX, etc.) for vocational training courses (computer studies, stress management, arrangements, self-production, choral singing, etc.). "Category A" workers can benefit from a half year's paid "post education" vocational training financed by the State. For technicians, it is generally at the employer's discretion. FAF is trying to set up training courses for young people.

6- SOCIAL PROTECTION

There are no special provisions as regards the social protection of performers who therefore fall within the scope of the common law system. However, collective agreements can decide that in the case of sick leave the employer will pay the full wages during a certain period (minimum 14 days) before obtaining partial reimbursement.
Workers who have unemployment insurance are automatically entitled to health insurance.
Unlike employees, "category B" artists must have worked at least 6 months during the last 12 months in order to be entitled to cash benefits in the event of illness, and the first 3 weeks of illness are not covered, unless they have taken out private insurance for this period.

FAF is currently working jointly with producers in order to obtain maternity insurance for all intermittent workers in the industry covered by their collective agreements.

According to DMF, "category B" musicians have their own pension plan, but unlike that of "category A", employers do not contribute. Payments under the general pension plan are very small. The collective agreements concluded by DSF have created, but only since 1991, supplementary pension plans for actors. The employer deducts from the gross wage a contribution of 12 % which is paid to a fund (PAV) managed jointly by workers and employers.
Since 1999, FAF has organised its own pension plan, financed by employers in 2001 5 % of gross wages.
This pension also covers long-term illnesses, disability and life insurance. For TEF members: idem; but there are still 5 collective agreements which make no provision for such. According

to TEF, this should be made compulsory by law. This supplements the State pension which is very small (legal minimum of 55 DKr a day).

The unemployment insurance funds are managed by the trade unions, but with financial structures having their own legal personality. Contributions are paid directly, independently of the trade union contribution. In order to adapt to the reform relating to the obligation for workers to look "actively" for work, the trade unions DSF, DMF *and* DAF have set up training programmes offering artists the possibility of vocational retraining.
However, access to the unemployment insurance fund is subject to:
- for musicians: membership of the trade union, or in certain cases, the possession of a diploma (after at least 18 months of study);
- membership of the trade union is not a condition for actors, but they must be, according to the trade union's criteria, professionals;
- the respect of the minimum trade union requirements;
- having worked at least 1924 hours during the last 3 years.

The hours are in fact calculated according to the pay, which is "broken down" by including an estimate of the time spent in rehearsing for concerts, etc. The hour taken into account must correspond to at least to 140 DK.
Thos who satisfy these conditions are entitled to protection during a period of 4 years, which can be renewed in accordance with the conditions described above. The remuneration received in respect of worked carried out during a period when unemployment benefits are received deduced from the monthly benefits payment.

In order to be entitled to unemployment insurance, technicians must satisfy criteria of professionalism: the criteria of trade union membership, participation in a performance in accordance with the standards stipulated in the relevant collective agreement and, if applicable, the possession of a diploma.
According to TEF, seasonal workers are not covered by unemployment insurance (but they will be protected if they work once for another employer, even one day, which demonstrates the absurdity of the system). The benefits are paid during 104 weeks, with a possibility to benefit from an "activation" programme, entitling the beneficiary to 52 weeks of full-time employment (and training).

7. TAXATION

"Category B" workers can deduct the full amount of their professional expenses, while "category A" workers are only allowed to deduct part of those expenses. Moreover "category B" workers *(when paying taxes as self-employed workers)* are entitled to be taxed on the average of their income over a period of 3 or 5 years.

Trade union contributions are deductible from the taxable income.

FINLAND

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FINLAND

01/03/2002 original version : French

PRESENTATION

The general legal framework

Workers fall into three basic categories: “employees”, “entrepreneurs” (self-employed) and “civil servants”. As employees, they can be engaged for an indefinite period of time or for a fixed term. It can be said that the two significant categories in the entertainment and audio-visual sectors are “employee” and “self-employed”.

1- STATUS

The legal framework specific to worker in the entertainment industry

Although the 1971 Law on employment contracts draws a sharp distinction between self-employed workers and employees, there still remain some “grey areas”. Finland has a new law on employment contracts that came into force on the 1st of June 2001.

2- INDIVIDUAL CONTRACT

2-1 *The contract*

Employment contracts are not required to conform to a particular model, but employees are entitled to request the employer to submit a written description of the principal working conditions, provided that the contract is concluded for an indefinite period of time or for a term of at least one month. In practice there are many verbally concluded contracts in the entertainment sector.

In principle, the contents may be freely defined. In practice, an employment contract describes the nature of the job to be performed (including its duration), the working hours and regular workplace, the main tasks, the basic pay and the date of payment. A collective agreement applicable to the individual contract is often mentioned in the contract itself.

In principle, the contract is negotiable within the framework of the law on employment contracts and the law on collective agreements and must therefore comply with the provisions of the relevant collective agreements in force. It should be noted that, in the event of a clash between collective agreements and employment contracts, the rule that is most advantageous for the worker prevails.

Trade Unions proposes model contracts which may form part of the collective agreement with the employer.

Workers may not modify the conditions of the employment contract without the employer’s consent. Similarly, conditions stemming from legal provisions or collective agreements that are binding on the parties to the employment contract cannot be modified unilaterally. In his

capacity as manager, the employer may modify working conditions to the extent allowed by the nature of the conditions themselves and in accordance with the clauses of the employment contract and any relevant collective agreement(s). However, a judge may rule that some elements of the contract are unreasonable and change them accordingly.

The contracting parties have no obligation to declare the contract to any public administration. There are no specific regulations in Finland requiring contracts to be entered in a public registry. However, collective agreements must be accessed in a public registry.

Employment contracts may be concluded for a limited period of time when required by the nature of the work, the tasks associated with the post, established work practices or other comparable circumstances, or when - having regard to the company's area of activity and/or the tasks to be performed - the employer has some other valid reason for concluding a fixed-term contract.
In the entertainment and audio-visual sectors, fixed-term contracts are often concluded for the entire duration of a project. Collective agreements define the reasons justifying the conclusion of a fixed-term contract and limit the overall number of contracts of this kind in the industry. Nevertheless, it is apparent that, in practice, people may be employed by a theatre for ten years on the basis of successive one-year contracts.

2-2 The breach of contract
The law on employment contracts stipulates that the dismissal of an individual worker must be justified by particularly serious reasons. Such reasons may be economic in nature or may concern the individual himself/herself (serious misconduct). Furthermore, the law establishes that notice of termination must be given within a reasonable period of time and in such a way as to make clear the grounds for termination. Unfair dismissals usually result in compensation.

Since the 2001 law on employment contracts, compensation for unjustified dismissal ranges from a minimum of three months' pay to a maximum of 24 months' pay in both the contracts for indefinite period or in the fixed-term contracts.
In the event of unfair dismissal, a court may not force the employer to reinstate the worker concerned but in the case of reinstatement the compensation may be lower.

2-3 The plurality of contracts
In general, there are no restrictions preventing a worker from carrying out a secondary professional activity, unless an agreement to the contrary exists. However, during the period of employment, the worker may not engage or cooperate in such form of disloyal competition.

2-4 The exclusive rights
The law does not stipulate any obligation as regards the exclusiveness of the contract. In practice, however, editors, producers, etc. propose to their authors exclusive contracts.
The law relative to authors rights notice that if a movies is not produced, after the author's work, he can renounce to the contract . In this case the renonciation has no effect on the remuneration.

2-5 The intellectual property rights protection

The Copyright Act does not provide for the transfer of rights to the employer. Whether or not a worker has employee status has no impact on his/her intellectual property rights.

Some collective agreements in the entertainment and audio-visual sectors specify that the legal status of the author is irrelevant: he or she retains his/her intellectual property rights. In practice, it may happen that an agreement concerning the creation or performance of a work is modeled on an employment contract and does not contain any provisions for the transfer of rights. In this case, the transfer of certain rights is assumed to take place in the form of a "silent agreement" which precludes any additional remuneration for the transfer of rights.

The following categories of workers are protected by intellectual property rights: composers, directors, scriptwriters, playwrights, translators, decorators, costume designers, lighting designers in some cases, directors of photography, choreographers and performers (musicians, actors, dancers, singers, etc.).

2-6 The conditions subject to which a worker is eligible to retire

Under the so-called TEL scheme, waged workers can benefit from an old age pension from the age of 65, but can already obtain a retiring allowance from the age of 60.

The amount of the pension to which a person is entitled is calculated on the basis of all the employment contracts and all the income earned since the age of 23. The so-called TaEL law on the pensions of artists and other groups of employees covers all short fixed-term contracts mainly in the private sector. This system takes into account all the income earned since 1 January 1986 and adapts the conditions for access to the pension system to the specific characteristics of fixed-term employment contracts.

3- COLLECTIVE AGREEMENT

The legal effect of a collective agreement becomes mandatory in a sector if the signatories represent at least 50% of the sector. Since 1 June 2001, the Ministry of Labour has been entitled to request information from the social partners in order to establish the "general validity" of a collective agreement. In the entertainment and audio-visual sectors, many collective agreements in force are mandatory, so that all employers must comply with them and ensure that individual contracts conform to their provisions

4- REMUNERATION

Unpaid work is not prohibited, but the law on employment contracts only covers work that is intended to be remunerated. In the entertainment sector, the collective agreement concluded by the actors' union stipulates that students acting, performing, etc. must receive a minimum wage. However, the union indicates that, in practice, the fact that unpaid work is not prohibited is used as a means of "gaining a foothold in the business".

In Finland there is no minimum wage established by law. However, minimum wages are fixed through collective agreements. As far as the entertainment and audio-visual sectors are concerned, all collective agreements include minimum wages. In accordance with the law on employment contracts, employers must respect the wage levels established for the same job or

the same type of work in national-level collective agreements, so that, in general, a legal minimum wage - adapted to the collective agreements system - exists in most sectors.

The notion of “amateur” plays a significant role in small theatre groups.

Overtime is regulated by law and by collective agreements. Overtime is paid at higher rates than work carried out during normal working hours. The first two hours of daily overtime are paid 1.5 times higher than the normal rate, and additional hours are paid double. Any hours worked in excess of the normal working week but not counting as overtime are paid at least as the regular working hours.
Specific rules apply to seasonal work. If the employer and worker agree, pay for overtime can take the form of extra time off or a holiday to rest.
The duration of the holiday is calculated on the same basis as pay for overtime. As a general rule, the holiday must be taken within six months of the overtime performed. The rules applied in different collective agreements vary greatly across the entertainment and audio-visual sectors.

The law provides for payment to be made within a maximum period of one month or at the end of employment. Should he fail to comply with this deadline, the employer is liable to pay interest on the outstanding amounts. As an additional employers who do not comply with the deadline for payment, whether for a completed job or an interrupted job, are obliged to pay compensation equivalent to up to six days’ wages (maximum) plus interests.

The Finnish state provides a guarantee for wages/salaries, and this is managed by an agency attached to the Ministry of Employment. Workers who wish to apply for compensation must do so within three months of receipt of their last wages. The agency reaches a decision on the basis of evidence concerning the bankruptcy or insolvency of the employer.

5- WORKING CONDITIONS

5-1 The general system
In accordance with the Finnish law on working time, the latter normally amounts to 8 hours per day and 40 hours per week. These are the maximum regular working hours set out in the law on working time. In collective agreements working time is somewhat shorter. However, the standard weekly working hours may be rearranged in such a way as to *average* 40 hours per week over a period of 52 weeks at the most.
The law on working time allows the social partners plenty of latitude to conclude collective agreements which depart from the rules, as long as an average of 40 hours per week over a 52-week period is not exceeded. However, in spite of this restriction, in practice longer working hours are very common in the film production industry.
The average working day in Finland is in the region of 10-12 hours, and the average working week is well above 50 hours. Collective agreements in the entertainment and audio-visual sectors provide additional protection for workers by defining a set of minimum standards.
The collective agreement applicable to musicians performing in restaurants, for example, stipulates that they cannot be forced to play longer than six hours per day. Each 45-minute session must be followed by a 15-minute break with no loss of pay. For actors, the standard working day is 7 ½ hours per day, including 4 hours for rehearsals and 3 ½ hours’ performance time.

The law on working time stipulates that working hours must be organised in such a way as to offer workers an uninterrupted rest period of at least 35 hours per week. If possible, the weekly rest period must include Sunday. Exceptionnaly it may arise up to 35 hours over a 14-day period, but in any case cannot be less than 24 hours per week. In a limited number of cases specified by the law, some exceptions are possible to the provisions concerning weekly rest periods.

As regards occupational health and safety, the law establishes certain obligations for employers. The latter are required to exercise due diligence and take all the measures they can reasonably be expected to implement in order to protect employees against occupational hazards and diseases, taking into account, to this end, the nature of the work, the work environment, and the age, sex, abilities and other characteristics of the workers themselves.

Legislation on occupational health and safety applies to the work carried out by employees on the basis of an employment contract, in exchange for a wage or salary, on behalf of an employer and under the latter's supervision. It does not apply to self-employed workers. The latter do not benefit from health care specific to the occupational hazards they face. However, they can access the whole health care and industrial medicine network. There are structures enabling self-employed workers to gather useful information on the prevention of occupational hazards. Such structures include the Institute of Occupational Health, the Regional Health Centres, the Labour Inspectorate.

5-2 . The regulation on paid holidays leave

The law establishes a set of minimum rules for any job in Finland. Collective agreements have improved the conditions for workers in the entertainment and audio-visual sectors. However, provisions vary from one agreement to another. Fixed-term contracts are also covered. Workers employed under such contracts are entitled to two days' paid holiday per month, provided they work at least 14 days per month for the employer concerned. If they are employed for less than 14 days per month, a fixed percentage is applied to establish their annual paid holiday entitlement.

5-3 The vocational training

Employees can benefit from leaves of absence for training purposes, provided they have worked for the same employer for at least one year. Such training programmes may take place in a state training institute. The period of leave for training purposes may not exceed two years in any five-year period. In practice, employees must finance their own training.

5-4 The *allowances in the case of accidents at work*

The law on industrial accidents provides for employees to receive compensation for any industrial accidents. After recovery, the worker is entitled to reinstatement in his/her job. It should be noted that accidents occurring on the way to or back from work are also covered.

5-5 The role of the Labour Inspectorate

This is a national control body attached to the Ministry of Labour. The country is divided into health and safety districts in which specialised agencies monitor and control all aspects of occupational health and safety, a concept which is interpreted in a very broad way. Control by the Inspectorate comprises a wide range of aspects including the workplace, the health and safety of workers, the agreements concerning working hours and holidays as well as individual companies' health and safety services. Control also focuses on the implementation of the legal provisions concerning employment contracts, particularly the provisions

governing the general clauses contained in collective agreements and the protection of workers against unfair dismissal.

6- SOCIAL PROTECTION

Residents are covered by the social security system, which provides basic pensions, sickness insurance, family allowances and unemployment benefit. Furthermore, all employees are entitled to certain benefits depending on their income - e.g. additional pension payments, disablement allowances, etc. It is a characteristic feature of the Finnish social security system that a high proportion of the insurance schemes are run by private insurance companies, even though insurance is compulsory and the overall management of the system is in the hands of the state. The Finnish National Insurance Institute (Kela) is responsible for the provision of the above-mentioned allowances. The social protection system is financed through direct contributions by the insured (13%), the employers (23%) and the state.

The majority of workers in the entertainment and audio-visual sectors are classed as employees and therefore have full access to social protection.

Finland has two old age pension schemes: the general national pension scheme and the retirement pension scheme. Both systems provide old age pensions, disablement pensions and widow/widower pensions. The national pension scheme provides old age pensions payable, in principle, to all residents in order to guarantee a minimum income level, whereas the retirement pension scheme is based on the person's previous employment and income. The amount of the national pension is linked to the retirement pension to which an individual is entitled. It is paid to people who do not benefit from a retirement pension or whose retirement pension is below a certain threshold. Above that level, the person concerned is no longer entitled to receive a national pension. National pensions are managed by the Finnish National Insurance Institute (Kela). The retirement pension scheme is run by private insurance companies.

Workers in the entertainment and audio-visual sectors are insured in accordance with the so-called TEL law on employees' pensions in the case of permanently employed workers, or in accordance with the law on temporary workers (including workers with fixed-term contracts), or again in accordance with the so-called TaEL law on pensions for performers and certain other categories of employees (including creative artists). It should be noted that self-employed workers can benefit from the pension system in accordance with a specific law - known as YEL - for this group of workers.

The YEL law establishes that the payment of insurance contributions towards a retirement pension is obligatory if the worker concerned is not employed in accordance with an employment contract or as a civil servant, is aged 18 to 64, has been working as a self-employed worker for at least four months and his or her estimated annual turnover amounts to at least EUR5,068. It should be noted that this insurance is regarded as a "professional expense" and is therefore fully deductible from the taxable base.

Employees (whether with fixed-term or permanent contracts) as well as self-employed workers can obtain unemployment benefit. The unemployment benefit system applies to each worker. Following a qualifying period, an unemployed person can apply for unemployment benefit. This is either a basic allowance or an allowance based on previous income. Most

employees are covered by an unemployment benefit fund constituted for their specific sector (unemployment insurance fund). In order to be eligible for unemployment benefit, a worker must be in the 17 to 64 age group and must have been employed for at least 43 weeks, working at least 18 hours per week. A self-employed worker may claim unemployment benefit if he/she has worked for at least 24 months out of the 48 months prior to his/her claim, and provided his/her income as a self-employed worker was above a certain minimum. For many artists working on short term contracts, it is very hard to fulfill the above mentioned requirements.

Whether on the basis of previous income or as a basic allowance, unemployment benefit is paid for a maximum period of 500 days. Income-linked benefit is paid by the unemployment insurance fund if the person concerned has paid contributions to the fund for at least 10 months prior to submitting his/her claim. Benefit consists of a basic amount plus an amount based on previous income, plus child benefit, so that in some cases it may add up to 90% of the latest monthly income. In normal cases the percentage is 40-60. All those who do not contribute to an unemployment benefit fund but who nevertheless fulfil the other above-mentioned criteria receive a basic amount which may vary depending on other sources of income and/or social benefits received.

People who do not fulfil the established criteria or who have already received unemployment benefit for 500 days may nevertheless be eligible for an allowance with a view to rejoining the labour market ("reinsertion allowance"). Those who have already received unemployment benefit may receive this additional allowance for a maximum period of 180 days. Those who do not fulfil the established criteria or have already received the "reinsertion allowance" for 180 days may receive income support for an indefinite period of time subject to means testing. It should be noted that young people in the 18 to 24 age group are not entitled to these allowances if they refuse a job offer or if they have not followed any training programme or fail to take advantage of refuse the measures offered by the employment agency.

7- TAXATION

Wage-earning performers often incur major expenses in the exercise of their profession (agency costs, traveling expenses, makeup, costumes, etc.). Finnish legislation recognises this fact so that, as far as deducting professional expenses is concerned, the same rules apply to all performers in all kinds of working contracts.

FRANCE

PRESENTATION
The general legal framework

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The legal framework specific to worker in the entertainment industry

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7- TAXATION

FRANCE

01/03/2002 original version: French

PRESENTATION

The general legal framework

Workers can be paid under one of the following four professional statutes: "employee", "self-employed", "author" or "civil servant". However, an "author" (for example a director, a photographer, etc.) can combine his or her status of author with that of "employee", or with that of "civil servant".

The "employee", that is to say a worker with a "contract of employment", is protected by all the provisions of the Labour Code (the content of which is very developed in France because of a strong interventionist tradition).
The Labour Code states rights for employees mainly in the following areas: the conclusion, content, duration, suspension or interruption of individual contracts / working hours / wages and additional remuneration / wage guarantees in the event of the employer's bankruptcy / paid holiday leave / collective agreements / redundancies and redeployment measures / vocational training / health and safety at workplace / collective representation and status of unions / specific legal system / Labour Inspectorate / Labour Court: "conseil de Prud'hommes".
The status of "employee" depends on two main criteria: the existence of a relation of subordination and the right to wages. Contracts cannot reject or impose this status. If necessary, the courts' decision will be based on the facts.
All "employees" are protected under the Labour Code, irrespective of the duration of the contract.

Only "employees" benefit from the rights laid down in the collective agreements concluded by trade unions.
Collective agreements protect all workers belonging to the scope of representation of the signatory trade union(s), including non-members, as regards their relationships with the signatory employers. The collective agreements can be "extended" to the whole professional sector, and therefore to all employees, by ministerial decision.

All "employees" benefit from all the general social security schemes, in the following areas: health / disability / widowship / maternity / retirement / accidents at work / unemployment / vocational training.
The financing of all these social protection schemes is based on an employers' contribution (which finally varies from 40 to 50% of the gross wage). The collective management of these schemes is in principle the joint responsibility of employers and employees. In the event of deficit, the State can intervene through specific tax measures.

"Self-employed workers" are not protected by the Labour Code.

"Self-employed workers" finance on their own their social security benefits, according to often very disadvantageous specific schemes.

"**Civil servants"** are covered by a specific employment and social protection scheme, which varies according to whether their employment is simply "contractual" (and therefore precarious) or "permanent", and also depending on whether they are employed at a national or regional level. In general the "contractual" employment scheme is less advantageous than that of "employees", and the employment scheme of "permanent employees" is rather more favourable than that of "employees", except as regards wages.

The social security schemes that apply to civil servants are quite similar to those of "employees", without prejudice to pension and unemployment insurance schemes.

"Authors" are protected by the Labour Code and by the Social Security Code's provisions applicable to "employees" if their contract is considered as a "contract of employment".
"Authors" are always protected by the Intellectual Property Code (especially as regards their contract, the assignment of their property rights, their remuneration, the use of their work, etc.) even when they are "employees".
If an author's contract is not classified as a contract of employment, the author is only remunerated by way of royalties, and benefit only in part from social security schemes, in accordance with specific conditions which are very disadvantageous for workers.

1- STATUS

The legal framework specific to workers in the entertainment industry

Since 1969, the Labour Code has made it compulsory for "performers" to have the status of employees, that is to say mainly performers and directors (theatre) or directors (audio-visual works), except when it can be proven that they carry on their activity as entrepreneurs or independent workers registered at the trade register.
The law stipulates that performers have the status of an "employee" even if they remain free to express their art, own the material used and even if they hire themselves one or more people to assist them (provided that they participate personally in the performance) whatever the qualification given to the contract. This provision is currently challenged by the European Commission (Internal Market DG) which considers that the fact for an artist having the status of a "self-employed worker" in another EU Member State to be obliged to bear the "employee" status in France, consists in an unjustified obstacle to the free "movement of services" in Europe.
Social laws are applicable to foreigners, whether or not they are EU nationals, provided that they have a valid French work permit.

When performances are "bought", for example by a Festival from a foreign organisation, it is possible to oblige the Festival to pay the social security contributions if the organisation "employing" the performers has failed to pay such contributions.

Moreover, it is also possible to have the person in charge with the performance venue (Festival, concert hall, etc.) classified as the employer or "real" joint employer of the artists.
Technicians can benefit from this case-law.

A very important administrative reform (so-called "one-stop shopping") was implemented in 1999, which simplifies dramatically the administrative formalities with regard to the employment of workers in the entertainment sector by so-called "occasional" employers (those who do not organise more than 6 performances a year). Henceforward these employers only have to complete a single administrative formality, with a telephone help-line, and make a single social protection contribution. This service is free. It is extremely popular and has already resulted in a sharp fall in undeclared employment. It might be extended to all cafés, hotels and restaurants.
Moreover, another reform was introduced in 1999, which imposes strict conditions of compliance with social laws regarding the granting or renewal of a "performance licence", which the three categories of entrepreneurs in the entertainment industry must hold: owners of show venues, producers and broadcasters of performances and tour producers who do not have employer's responsibility for the artistic stage.

Social protection schemes are applicable to the entertainment and audio-visual sectors, although subject to adjustments, thanks to collective agreements, in particular to creating equivalencies between "fees" and working hours taken into account for the calculation of social benefits (health insurance, unemployment insurance, etc.). These adaptations are particularly important as regards intermittent workers.

2- INDIVIDUAL CONTRACT

2-1 The contract
Fixed-term and part-time temporary contracts of employment must be in writing. Otherwise, the employment is considered as full-time and for an indeterminate duration.
An emergency legal procedure exists to claim for the reclassification of a succession of fixed-term contracts with the same employer into a contract of indeterminate duration (considerable case-law exists on this issue).
In the field of visual arts and photography, the contract is very often merely an "invoice", which is obviously totally inadequate.
Trade unions can give legal advice on individual employment contracts, unlike collective management companies (although some of them do).
The standard contracts drawn up by the trade unions are rarely used.

2-2 The breach of contract
If there is no written contract, the author may contest having authorised the use of his or her work for such and such utilisation and claim for the immediate termination of any use in progress (since in the absence of a written agreement regarding the duration of the authorisation, the author keeps his or her freedom of decision).

2-3 The exclusive rights
There is a collective dispute since 1988 between musicians' organisations supported by the Spedidam (collecting society managing performers' rights) and producers of phonograms (mainly represented by IFPI France), since producers, despite their numerous in court convictions, refuse to respect the exclusive rights of musicians provided by the law of 3 July 1985. Producer's representatives have denounced the collective agreement of 1969 which terminated in 1994
Nowadays the litigation concerns the management modalities and the complementary remuneration rate granted to musicians.

2-4 The exclusivity clause

An over-long exclusivity clause in a contract concluded between an artist and a producer can be cancelled by the courts; just as an excessive or non-remunerated non-competitive clause does. In general, there is no real financial compensation in exchange for the exclusivity assigned by authors or performers, while the implementation of the non-competition clause in regular contracts is only valid in exchange for financial compensation.

2-5 The intellectual property rights protection

The main aspects of the contracts entered into by authors are protected by the Intellectual Property Code (purpose, territory, duration, remuneration, obligations concerning use), unlike contracts concluded by performers. Nevertheless, some aspects have been taken account by the existing collective agreement. But in reality, authors generally remain in a position of weakness when the contract is concluded. Contracts cannot be revised by a judge or by a an arbitration committee when they prove unfair. The most shocking fact is the period of the assignment of rights which, for example, in the area of publishing, is the total duration of protection (the author's life and 70 years after his or her death), without this exorbitant period being justified by financial compensation received in exchange.

2-6 The transfer of the contract in favour of a third party

Unlike contracts concluded by authors, contracts concluded by performers are freely transferable by the producer to a third party, unless stipulated otherwise in the contract

3- COLLECTIVE AGREEMENTS

"Control auditions" in orchestras are regulated by collective agreement, notably to decide that the musical director (who in general has asked for the control audition of a musician) does not have the determining vote.

There is no longer a collective agreement for directors. There is no longer a collective agreement for musicians. As regards other performers, there are various collective agreement in the performing arts sector (subsidised companies, non subsidised companies) as well in the audio-visual sector (radio, television, cinema) For now, they do not exist any more concerning dubbing and phonographic production.

4- REMUNERATION

The collective agreements on permanent musicians fix a minimum wage with systems for calculating the hours worked which are specific to the artistic jobs concerned. Full time work in an orchestra can then be estimated from 75 to 100 hours a week. Other performers are remunerated by the performance and/or the day, the week or the month.

There is no minimum wage for authors and the concept of "decent wage" seems to be unknown to their employers. Yet, the share of the remuneration for private copies is fixed by law (in the audio-visual area: 1/3 for authors, 1/3 for performers, 1/3 for producers).

Audio-visual producers impose in individual contracts a system whereby 50% of the director's remuneration is "classified" as an "advance on future payment of royalties", the other 50% being wages subject to social security contributions.

This allows producers to pay almost no social security contributions on 50% of the director's remuneration. This practice is doubly disadvantageous for directors, since it reduces their social protection and subjects 50% of their incomes to a tax regime which is more expensive than the tax regime applying to employees.

In the cinema sector, a substantial percentage of technicians are remunerated at a level below the trade union minimum wage.
Directors never receive overtime pay.

A regulation on "amateurs practices" (decree of 19 December 1953) lays down restrictive conditions, especially the total absence of remuneration gained from this activity. This regulation is currently being revised.
The collective agreement of 1969 (now cancelled) on the employment of musicians for the record production, laid down a deadline of 8 days for the payment of "fees".
Contracts concluded by authors must provide for accounts to be presented at least once a year (which is insufficient), but the fact is that in reality authors do not have the possibility to check these accounts themselves. The individual contract can include an "audit clause" providing that the producer is accountable for the audit of the accounts by a professional, where it results in an adjustment of more than 5 % in favour of the author. This kind of "audit clause" is rare. It is sometimes obtained by artists in recording contracts.

In case of the employer or producer's bankruptcy, only employees are effectively protected, including casual employees (even for a single day of work).

5- WORKING CONDITIONS

5-1 The general system
Musicians' performances are usually calculated on the basis of 3 indivisible hours. Performers are generally paid of fees (flat rate not based on the effective work). In the performing arts sector, rehearsals are remunerated on the basis of 4 indivisible hours.
Regarding film technicians, the minimum rest period between two working days is 12 hours. Technicians employed for the production of documentaries, TV films or advertising films, are often required to work hours that do not respect this standard. There is a collective agreement in negotiation with the view to defining workable time. Agreements on salary have been signed.

5-2 The regulation on paid holiday leave
The Entertainment Industry Holiday Fund, set up in 1939, collects the contributions paid by companies in the entertainment industry in respect of paid holiday leave and pays to casual workers their benefits annually (although they are not obliged to take a holiday). The contribution due by the employer is of 13.30 %. It is paid annually to artists.
All employees with a 2 year seniority are entitled to an individual training paid leave, their employment contract being only suspended. In the entertainment industry, this training is financed by employers with a contribution equal at least to 2% of the gross wage.

5-3 The vocational training
There is no vocational training system for authors, because employers do not provide financing.

5-4 Health and safety committee

Only legal entities employing at least 50 employees are obliged to set up a health and safety committee.

5-5 The role of the Labour Inspectorate

Labour inspectors play an important role as they can carry out controls and report any infringement of the Labour Code and the Social Security Code. It was decided in 1999 to create specialised labour inspectorates covering the entertainment industry, with a specific training, and working hours enabling them to carry out controls in the evening. However, this reform has not been adequately implemented, despite the 1998 national convention of partnership against illegal employment in the entertainment industry.

6- SOCIAL PROTECTION

Performers are covered by a specific social protection scheme, for example on the following points:

- social security contributions limited to approximately 55 % of the rate of contributions due for employees under the general scheme.
- health insurance/right to daily benefits: payable during 6 months if they received at least 12 “fees” during the last 3 months, and payable during more than 6 months if they received at least 50 “fees” during the last 12 months.
- health insurance/right to cash benefits: payable during 2 years if they received at least 75 “fees” during the last 12 months.
- disability insurance: if they received at least 50 “fees” during the last 12 months,
- unemployment insurance: if they can prove having been paid for a minimum of 507 “hours” paid to the worker (each isolated “fee” correspond to 12 hours, and to 8 hours when there are 5 fees or more paid by the same employer), during a 12 month period.

Since 1977, authors have been covered by the general social security scheme. Producers or broadcasters pay a contribution equal only to 1% of the royalties. The rest is paid by the authors, with a total of approximately 8.85 % for health insurance, maternity insurance and disability insurance, and a minimum pension contribution of 6.5 %. In addition, authors have to bear the full cost of compulsory supplementary pension contributions, of a minimum of 8 %.

Authors are covered by the social security scheme on the following conditions:

- they voluntarily contribute to a pension plan;
- they have an annual income equal to 1200 times the value of the minimum wage (49.64 francs an hour in 2001). Otherwise, it is possible to obtain an exemption by applying to a professional committee.

Authors who do not have the employee status are not protected by the legislation on accidents at work.

Authors who do not have the employee status do not have any unemployment insurance.

Casual technicians benefit from unemployment insurance according to a system similar to that benefiting performers, when cumulating 507 paid hours over a 12 month period.

7- TAXATION

The law of 30/12/85 allows artists with a status of employee to be taxed on the average of their incomes over the last 3 or 5 years. They can deduct their professional expenses from these incomes, either on a flat-rate basis or on the basis of the actual expenses incurred (subject to receipts).
Authors are also entitled to deduct all their professional expenses.
VAT applies to royalties when an author or a performer artist received more than 245,000 francs (37.350,01 euro) during the previous year.

GERMANY

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GERMANY

01/03/2002 original version : German

PRESENTATION

The general legal framework

Workers can be paid according to one of three different types of professional status: employee, self-employed or civil servant. It is important to note that the expression Freier Mitarbeiter ("freelance") can be applied not only to an employee but also to a self-employed worker. In Germany, it is important to distinguish between self-employed work and "dependent" work. However, there are several forms of contracts under which employees and self-employed people can work in the entertainment and audio-visual sectors.

1- STATUS

The legal framework specific to workers in the entertainment industry

Self-employed workers can work under a service contract (Dienstvertrag), in which case they are classified as employees or under an order contract (Werkvertrag), in which case they are classified as self-employed. In addition, the German financial authorities have drawn up a catalogue intended to identify self-employed activities. This catalogue defines almost all artistic professions in the entertainment and audio-visual sectors as "self-employed" professions if the duration of the activity (even if concluded by way of an order contract) is not fixed beforehand for a specific period in the contract.
However, this catalogue is sometimes contradictory since, for example, a director who works for a broadcasting company will only be classified as self-employed if he or she is employed for a production. However, the financial authorities always classify an assistant director or stage manager as self-employed when they work for a production firm (cinema and television). Finally, it is important to note that performers are only classified as self-employed if they are employed as soloists, form an independent theatre group (composed only of self-employed people) for a tour or as soloists engaged for a television programme.

An employee can be employed under a contract of indeterminate duration or under a fixed-term contract. Fixed-term contracts are often used for cinema and television productions or in the theatre (seasonal contracts). An employee may also be employed on a part-time basis. In addition, there are specific statuses. The "non-permanent" status applies to fixed-term contracts for less than 7 days. A person employed for a period limited to two months or fifty working days during a year and whose earnings do not exceed 630 DM a month, is considered as having a "minimum job" (Geringfügig Beschäftigte). This status has no social protection whatsoever. Another form of employment status to be found in the entertainment and audio-visual sectors is that of quasi-employees (Arbeitnehmerähnliche Personen). This status applies to workers who satisfy the conditions of self-employed workers but who are, however, dependent on a single contracting party or group of contracting parties. This dependence is defined on the basis of the workers' income, at least half of which must be paid by a single

contracting party. It is important to note that an employee with such a status is better protected than a self-employed worker, above all because this group can conclude collective agreements.

2- INDIVIDUAL CONTRACTS

2-1 *The contract*

In Germany, no specific form is stipulated for contracts of employment. They may be in writing, verbal or even tacit. However, the law requires, in the absence of a written contract, a written declaration concerning the content of the contract. This declaration must be handed to the employee as soon as he or she starts work or immediately any of the terms and conditions of employment are changed.

In principle, the content of a contract is unrestricted. Nevertheless, the content has consequences for the worker's status. For self-employed theatre groups, for example, it is important that their contract with the contracting party does not specify fixed working hours or a fixed place of work, otherwise the group may lose its self-employed status. The collective agreements which are in force in the entertainment and audio-visual sectors often define elements which must be included in a contract. In the case of a service contract, they define the type of service, the period and remuneration. In the case of an order contract, these elements are the work commanded, the production period and the working hours. It is interesting to note that the union has drawn up a standard contract for authors with the federation of literary publishers; although this standard contract is not obligatory it establishes a certain principles.

Contracts are negotiated within the framework of the law on contracts of employment which protects workers with regard to the duration, suspension or interruption of individual contracts. Contracts must respect the relevant collective agreements; there are more than 15 such agreements in the entertainment and audio-visual sectors. For employees or quasi-employees, the contract's key elements (leave, pay and overtime pay, etc.) are fixed by the collective agreements in force. The union proposes standard contracts for the different categories of self-employed workers. However, employers, especially in the audio-visual sector, also have their own standard contracts.

Although neither party to the contract may amend the contract's terms and conditions unilaterally, an employer's management prerogatives allow it to change conditions of employment to the extent allowed by the nature of the working conditions, or the relevant collective agreements. This includes, for example, the right of a producer to extend the duration of the contract if such an extension is justified by special conditions, such as a breakdowns. Any transfer considered as a change to the contract of employment requires the consent of the works council in establishments having more than 20 workers.
There must be objective reasons, such as the replacement of a person absent or a temporary increase in the workload, to justify the use of a fixed-term contract. The law on the promotion of employment allows several fixed-term contracts to be concluded, up to a maximum total of 24 months, but there must be a valid reason for the duration of these contracts. Workers employed in artistic professions in theatres, orchestras, cinema or television productions etc. do not benefit from this protection since industrial tribunals have ruled on several occasions that the nature of the employment justifies fixed-term contracts. Workers employed with a quasi-employee status in radio-television stations are not offered a new contract before a year

if they have drawn concurrently their earnings to a certain level; this practice is intended to prevent the workers concerned from filing a complaint in order to obtain employee status.

In principle, the time-limits fixed in an order contract must be respected. If one party is responsible for the non-performance of the contract, the other party may claim damages. The law on copyright and related rights imposes no limit on the transfer of rights.. However, the law on copyright stipulates that a contract on the transfer of rights is by its nature exclusive or limited. In practice, there are collective agreements which cover the different aspects of the transfer of rights, but their validity is limited since they only apply in certain public ratio-TV stations and cover only quasi-employees. Nevertheless, they establish rules limiting the transfer of exclusive rights. However, the rights are transferred for the full period during which the work is protected. It is current practice to limit the transfer of rights on representations to two years.

In cases where the contract is subject to the general social security scheme, all new employees must be declared to the relevant social security office.
In Germany, there are no special cases when a contract must be registered with the public authorities by the contracting party.

2-2 The breach of contract
In the case of permanent employment, any dismissal must be justified. Dismissal is thus authorised on three grounds:
- the worker's personality,
- the worker's behaviour
- and economic grounds.

Even if one of the said causes can be invoked, the dismissal will be deemed illegal if the worker could be transferred to a comparable position immediately or after a retraining or refresher course. The employer must inform and consult the works council before dismissing an employee.
If the industrial relations tribunal considers that a dismissal is unfair the tribunal may order that the employee should be reinstated. Compensation is due for the period between the dismissal and the tribunal's ruling. The most common sanction in the case of unfair dismissal is compensation, but the tribunal may also order the worker to be reinstated. Although the tribunal may order the worker to be re-instated, in practice, generally less than 2% of workers dismissed are reinstated after legal proceedings.

2-3 The plurality of contracts
In general, there are no restrictions on workers having a second professional activity, unless there is an agreement to the contrary. A worker must not, however, take part or co-operate in any activity construed as unfair competition during his or her work relation.

2-4 The exclusive rights
In general, there is no obligation to grant exclusive rights under a contract. In practice, however, contracts often include exclusive rights. Musical production firms grant contracts imposing exclusive rights over a musical work, whereby the exclusive rights are not limited to the duration of the contract, but apply for a further five years after the expiry of the contract. The possibilities of the use of the musical work are therefore limited. Radio and television stations demand exclusive rights over the use of works, which can however be limited. In fact the collective agreement between several public stations and ver.di limits the exclusive rights to 5 years for television productions. The general practice is nevertheless the "buy out"

clause. Theatre groups have to contend with a "reverse exclusive rights" since they must request permission to perform before each tour.

2-5 The intellectual property rights protection

The provisions of the law on copyright and related rights stipulate that clauses concerning the transfer of copyright are also applicable when the author created the work as part of his or her obligations pursuant to a contract of employment or a service contract. It also stipulates that when an artist performer has provided a service as part of his or her obligations, under a contract of employment or under a service contract, it is the nature of the contractual relationship which, in the absence of a special agreement, determines to what extent and on what conditions, the employer or owner can use the service, or authorise its use by third parties. The principle is therefore that the contract of employment or service contract does not in any way change the fact that the rights belong to the author or to the performer. As regards performers, it is important to note that the employer becomes the holder of the relevant rights if the terms and conditions of the contract recognise that the employer or manager holds the rights relative to the use of the artist's performance or services.

The categories of workers protected by intellectual property rights are as follows: composers, directors, scriptwriters, playwrights, translators, decorators, costumers, photo directors and performers (musicians, actors dancers, singers, etc.). The protection of editors is currently being debated.

2-6 The transfer of the contract in favour of a third party

In principle, contracts can be transferred provided that their terms and conditions are respected. As regards order contracts, they generally stipulate that the contracting party is authorised to transfer the rights acquired to a third party. In the audio-visual sector, that often includes the right to transfer the contract in the case of joint productions.

2-7 The conditions subject to which a worker is eligible to retire

It is obligatory for all employees and self-employed artists (creators and performers) to belong to a pension plan. Only the insured person himself or herself is entitled to the pension. To be eligible for a pension, the insured person must have reached a certain age and have been a member of the plan for a minimum qualifying period. If applicable, depending on the pension plan concerned, he or she must satisfy other legal or personal conditions. The normal retirement pension is paid from the insured person's 65th birthday and supposes that the insured person has contributed for a minimum period of 5 years.

2-8 Compatibility with the different statuses

In Germany it is possible to combine several statuses. The worker's earnings determine which contractual status is the most important and have economic consequences (taxes, provision of collective agreements). However, the earnings are managed separately from the point of view of social security benefits (pension, health insurance, unemployment insurance) and for taxation purposes.

3- COLLECTIVE AGREEMENTS

The normative rules of collective agreements are only legally binding in the framework of a work relation when the worker is a member of the trade unions that signed the agreement and when the employer is also a member of the contracting association. However, in practice, workers who are non-union members benefit from the same conditions. It is important to note

that specific groups of self-employed workers can benefit from the right to collective bargaining when they have quasi-employee status. That can be justified if the workers are considered as economically dependent.

4- REMUNERATION

Unpaid work is not prohibited in Germany. There are abuses in particular in cinema and television productions where people starting out in the business are not given contracts.
There is no legislation establishing a minimum wage. Standard minimum wages are only fixed in collective agreements. In the entertainment and audio-visual sectors the collective agreements define minimum wages, but do not cover all categories of workers. If the work relation is governed by a collective agreement, the wage stipulated in the relevant collective agreement is the valid minimum wage which must be respected by the parties to the individual contract. However, the wages fixed by collective agreements are only minimum wages, actual wages are far higher.
The "amateur" concept does not play a major role in abuses as regards the respect of the minimum wage payment in the entertainment and audio-visual sectors.

The law on working time contains no provision on the payment of overtime. Paid overtime or time off in lieu is often determined in collective agreements or individual contracts. In the entertainment and audio-visual sectors, the overtime rate is often fixed at 25 %, whether the overtime worked is outside the normal working hours, above the maximum authorised or involves night-work. However, the so-called Solo collective agreement (covering soloists and other categories) contains no provisions on working time.
In practice, collective agreements stipulate that employees must be paid on a certain calendar day or working day following the last working day of each month during which services were provided. With regard to fixed-term contracts, the agreements stipulate often that payment should be made immediately after the work has been accomplished. In cinema and television productions, the agreement provides for the possibility to pay fees either daily, weekly or monthly.

There is no State wage guarantee system.

5- WORKING CONDITIONS

5-1. The general system
Labour law fixing minimum working conditions is a compilation of isolated laws and does not always apply to all categories of workers nor to the different categories of employees or self-employed workers. The collective agreements in force in the entertainment and audio-visual sectors improve the minimum standards fixed by the law or, in specific cases, provide for a dispensation if such is justified by the nature of the work. It is important to note that most provisions in labour law and collective agreements cover only employees. It is important to note that quasi-employees can be protected by collective agreements, but the scope of the protection varies. Nevertheless, they regulate working conditions and afford a degree of protection from which self-employed workers who do not have the status of quasi-employees do not benefit.

The provisions of the law on working time which define a working day as 8 hours apply only to employees. As the weekly working time (which is not defined in the law) is based on the possibility of a week of 6 to 8 hours a day, the regular working week is 48 hours. A new law on the organisation of working time provides for the possibility to increase the daily number of working hours to 10, while maintaining an average of 8 hours a day over a period of 6 days. Night-work is limited to 8 hours a night (10 hours if an average of 8 hours over 4 weeks is respected). In cinema productions, the collective agreements have fixed a normal working week of 42h30 and a maximum weekly working week of 50 hours. Despite these limits, longer working weeks are in practice very common in cinema productions.

As regards health and safety at work, employees benefit from certain obligations imposed by law on employers. In principle, employers must organise the work in such a way as to provide employees with the necessary protection against health and safety risks inherent in the nature of the work, and comply with the legal requirements and regulations concerning professional insurance. In addition, employers are obliged to adapt the work to the individual, in particular from the point of view of the design of the work station, the choice of equipment, working and production methods, reducing monotonous work and fixing work rates. Self-employed workers benefit from specialised medial surveillance with regard to risks specific to their occupation: aptitude test required under the legislation on transport, preventive medical examination, in accordance with the principles of the National Health Service, if the worker is insured with against accidents at work. The current list of occupational illnesses recognised by social security offices includes certain ailments which affect in particular performers.

5-2. Regulations on paid holiday leave

All employees and also quasi-employees are entitled to paid holiday leave (fixed-term contracts, contracts of indeterminate duration, part-time workers, etc.) Self-employed workers who do not have quasi-employee status do not have any such entitlement. Workers employed under a contract of indeterminate duration are entitled to a minimum of 24 days annual paid holiday leave. The collective agreements contain even more favourable provisions for the different categories of employees.

5-3.Allowances in the case of accidents at work

Employees and quasi-employees are protected by the law and, as a rule, they are paid a daily allowance by their employer form the first day of their sick leave. Self-employed workers not having quasi-employee status are not protected, but can take out personal accident insurance, for themselves and their spouse who works with them. However, self-employed people working under a service contract must be insured by the contracting party. The general social security scheme offers the following benefits following an accident at work or in the case of an occupational illness: full medical treatment, occupational therapy (including, if necessary, retraining), social rehabilitation measures, the payment of a pension to the insured person and the surviving spouse. The daily accident allowance amounts to 80% of the shortfall in gross pay up to the amount of the net pay, provided that no wage is paid. Such allowances are paid for a maximum period of 78 weeks.

5-4 The role of the Labour Inspectorate

Labour inspectors have considerable influence on labour relations. Their role is particularly important as regards safety and hygiene conditions, the establishment of contracts of employment and social security contributions. From the point of view of health and safety, the relevant social security office is responsible for checking the working conditions of self-employed workers who are insured.

6- SOCIAL PROTECTION

All employees and self-employed artists (creators and performers) must belong to the general social security scheme which includes a pension scheme and health insurance. Only employees are entitled to unemployment insurance. However, the criterion of compulsory protection does not apply where annual earnings exceed 36.813 EUR (or 31.291 EUR in the new Länder). In this case, it is possible to take out voluntary insurance cover. Workers whose annual earnings do not exceed 3804 EUR (or 3.190 EUR new Länder) and who work less than 15 hours a week (minimum employment) are also excluded from the scheme. Contributions are calculated on the basis of the worker's earnings and are shared equally between the worker and the employer/contracting party.

There are special rules concerning the insurance of self-employed people who have a dependent employment (service contract) with public radio-television stations. They are insured in the same way as their colleagues having a contract of employment, but the protection ceases three weeks after the last engagement. The workers concerned must then find a balance between the period of their service contract (see 1.7. Fixed-term contracts) which limits their work possibilities and the need to work at least one day every three weeks in order to continue to be covered.

Performers are covered by the social security office for artists (Künstlersozialkasse), the "KSK". They are eligible if they have an annual income of at least 3783 EUR. Membership of the "KSK" is obligatory, but in order to be covered artists must prove that their principal activity is artistic. Debutants can become members during the first five years of their artistic activity even if their annual income is below that amount. Like the other workers they pay 50% of contributions; the remaining 50% is paid by the employers and by the State. The law on the social protection of artists stipulates that employers of artistic works must pay a social security contribution and the Ministry for Social Affairs fixes very year the amount of the contributions. Under this system, employers must pay to the "KSK" a percentage of all fees. The current problem is that the "KSK" – with its financial problems – applies increasingly strict membership criteria. An actor for example who is forced by the theatre to accept a contract as a self-employed worker – despite the fact that under the law he or she has employee status – can encounter difficulties.

Workers in the entertainment and audio-visual sectors benefit from several supplementary insurance schemes. The public radio-television stations allow self-employed workers to join a pension plan. The worker must have worked at least for one year for private stations or private production firms which participate in the scheme, with a minimum wage of 3067 EUR. It is interesting to note that the administrative costs of this scheme are limited to 3% of the volume. A worker is entitled to a pension, after having contributed for 10 years.
It is obligatory for artistic employees in theatres to belong to a supplementary pension plan (disability, pension, widowhood and orphan's pension). Contributions are calculated on the basis of the employee's wages (9% of the gross wage, 16% if the worker is not a member of the general social security scheme) and are equally split between the employer and the employee. It is obligatory for musicians employed by orchestras, the so-called Kulturorchester to belong to a supplementary insurance scheme which has the same terms and conditions as the theatre insurance.

Self-employed workers without supplementary insurance can join a group insurance plan concluded by ver.di (IG Medien).

As stated above, employees automatically belong to the general disability-pension scheme (apart from a few exceptions). The gross monthly wage ceiling used for calculating contributions to the general disability-pension scheme is, for the year 2001, 4.448 EUR (or 3.732 EUR new Länder). This limit on contributions means that the contribution to the state disability-pension scheme is based on these maximum amounts. Self-employed artists automatically belong to the state disability-pension scheme. Since 1 January 1999, self-employed workers with quasi-employee status have belonged to the general state scheme when, in connection with their self-employed activity, they do not employ regularly any worker subject to social insurance.

The following provisions apply for all workers entitled to social protection:
1. Only the insured person himself or herself is entitled to a pension. They must have reached the retirement age and have contributed during a minimum period. The pension is normally paid from the 65th birthday and supposes a minimum period of contributions of 5 years, the pension for long-standing contributors is paid from their 63rd birthday and supposes a minimum period of contributions of 35 years and the pension for severely disabled persons is paid with effect from the 60th birthday and supposes a minimum period of contributions of 35 years. For reasons of unemployment or at the end of part-time work or in cases of progressive early retirement an old-age pension can be paid from the 60th birthday and supposes a minimum period of contributions of 15 years. However, it is only paid to unemployed people with effect from the date of their eligibility for a pension and who, after having reached the age of 58 and six months, have remained unemployed for a total of 52 weeks or have received a rehabilitation allowance as a miner having been made redundant.

2. The insured person can choose to take his or her pension by way of a full pension or a partial pension. They may choose to be paid a third, half or two-thirds of the their pension entitlement. The lower the amount of the partial pension, the more complementary income they are authorised to earn.

3. A disability pension replaces income when the insured person is partially or totally incapable of carrying out any wage-earning activity. Such pensions are subject to certain conditions. Thus, on the date of the event resulting in such disability, the insured person must have contributed to the compulsory disability-pension scheme for at least three years during the last five years (plus possible periods considered as periods of non-contribution) and have contributed for the minimum period of insurance (5 years) prior to the event resulting in the reduction of the worker's wage-earning capacity. However, this condition does not apply in cases where the reduction of the worker's wage-earning capacity occurs in circumstances where the minimum insurance period (general condition) is considered as having been attained. That is notably the case as regards accidents at work.

4. Upon the death of an insured person, the surviving spouse is entitled to a widow's pension equal to 60% of the full pension entitlement of the deceased spouse. This "big" widow's pension is due on conditions that the widow or widower is aged at least 45, or suffers from an industrial disability or is unable to earn a living or is bringing up a child. If none of these conditions are satisfied, the surviving spouse is entitled to the "small" widow's pension, which is equal to 25 % of the amount of the deceased spouse's full pension. However, if the

surviving spouse has his or her own income and that is above a certain threshold, 40% of the excess amount is deducted from the widow's pension.

5. Orphans who have lost both parents receive one fifth of the amount of the full pension due to the deceased insured person, and orphans who have lost either their mother or father receive one tenth.

Only employees are covered by the unemployment insurance scheme. Non-permanent employees (those working under a fixed-term contract of less than seven days) or those who have a minimum job (their employment is limited to two months or fifty working days during a year and whose income is not more than 630 DM) are not covered by unemployment insurance. In certain cases, self-employed workers with the status of quasi-employees may be covered. However, self-employed workers are not covered. The contribution is 6.5% of the wage (the employer and employee contribute equally). The regulations concerning upper limits and thresholds are the same as those applying to pension plans. In order to be entitled to unemployment benefits, the employee must have contributed for 360 days during the three years before losing his or her job.

7- TAXATION

Income tax is imposed in principle in the same way for employees and self-employed workers. Only the calculation and the method of payment are different. Nevertheless, that has important consequences for self-employed workers. Whereas taxes are directly deducted from the employee's wages or fees, self-employed workers receive their fees without any deduction and have to make an advance payment every three months. In practice, the difference between the two methods is that, as a general rule, the employee pays more than what it is due and can claim a refund whereas the self-employed worker pays less and must pay the balance at the end of the year.
The amount of taxes due is calculated in the same way for employees and self-employed workers: after the tax exemptions have been deducted (children, house construction, etc.) from the global income to obtain the taxable amount. The global income of self-employed workers is equal to turnover less operating costs; the global income of employees is equal to all their income and fees less professional costs (which can be deduced on the basis of actual expenses or on the basis of a flat-rate amount).

Self-employed workers have the possibility to deduct more items than employees. However, the criteria applied to obtain deductions on the basis of operating costs for self-employed workers who use their flat or house for work purposes are becoming stricter. It is important to note that deductions are calculated for the principal professional activity (which accounts for at least 50% of the global income). Artists (creators and performers) who are employees benefit from a special fixed amount of professional expenses which is higher than the fixed amount applied to other employees.

In addition, self-employed workers are subject to the VAT system. That can have advantages and drawbacks for self-employed workers. In general, it can be considered that a self-employed benefits more from clients who are ready to pay VAT on top of fees. Self-employed theatre groups or musical groups can obtain an exemption from VAT like all self-employed people whose turnover is less than 16361 EUR during the previous year. Almost all services

in the entertainment and audio-visual sectors are subject to a reduced VAT rate of 7% (instead of 16%).

GREECE

PRESENTATION
The general legal framework

1- STATUS
The legal framework specific to worker in the entertainment industry

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GREECE

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PRESENTATION

The general legal framework

The labour code seems to impose, for every worker, including those in intermittent work (even for one day), the status of "employee", as soon as there is a contract of employment. But, as often seems to be the case in Greece, the reality is not the same as the legal principle.
The Presidential Decree 156/1994 makes it compulsory for contracts to be in writing and to contain the provisions imposed by Directive 91/533. Any infringement of this obligation can (in theory…) be sanctioned by a fine imposed by the labour inspectorate. It almost never is.

There is no legislation regulating the maximum duration of fixed-term contracts, and since a "liberal" reform introduced in 2000, the law is more flexible in permitting the use of fixed-term contracts.
A fixed-term contract can only be renewed twice. If the contract is renewed after that, it is automatically transformed into a contract of indeterminate duration. In the event of any breach of a fixed-term contract, the employer must pay the remuneration due until the end of the contract.
Employee representatives can only be made redundant on certain grounds, which are listed in law, and following a decision of a tripartite committee (judge, employee representative and employer representative).

Collective agreements cover only members of the organisations which are signatories to the agreements. They may be extended to a branch of economic activity as a whole by a decision of the Minister of Employment, only if more than 51% of the workers in the category in question are employed by the employers that are signatories to the agreement.
A law enacted in 1999 has created greater flexibility on the regulation of working time, with a possibility to work up to 15 hours a day and numerous derogations concerning Sunday rest.
Self-employed workers are not covered by the health and safety legislation.

The right to strike is "regulated" by a law, according to which it can only be sanctioned after 5 days.

Employees must obtain from the services of IKA a book in which their "stamps" confirming that their social security contributions have been paid are affixed. The health insurance fund is deeply in the red. One stamp can correspond to one day's work, but may also correspond to more depending on the type of employment and remuneration.
Health insurance: in order to be eligible for the daily allowance, the insured person must be able to prove that he or she has paid contributions for 100 days during the year preceding his or her sick leave or during the 12 months preceding the last 3 months of activity, or prove that he or she has paid contributions in respect of 300 days during the last 2 years or the 27 months preceding the last 3 months of activity.

Maternity insurance: the beneficiary of the maternity benefits must have paid 200 days of contributions during the 2 years preceding the start of the maternity leave.
Disability insurance: the insured person must be able to prove that he or she has worked the minimum periods: either 1500 days, including 600 during the last 5 years, or 1050 days during the 12 years preceding the disability (the number of days required increases between the ages of 21 and 33).

The nominal value of the stamps, and their consequences with regard to social protection (value in terms of the "days" taken into account), depend on the amount of the remuneration paid.
In principle there is one stamp per "fee" and, for those who are paid monthly, the equivalent of 25 stamps a month.
The minimum value of the stamps (7,000 Drh) is higher (with better social cover) for "unhealthy or heavy work": 13,000 Drh. That allows, for example, the workers concerned to be able to retire at 60 instead of at 65, and more generally obliges employers to make higher contributions for the social protection of workers.
In fact, there are 25 categories of stamps depending on the remuneration paid and the type of work. This system is perverse, since employers have every interest in imposing the use of the cheapest stamps; which leads to a reduced social protection, especially for intermittent workers.
More generally, there is an important level of fraud in the use of stamps.

Unemployment insurance: employees must have lost their job through no fault of their own, be registered with their local job centre and be able to prove that that have collected 240 stamps during the two years preceding the date when they lost their job. For those claiming unemployment benefits for the first time, they must be able to prove that they have contributed for at least 80 "days" a year during the 2 years prior to their redundancy.

1- STATUS

The legal framework specific to worker in the entertainment industry

The number of "informal" jobs has increased considerably, while at the same time there is a dearth of collective agreements. Although the law obliges employers to declare all new employees to the administration, this obligation is rarely respected as regards musicians. Moreover, there is no regulatory framework for the employment of musicians in permanent municipal orchestras and in private orchestras. Most intermittent musicians are paid as "self-employed workers", whereas according to the musicians union, this type of employment should, according to labour laws, have "employee" status.
Actors who manage a troop become "self-employed workers" and are considered as being personally the employers of the troop members. They thus lose the right to belong to the actors union.

ETEKT has obtained the creation of a "licence" for technicians, which is issued if the worker can satisfy certain criteria of professionalism: having a diploma, the application studied by a professional committee and a professional examination.

Self-employed workers are not protected by the collective agreements.

2- INDIVIDUAL CONTRACT

2-1 The contract

Most musicians employed by the State in its 3 permanent music groups (2 orchestras and a choir) are employed on fixed-term contracts (written), and cannot be recruited as permanent employees since a reform adopted in 2000 prohibits that. Musicians who retire are systematically replaced by others on a fixed-term contract. While a permanent employee receives on average d 400,000 Drh a month, an employee on a fixed-term contract receives 150,000 Drh a month. Artistic cohesion and more generally the quality of the orchestras will be affected adversely by this situation as a whole.

According to ETEKT, even in the case of technicians, numerous workers are employed without a written contract. However, the trade union has established standard contracts which "allow self-employed workers to benefit from the same social protection as employees" (…). ETEKT has informed us that there is a legal possibility, in the event of a regular succession of fixed-term contracts, to have the contract reclassified as a contract of indeterminate duration, but that this possibility is never used.

The trade unison representing performers do not issue standard contracts.

The production budgets of films are filed with the Greek Cinema Centre, but not the contracts. In the event of their work being broadcast by public television, actors receive an additional remuneration equal to 5% of their initial remuneration.
ETEKT has created a collective management company to represent photo directors, sound engineers and editors. Public television pays royalties to this company, but the private television channels have refused.

3- COLLECTIVE AGREEMENT

The collective agreements relative to performers are generally concluded for each of the two "seasons" worked by the musicians: "Winter" from 1 October to 30 April, and "Summer" from 1 May to 30 September.

A collective agreement has been concluded between the musicians union and the clubs covering the employment of intermittent musicians. It has been extended by a decision of the Minister of Employment: it therefore protects all the musicians employed by clubs, including by employers that have not signed the agreement. This conventions stipulates that in the absence of a written contract, the employer has a "grace period" of 6 days to regularise the situation in writing. After that period, the employment becomes permanent to the end of the "season" (with, in the case of breach of contract, an obligation to pay compensation equal to the amount of the remuneration up to the end of the season). In order to prove that they were employed for more than 6 days, musicians must present two witnesses before the industrial tribunal (including one under oath).

Actors are not covered by any collective agreement in the audio-visual area. Private producers have a very aggressive attitude towards trade unions, and apparently are in general supported by the government. Moreover, the collective agreements in force in theatres are regularly violated, without the actors deciding to take legal action for fear of finding themselves on a "black list".

Technicians have a very clear and comprehensive national collective agreement in the general field of audio-visual production. This agreement has been extended by ministerial decision.

4- REMUNERATION

Members of orchestras can earn less than 100,000 Drh a month. Directors employ at very low cost Albanian musicians (for several months) when Greek musicians protest about their pay. An orchestral soloist is paid between 500,000 and 700,000 Drh (on average 2,500 Euros, that is to say on average 3 times less than in a German orchestra). More generally, it is shocking to observe to what extent the standard of living of musicians has deteriorated, while Greece has received important aids from the European Commission in the area of culture (including 300 million Euros of unused credits).

There is no "wage scale" for musicians, as the regulation does not recognise their professional diplomas. Paradoxically, intermittent musicians receive an "annual bonus" paid by the National Employment Agency.
Directors do not have minimum pay levels established by collective agreements. Pay is exclusively the result of individual negotiations.
The hourly rates of technicians are increased by a standard 75% for overtime, whatever the time (including nighttime work) or day (including Sunday).
The system of guaranteed wages in the event of the employer's bankruptcy never covers intermittent workers in the entertainment industry.

5- WORKING CONDITIONS

5-1 The general system
The agreement concluded by PROSPERT for national radio-television employees fixes the working time at 37.5 hours a week.
The normal working day of a technician is 8 hours, or 6h40 in the case of a 6 day week; with a minimum rest period of 10 hours between every day worked.

5-2 The vocational training
Neither employers nor the State contribute to the financing of training for workers in the entertainment industry. The 1988 "Merkouri reform" has never been implemented, despite the fact that, according to the trade unions, it is economically viable. In reality, those that can afford do so, go abroad to follow vocational training courses.
ETEKT is in the process of creating, in a building restored thanks to aid from the Ministry for Culture, a training centre for the audio-visual field.

5-3 The role of the Labour Inspectorate
The labour inspectorate never intervenes in the establishments or buildings used for performances or for production purposes, except in exceptional circumstances.

6- SOCIAL PROTECTION

A law of 1926 has extended membership of the general social security scheme (IKA) to self-employed workers, with as a consequence self-employed workers are "considered" as

employees. Employers are therefore responsible for the payment of the social security stamps, both for employees and self-employed workers.

ETEKT launched an action to have 55 production companies controlled by the labour inspectorate as regards the payment of social security contributions. Following this action, adjustments and penalties have been imposed covering periods from 5 to 10 years.
ETEKT has obtained, through a collective agreement, the right to control that contributions have been paid.

Artists need a minimum of 50 “stamps” a year (+ 25 for the current year) to be eligible for health insurance cover, and 100 stamps a year for the reimbursement of hospitalisation costs. Musicians and actors benefit are entitled to benefit from the stamps reserved for the category of workers at risk (“unhealthy or heavy work”), which means that they need 4,500 stamps instead of 6,000 to be entitled to the minimum pension. There is currently a project to revoke this “privilege”, at the request of the European Commission.

The musicians union has proposed the following measures concerning specifically musicians:
- a lowering of the retirement age;
- a lowering of the threshold of 50 stamps to be entitled to health insurance benefits;
- controls and additional assessments due in respect of the non-payment of social security contributions by employers.
Moreover, it has proposed the creation of a system of a specific degree of disability for musicians (example: specific degree of disability in the case of a guitarist being unable to use his or her thumb, etc.).

Technicians do not benefit from stamps reserved for the category of workers “at risk”; they consider this to be an unjustified discrimination).

In order to receive the full retirement pension at the age of 65 (for men) and 60 (for women), workers must have collected at least 10,400 stamps. As there is no specific pension plan for artistic professions, the situation is that few artists receive a retirement pension, notably because their career often stops well before the age of 60 or 65.
PROSPERT has concluded, for national radio-television employees, a collective agreement allowing early retirement at 53.

A contribution for paid holiday leave is paid for intermittent musicians, but they never benefit from it. The same is true of the “Easter bonus”.

Unemployment insurance: a person who wants to work occasionally during a period of unemployment cannot in theory do so since he or she must ask for his or her book of stamps to be returned. However, in practice, a person receiving unemployment benefits is never asked to supply his or her book!
In practise, during the 6 months when unemployment benefits are paid, he or she will work without a book of stamps, that is to say undeclared. More generally, the administrative system is too complicated, which leads to numerous workers in the entertainment industry not applying for unemployment benefits. Those who receive such benefits are generally paid a flat-rate sum of 107,000 Drh a month, during a period of 6 to 8 months maximum.
For performers, the minimum amount of stamps, in order to be entitled to unemployment benefit, is 200 during the last two years, but after deduction of the stamps of the last two months (which is tantamount to requiring more than 200 stamps). A musician who is

receiving unemployment benefits is allowed to work 12 “days” a month, with the amount of the unemployment benefit being reduced accordingly during the 12 days.

7- TAXATION

Musicians and actors (to be confirmed) are allowed to deduct most of their professional expenses (clothes, material, travel, rent, studies, medical costs, etc.) but the systems governing the deduction of these expenses change regularly.
Possibility for income tax of 20% to be deducted at source: with the employer being obliged to provide the worker with a certificate confirming payment.
This system is frequently applied. The musicians union is in favour of this system, as it allows the payment of social security contributions to be controlled (except for cases involving employment by private individuals).

IRELAND

PRESENTATION
The general legal framework

1- STATUS
The legal framework specific to worker in the entertainment industry

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2-4 The protection of the intellectual property rights
2-5 The conditions subject to which a worker is eligible to retire

3- COLLECTIVE AGREEMENTS
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6- SOCIAL PROTECTION

7- TAXATION

IRELAND

01/03/2002 original version : English

PRESENTATION
The general legal framework

Irish law regards a verbal contract as a legally enforceable agreement. Therefore a written contract though desirable and usual is not a requirement in order for a contract to exist. An employee may demand a written contract but if an employer fails to provide one that is not proof that a contract does not exist.

The law states that employees are entitled to a written contract and this is very much usual practise.

The main distinction in contracts is between employment contracts and 'contracts for service'. Employees have various rights enshrined in legislation relating to Employment and Trade Unions – independent contractors, who are contractors for service, do not get all of these rights.

Underneath the level of legislation there are various collective agreements. These agreements, between trade unions and employers usually, do not have any special legislative force, being themselves contracts between the parties involved, although there is a rarely used system that allows that these agreements can be registered.

1- STATUS

The legal framework specific to worker in the entertainment industry

The main collective agreements are the national agreements on pay and other matters (the most recent is the Programme for Prosperity and Fairness) negotiated at national level between employers, trade unions and the government. This regularly renewed agreement lays out pay increases for three years in return for a no-strike agreement and also outlines various social objectives to be achieved during the period. This affects most employees in the arts, communications and entertainment sectors but has a less clear impact on independent contractors.

At a more local level there are also collective agreements covering the particular circumstances of individual groups of employees and independent contractors in our area. For example actors, writers and technicians all have agreements with the state broadcaster and the independent producers. It is at these local levels that the reality of practise in respect of employment contracts, whether as employees or independent contractors, is decided. As general practise workers are given standard contracts that have been agreed between employers and employees representatives.

Ireland has an extensive, and given the no-strike clauses in the National Agreements, heavily utilised systems of arbitration systems, labour relations commission and the labour court dealing with most problems that can arise between employees and employers.

Additionally most local agreements have grievance procedures built in to them that allow local problems to be dealt with at a local level.

2- INDIVIDUAL CONTRACTS

2-1 The contract

Contracts are in two general categories. There are those which are letters of appointment (for employees) and those that are contracts for service (which are those for independent contractors). As a general rule in the entertainment and media areas contracts refer to extant collective agreements.

Screenwriters, who are almost always independent contractors, are not as well organised in this area as they should be with collective agreements now being revised to be more substantive and more effective.

Standard contracts and procedures exist for other writers but normally based on custom and practise rather than collective agreements.

Visual artists are the main group not generally covered by the arrangements outlined above as their work method usually involves them making work which is subsequently offered for sale. Contracts with exhibitors or galleries are often verbal. Where visual artists are commissioned to produce work contracts for service are usually agreed and signed in advance.

There is relatively little to negotiate for the majority of individuals. Contracts follow the collective agreements. Extensive negotiation takes place of course to establish and maintain the collective agreements but individual contract must follow the terms of the agreements. The key difference is where an individual technician, actor of writer is especially sought after and may therefore be able to negotiate rates of remuneration and/or share in the exploitation of the eventually produced product higher than the minima established by the collective agreements.

Negotiated changes in contract (within the confines of the collective agreements and the law) are possible but unusual. More likely is a dispute over interpretation (but as the contract is based on a collective agreement any problem of interpretation would effect all contracts under the collective agreements and it is at that level that such problems would normally be addressed) or an extension of some kind (e.g. a writer may be asked to undertake further drafts of a script).

Collective agreements can theoretically be registered but this is rarely used and not at all used in the audio-visual or entertainment sectors.
There is no requirement to register contracts. Contracts have general protection in law and no further protection is acquired by the registration system.

Many workers in the entertainment and audio-visual fields work on short term contracts. A somewhat complex situation exists in respect of regularly renewed short term contracts. In general, Irish employment law does not allow for regularly renewed short term contracts if the employers intentions are to avoid the responsibilities that go with permanent employment status. This relates for example to the terms and procedures for dismissing individuals and

cases have been brought to the Employment Appeal Tribunal ending always in the employees favour.

Most employment is short term in the sense that the individual is employed for the period of a production or (as a contract for service) where a particular task has to be done.

Complications arise in cases such as long-running series for television where actors and writers may in practise be working on one production for a very long time. The national broadcaster goes to considerable trouble to ensure that these individuals do not have a claim for permanent and pensionable employment as a result of regularly renewed employment. Presenters on RTE (the national broadcasting network) working on continuous short-term contracts over a number of years during which PRSI (pay related social insurance) was deducted from their salaries were deemed by the Rights Commissioners to be permanent employees entitled to holiday pay.

2-2 The breach of contract

Most contracts allow either side to withdraw on the basis of a certain notice period. Employment contracts must respect the law on minimum notice periods. Problems about the quality of work being produced are the most usual cause of the breaking of contracts in particular refusal to pay or to accept work. As the definition of quality of work is often a subjective judgement this can lead to problems. Most collective agreements have dispute resolution procedures incorporated in them.

For writers and screenwriters there are often 'turnaround' clauses incorporated. These mean that if the broadcaster, publisher or producer fail to publish or produce the work within a period of time then the rights in the work revert to the writer. However this is not a breaking of the contract.

It is unusual for a freelance worker in film or television to quit or be fired. The speed of production is such that it is often difficult to replace someone. The sanction is that the freelancer may find it difficult to get future work if they are not though to have worked well on past projects.

An employee or a contractor would usually call on trade union representative to negotiate some resolution. In the event that the employer refused to co-operate then various recourses are available. These relate not just to the fact that the contract has legal status but also to extant employment legislation that prohibits from dismissing employees except in specified circumstances. Reinstatement follows the same logic.

2-3 The plurality of contracts

Unless a contract specifies that the employee or contractor works exclusively for the employer during the period of the contract than it is theoretically possible that the individual could undertake other work in parallel.

This is more likely for a writer or visual artist, less practical for an actor or musician.

However it is possible for performers to have more than one contract simultaneously. The performer must notify the second employer of existing contractual obligations and obtain a

commitment form the second employer that the work undertaken will not interfere with the original contract e.g. an actor contracted to perform in theatre may with the management's permission accept a film contract provided the film company undertakes to ensure that the actor is in the theatre every evening before the half-hour call. An actor with radio or TV commitments can work simultaneously in theatre with the consent and agreement on working arrangements between the contracting parties.

2-4 The protection of the intellectual property rights

Intellectual rights in Ireland are alienable and can be assigned by their creator. As a result of Section 23 of the new Copyright and Related Rights Act an individual who signs a contract of employment will cede all rights to any intellectual rights they may be party to creating to their employer in their contract. Equally many workers in audio-visual or entertainment industries will cede or assign all their rights in their basic contract. However some workers do not assign rights but rather sell additional uses of the rights in various territories or media usually in return for a fee based on a percentage of the original basic fee. Equally shares in Box office or net producers receipts are not uncommon. These two approaches are not mutually exclusive.

The recent new Irish copyright legislation created moral rights for creators in line with European directives, but also allowed that the rights can be waived. These rights exist regardless of employment status and the extent to which individuals are asked to waive these rights varies.

Copyright in Irish law is not inalienable and is often though not always assigned to producers. Normally contracts set out rates of remuneration for what are usually called additional uses (for example the basic payment may relate only to exploitation of the product once only on national broadcaster – additional use payments are made if the product is to be re-used or sold to other users).

2-5 The conditions subject to which a worker is eligible to retire

Roughly speaking employees have pensions built in to their employment status, freelance workers and independent contractors do not.

In RTE for example the tax status of employees mean that they are contributing to the state pension that they are therefore entitled to. Additionally if they have worked for a minimum of twelve months they become entitled to a further pension accumulated by a combination of contributions drawn for their salaries and contributions by the employer. The pension does not pay out until a minimum of twenty years service has been undertaken. Payment can be for a fixed monthly amount from retirement or a combination of lump sum, plus lesser monthly amount.

For freelance workers access to pensions depends on the category of tax band they place themselves in. Schedule E workers (employees) pay higher taxes and are entitled to various benefits – Schedule D workers (self-employed) pay less tax but have to make their own pension arrangements.

3- COLLECTIVE AGREEMENTS

3-1 Trade unions' representation in the sector

The audio-visual and entertainment industries in Ireland are quite strongly unionised.

The main organiser of workers in the audio-visual and entertainment industries is SIPTU – Services, Industrial, Professional and Technical Union – which is the largest Union in Ireland.

The Broadcasting Branch has most RTE workers as its members, covering operational, technical, programming grades and clerical and drivers. Janitors in RTE are organised by SIPTU but in a different branch. Film and television workers outside RTE are also largely organised by SIPTU in its Film, Entertainment and Leisure branch, with the exception of construction grades. Actors and other theatre workers are organised by Equity, which is part of SIPTU. SIPTU has a system of affiliate membership that allows organisations of persons not working primarily as employees to access the Unions services – these include the Irish Playwrights and Screenwriters Guild, the Irish Writers Union and the Artists Association.

RTE management is organised in a small independent Union, the RTE Management Association. The NUJ organises most journalists.

The construction crafts are organised in the TEEU (electrical workers); UCATT (carpenters); OPATS (plasterers); and painters in yet another branch of SIPTU.

Musicians are split between SIPTU which has the RTE Symphony orchestra and Concert Orchestra and the Federation of Irish Musicians which has relatively few members.

The key role of the unions is that of representing members to the employers, in particular in the negotiation and maintenance of collective agreements. Given the nature of the industries involved they also play very important roles in distributing information about upcoming work and, depending on the particular needs of particular categories of workers also provide information services

3-2 Legal effects of collective agreements

The legal effect of collective agreements in Ireland has never been fully tested in court. Both Employers and trade unions fear that to do so could hurt their side more than the other and in any case could be detrimental to their common relationship. Irish law is still based on Section 4 of the 1871 Trade Union Act of the United Kingdom, which confirmed that trade unions are not monopolies which can be prosecuted for restraint of trade yet at the same time left their agreement s with employers voluntary rather than legally enforceable.

In practise agreements probably are legally enforceable in that they are contract in their own right and also to the extent that they are reflected in individual contracts, which do have legal enforceability.

Closed shops are not permitted and as a result most collective agreements tend to apply both to members and non-members of trade unions.

4- REMUNERATION

It could occasionally happen that workers in the film or entertainment areas might contribute their work for say charitable purposes or to assist with training films being made by students or the like. This would be unusual and not of such a volume that it would cause any problems. Nothing in Irish law would prevent a worker from undertaking work for nothing.

Ireland has minimum wage legislation, which applies to all employees. However the minimums to be paid in the audio-visual or entertainment sectors are higher than the national minimum wage and are negotiated in the collective agreements.

Independent contractors are often paid a fee for the completion of a given task rather than a rate of pay per time period.

Irish law implements the decision of the European Working Time Directive. In general collective agreements provide conditions better than those minimums.

Higher grades at the national broadcaster do not usually get paid overtime – although they may get Time Off in Lieu.

In general the legislative requirement is one month but the collective agreements usually require more regular payments – for example technicians and actors are paid weekly. In film actors must be paid within two weeks of receipt of invoice. Voice over artists (radio and TV) must be paid within 30 days of receipt of invoice.

The Insolvency Act and the Protection of Employment Act place responsibilities of companies to retain funds to pay employees in the event of collapse. Employees are meant to be paid in first place as preferred creditors. Additionally there is the concept of Statutory Redundancy where employees who lose their positions through no fault of their own (such as in the vent of the collapse of the company) are entitled to compensation which will be paid buy the state if the company cannot.

Additionally There was a system of requiring companies, particularly in the case of film production to place bonds. Tighter production budgets and relatively few collapses have made this increasingly unusual. Completion bonds for films are normal but not legally required. Such completion bonds do not necessarily protect workers who have not been paid as a result of a productions collapse.

5- WORKING CONDITIONS

5-1 The general system

The European Union Working Time Directive applies in Ireland so 47 hours is the maximum working time per week. Other details – meal break provisions and so on – are usually defined in collective agreements and by extension in individual contracts.

5-2 The regulations on paid holiday leave

Paid leave entitlement relates to the amount of time worked. This is two days paid leave for every continuous four weeks worked.

5-3 The vocational training

There is no statutory entitlement to training in Ireland although a significant amount of training in the audio-visual field in particular is provided.

At RTE the collective agreement makes a commitment to training and RTE ahs a training facility but this is used only to provide training as the company sees fit and in a fairly short term way.

There is a state training agency which provides funding for training in all sectors of the economy although this is generally only available to unemployed persons actively seeking work. This agency provides funds for Screen Training Ireland, which runs short courses in the film area. There are a number of third level institutions that provide qualifications in film and television skills though these are not formally tied to either the broadcasters or the unions.

Many freelancers in the film business get their training on set as trainees; a provision that the Union insists is part of normal film production budgets.

5-4 The allowances in the case of accidents at work

Accident compensation is theoretically available but Unions are often required to argue the case on behalf of workers against employers reluctant to accept responsibility.

5-5 The role of the Labour Inspectorate

Safety inspections are made by local authorities. Labour inspectors can intervene of behalf of any regular employee.

6- SOCIAL PROTECTION

Health care is available to employees. Pay related social insurance (PRSI) is deducted from their salary at a rate of 8% matched by an additional 12% paid by the employer. Self-employed persons can pay into the system. However they do so at a lower rate and get less benefits. Many people also pay into the semi-state Voluntary Health Insurance, which offers additional facilities to those available from the state system or the wholly private insurance scheme BUPA.

All workers are entitled to unemployment benefit – at a rate of £85.50 per week plus £54 for an adult dependent plus £13.20 per dependent child – provided that they can prove that they are available for and actively seeking work. Actors experience difficulties when claiming for unemployment benefits. Attending auditions and on-going training are not interpreted as 'actively seeking work'. Equity has dealt with a number of cases where actors who have been working consistently have been refused unemployment benefit. When alerted early enough Equity was able to resolve the issues, but where it went to an Appeals Tribunal the applicant was rarely successful. The professional status of the performing artist is not recognised.

A state pension is paid at age 65 to all workers. There are two categories: Contributory pensions are based on PRSI contributions and are pay a maximum of £112 per week

(€142.21) based on forty PRSI contributions per year and reduced pro rata according to the number of contributions paid. Non-contributory pensions pay £95.50 per week (€121.26) to all citizens at age 65 who do not qualify for a contributory pension.

7- TAXATION

There are three rates of taxation of income in Ireland. For those earning less than £150 per week there is no income tax to be paid. Those earning up to £17,000 per annum pay 20% and on income over that 42% is payable.

Since 1968 a special regime has applied to creative artists (composers, writers and visual artists) who pay no income tax whatever on earnings no matter the high or low the income is. This is a seen as a very positive arrangement although there are some minor disadvantages or distortions caused in that employers occasionally discount the tax benefits in order to argue that they can pay less; saving for a pension is somewhat discouraged by the arrangement in that there are clearly no tax benefits to pension saving and many visual artists do not earn even the minimum amount of income necessary to pay tax and so the benefit is moot.

This particular tax benefit applies to all artists resident in Ireland and many British writers in particular utilise it.

An individual providing a service must register for VAT provided that they have a certain minimum volume of business. Media is zero-rated.

Restes

1.9 Commissioned works

One disadvantage of the status of permanent employment is that, as a matter of normal contractual practise rather than of law, employees contracts require them to accept that any intellectual property invented or produced by the individual during the course of employment is the property of the employer.

Moral rights were introduced in Ireland under the terms of the recent new copyright legislation which intends to implement the requirements of the European directive on the subject. However the paragraph establishing moral rights in the legislation is immediately followed by a paragraph that allows that the rights can be waived. A demand for such a waiver is now common practise with independent producers but not at the national broadcaster.

Commissioned works are contracted under the terms of a contract for service.

ITALY

PRESENTATION
The general legal framework

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1-1 The contract
1-2 The breach of contract
1-3 The plurality of contracts
1-4The protection of the intellectual property rights
1-5The transfer of the contract in favor of a third party

2- COLLECTIVE AGREEMENTS

3- REMUNERATION

4- WORKING CONDITIONS
4-1 The general system
4-2 The regulations on paid holiday leave
4-3 The allowances in the case of accidents at work
4-4 The vocational training
4-5 The role of the Labour Inspectorate

6- SOCIAL PROTECTION

7- TAXATION

ITALY

01/03/2002 original version : french

PRESENTATION

The general legal framework

Workers in entertainment may be engaged in two distinct types of activity:
(a) occasional production activities (audio-visual, drama, music, dance), always on fixed term contracts, insofar as the productions themselves run for a pre-established period (with pre-contract screen tests or auditions)
(b) and permanent activities (in broadcasting, permanent theatres, opera houses and orchestras) employing staff and artists on permanent contracts (with a paid trial period).

1- INDIVIDUAL CONTRACT

1-1 The contract
In general, employment contracts should be concluded in writing where the period is fixed or where there is an agreed trial period (during which both the employee and the employer may withdraw from the contract without compensation or the need for prior notice).
Apart from these two cases, contracts are assumed to run for an indefinite period where there is no written agreement. Workers are nevertheless entitled to receive a declaration giving the company's date of registration (a provision generally disregarded in the entertainment industry).

The contract may contain any provisions which do not run counter to the law or relevant collective agreements. Normally, the contract will indicate the main elements in the working relationship (start and finish dates, identity of the parties, job description and duties, the relevant collective agreement, any preferential clauses).
Particular collective agreements may identify further compulsory elements for inclusion in individual contracts (e.g. in the theatre, contracts must mention the role or roles which the actor will be required to play). In principle the contract may be negotiated freely by the employee, but it is common practice for employers to make use of standard contracts, though these must respect the conditions set out in the appropriate collective agreement. In the case of actors in the audio-visual sector, and in the absence of a collective agreement, contracts entirely drafted on a unilateral basis by the employer are used, solely in accordance with the dictates of the law.

Theoretically, a contract may not be unilaterally amended by either party. The judicial authorities may intervene only if the contract fails to comply with the law or the relevant collective agreement (e.g. bringing the employee's pay into line with the established parameters). In the entertainment world, it is not uncommon for employers to alter contracts verbally in mid term. In this case, where such an amendment is not in his favour, an employee

can regard the amendment as just grounds to terminate the contract, although this frequently entails legal proceedings.

The placement of workers in the entertainment industry should take place via a special public office. Under this procedure, applications may be made to employ specific individuals. Singers, concert soloists, conductors, producers, set designers, choreographers and dancers, like all other workers, may be recruited directly, but the names of the artists employed must be registered with the entertainment workers' placement office within a mandatory period of five days. Artists' contracts must also be lodged with the office.

Employment contracts are assumed to be open-ended, except in certain special cases which are listed under the Law no 230/62 (including the recruitment of staff for specific events or radio and television programmes). Fixed term contracts may, exceptionally, be extended with the employees' consent where unexpected contingent circumstances arise, but not more than once, for no longer than the length of the original contract and for the same activity. If the labour relationship continues after the expiry of the original (or subsequently extended) term, the contract is deemed to be an open-ended one, as from the date of initial signature.

Law no 56/87 has extended the scope of fixed term contracts to circumstances set out in collective agreements. Collective agreements for workers in the entertainment industry have restricted the use of fixed term contracts in the sector, identifying the circumstances under which such contracts may be used and the percentage of staff which a company may employ on such contracts.
Another legal device for employing fixed term labour is the "temporary contract for the provision of services". This is a form of contract under which a business (which must conform to certain legally defined characteristics) makes one or more workers available to a second company making use of their labour for temporary requirements (Law no 196/97). Inter alia, such contracts may be concluded under the circumstances set out in the national collective agreements applying to the category to which this second company belongs.
Contracts for the entertainment sector restrict the use of these instruments to the personnel employed on open-ended contracts. These contractual forms are generally used in the case of subordinate staff providing services in the entertainment business (technical and administrative employees) and, to a great extent, to employees of opera companies and orchestras.

It should be noted that Law no 61/2000 also regulates part time contracts, for which the written form is compulsory.

Actors and singers, on the other hand, are employed on the basis of precarious contracts. The contract usually excludes the existence of a relationship of subordinate employment, with the result that the parties are free to set the terms of the contract without being bound by such legal provisions.
The status of the contract does not preclude the possibility that the Labour Inspectorate or the courts might reach a different conclusion as to the legal nature of the relationship in the light of the manner in which the services are actually carried out, possibly deciding that there exists a relationship of subordinate employment.

1-2 The breach of contract
In the case of subordinate employment, the employee may withdraw from the contract at any time subject to prior notice and always provided that he is engaged on an open-ended

contract. Otherwise the employment contract may be rescinded by the employee where the employee is insolvent either legally or in economic terms.
The employee may rescind the contract with just cause (an objective cause which prevents, even temporarily, the fulfilment of the contract), for justified subjective reasons (e.g. failure to comply with contractual obligations) or objective reasons (such as factors inherent in production or work organisation).
In the case of unfair dismissal, a judge may order the reinstatement of workers on open-ended contracts and reimbursement of damages or the payment of compensation. In the case of fixed term contracts, liability is commensurate with the monthly payments which would bring the contract with the firm to its conclusion.

In the entertainment industry, sectoral collective agreements set out further special circumstances under which a contract may be annulled, including the violation of any exclusivity clause, theatre regulations or the professional objections of a worker to the role entrusted to him.
Employees have a general duty not to undertake any activity which is in competition with that of his employer. Failure to comply with this duty may constitute just cause for an employer to terminate the contract. Such a clause must be specifically agreed in artists' contracts.

1-3 The plurality of contracts
Employment in more than one capacity, even on the same day, is authorised provided that it is compatible with the exclusivity clause agreed between the parties. Any failure to comply with the provisions set out in the collective agreement will expose the defaulting party to liability for damages or payment of any penalty agreed in the contract.

1-4 The intellectual property rights protection
Authors' rights (in the case of authors) and associated rights (for performers) are protected by legislation and trans-national regulations. Authors' right are protected from both the economic and moral points of view. The works benefiting from this protection are listed in a non-exhaustive fashion in the legislation, which refers to "works of a creative nature" in the sciences, literature, music, theatre etc. whatever the manner or form of expression. For associated rights, all the relevant European regulations have been transposed into Italian law. In some cases Italian law recognises additional rights, such as the right to fair compensation for the public broadcasting of recorded audio-visual works.

1-5 The transfer of the contract in favour of a third party
Contracts of employment may be transferred to a third party subject to the formal information of workers. An employer taking over such contracts is obliged to respect the provisions previously agreed by the assigning party, including all contractual and legal obligations.

2- COLLECTIVE AGREEMENT

As a matter of principle, collective labour agreements are only binding on members of the organisations which have signed them. However, case law has extended their application to workers who are not members of such organisations in order to guarantee them fair and sufficient remuneration. In the absence of a specific collective agreement, the judge will apply the most similar agreement. In the entertainment sector, the application of collective agreements is a necessary condition for access to public subsidies.

3- REMUNERATION

As a matter of principle, the working relationship should be rewarded. Collective agreements establish the minimum wages applicable. Nevertheless, unpaid work is admissible provided that the event does not involve ticket sales or benefit from public subsidy. Trial periods worked by musicians, when they are organised independently by workers in preparation for events, may be included in the relative contracts as unpaid working days, for which social security contributions alone are due. In these cases contributions are due on the contractual minimum in force. In the case of occasional work, unpaid work is allowed and organisers usually require a declaration that the artist is willing to take part on a voluntary basis and without charge.

Periods outside normal working hours are paid via increases of various kinds depending on the case in question (extraordinary work, night work, holidays etc.) established by collective agreements rather than the law. These agreements also set out the compulsory deadlines for payment. Delays in the payment of wages do not in themselves normally attract penalties. However, such delays do give a worker the right to take legal action for payment, including legal interest, and to rescind the contract.

There is no real system of wage guarantees. For subordinate employees there exists a guarantee fund for severance pay. Fixed term workers enjoy no particular protection. If the contracting party is declared bankrupt, they may claim any sums due through the bankruptcy proceedings. If they are employed as subordinate workers they are classified as preferential creditors. Otherwise they are unsecured creditors.

4- WORKING CONDITIONS

4-1 The general system

The legal working week is of forty hours. In practice, each collective agreement sets out working hours which take account of the special features of the various occupations. The compulsory weekly rest day, as well as featuring in all collective agreements, is included in the Civil Code and is an individual right.

4-2 The regulations on paid holiday leave

Subordinate employees, whether on fixed term or open ended contracts, are entitled to paid holidays commensurate with the length of employment and regulated by collective agreements. However, in the entertainment business, artists are often employed on a freelance basis and do not enjoy this right.

4-3 The allowances in the case of accident at work

Turning to safety, both the Civil Code and Law no 626/94 oblige employers to take measures for prevention, to protect the physical and psychological well-being of their employees and to improve working conditions. Employees should be insured against accidents at work and unemployment. Often employers claim that workers are self-employed in order to avoid having to pay social security charges to the public institutions responsible.

Subordinate workers involved in accidents at work receive compensation for temporary

invalidity commensurate with their wages, and, in cases of "biological damage"[TN] or permanent injury, a permanent invalidity income calculated on the basis of a legally established scale. An accident in the workplace does not terminate an employment contract, but has the effect of suspending it. As result, the worker has the right to resume his normal activities with the same employer after a period of temporary invalidity. In practice however, it is exceptional for workers to return to their post because the temporary nature of the work.

4-4 The vocational training

Vocational training for staff on open-ended contracts is generally organised and financed by the regions through work and training contracts. In the entertainment sector, collective agreements also provide for apprenticeships for young people aged between 16 and 24.

4-5 The role of the Labour Inspectorate

The Labour Inspectorate may take action at any workplace where there are subordinate or non-subordinate workers. In practice this happens rather rarely in the entertainment industry due to staff shortages.

5- SOCIAL PROTECTION

Italian social security regulations state that all private and public employees and almost all self-employed workers must be covered by one form of social security or another. This requirement is not affected by the length of time worked: even a single day's work triggers the duty to carry insurance. There are four forms of compulsory social security cover:

- general compulsory insurance (AGO), managed by the national social welfare institution, INPS;
- alternative forms of general compulsory insurance, run by pension "Funds";
- exclusive forms of the AGO, run by the national welfare institute for public employees, INPDAP;
- welfare schemes for the self employed occupations, managed by category Funds.

ENPALS, the national welfare and assistance body for employed and self-employed workers in the entertainment industry, is one of the alternative forms of the AGO. It is responsible, inter alia, for the payment of retirement pensions, old age pensions and invalidity pensions. The INPS, however, pays sickness, maternity and unemployment benefits and any other social assistance.

The Italian pensions scheme is based on a contributory system and, therefore, on the amount of contributions paid during the entire working life revalued over time.

Before 2001, artists (except dancers who enjoy preferential conditions) in the entertainment industry where entitled to an old age pension at the age of 61 (56 for women), with 20 years' insurance equal to 2400 contributions for actual services in the sector. Retirement from work is a necessary condition. The contribution year for fixed-term workers in the entertainment industry (who are in the majority) is equal to 120 days' work for occasional artists, 260 days for other occasional workers, and 312 days for staff on permanent contracts. It is quite difficult to achieve in practice and workers frequently fail to accumulate sufficient contributions. Contribution mechanisms for non-working periods and the application of

unemployment benefits are also difficult to adapt to the needs of the entertainment industry.

In 2001/2002 workers in the entertainment industry are entitled to a retirement pension at age 54 if they have 35 years' contributions, or at almost any age with 37 years' contributions (contribution year of 120 working days). From 2008, 40 years' contributions will be required. The same regime applies to self-employed workers.

In this sector, some employers recruit artists and technicians for a production recording them as self-employed workers despite the fact that they present all the characteristics of employees. This enables employers to profit from a system which exempts them from payment of contributions for accident and unemployment insurance.

The maternity allowance is equivalent to 80% of average daily pay up to a limit of LIT 130 000 per day. It is calculated on the basis of the last monthly pay received and is generally paid by the employer don behalf of the INPS for a maximum 150 days. In the entertainment industry this arrangement is given a wide range of interpretations, which sometimes make it difficult to base the benefit on the last month actually worked insofar as freelancing workers have difficulty in finding work during the seventh month of gestation, for obvious reasons.

Sickness benefit runs from the fourth day of the illness and cannot exceed 180 days or the duration of the formal contract. The sum paid is equal to 40% of the average daily pay for the first 20 days of illness and around 60% per subsequent days caused by the same illness or a relapse. In practice, in the entertainment sector collective contracts often have provision for supplementary sick pay at the employer's expense. The percentage in question is determined by the contract. Only days covered by the contract are payable.

In the event of dismissal, unemployment benefit - equal to 30% of income with some limits on the maximum payable - is payable for a maximum of 180 days. The eligibility requirements - at least 2 years' insurance and at least 52 weekly contributions in the two years preceding the date on which employment was terminated - are difficult to achieve for those working in the entertainment sector, for whom provision has therefore been made for unemployment benefit with reduced requirements. This applies to employed workers who, having been dismissed for reasons not attributable to their own actions and unable to show 52 weekly contributions in the preceding two years, have worked for at least 78 days in the preceding year. The payment is proportional to the days worked during the preceding year, up to a maximum of 156.

For casual staff in the entertainment sector there is provision for unemployment benefit with lower eligibility criteria, up to a limit of the days worked in the preceding year which must, however, exceed 78.

However, the law in question can be read in two contradictory ways, in so far as it includes workers in the entertainment sector but expressly excludes "artists" and self employed workers.

6- TAXATION

For all workers, personal income tax (IRPEF) is deducted at source. In the entertainment sector, even expenses payments are taxes if they exceed LIT 90 000 (for a travel within the

country) or LIT 150 000 for travel abroad. Expenses payments are paid at a flat rate directly by the employer and are considered as an operating cost for the enterprise.

For self-employed workers registered for VAT a 20% deduction on account is normally applied. Expenses payments are also taxed but, unlike employed workers, invoices must be presented. Theatrical activities in Italy are subject to a 10% VAT rate. Self-employed workers in the entertainment sector often invoice travel and subsistence expenses (20%) separately from their own professional services (10%).

NETHERLANDS

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NETHERLANDS

01/03/2002 original version: English

PRESENTATION

The general legal framework

Workers fall into three basic categories: employees, self-employed and civil servants. Employees may be engaged on the basis of a permanent, fixed-term or part-time employment contract. Self-employed workers are engaged on the basis of a service contract. It is important to note that the notion of "freelance" can refer to both a worker with several non-permanent employment contracts and a worker engaged under a contract for a specific order or who is paid upon submission of an invoice.

1- STATUS

The legal framework specific to worker in the entertainment industry

As for employees, the two most common arrangements are permanent contracts and fixed-term contracts. Most of the principal contractual aspects are governed by collective agreements which often improve on minimum requirements or qualify legal flexible dispositions.
In the entertainment and audio-visual sectors, so-called "oproepkrachten" workers, who are employed on a flexible basis, represent a growing proportion of the workforce. These workers have signed an agreement with the employer whereby they work on demand. Such an agreement can take several different forms and can provide for varying degrees of flexibility. Some contracts give workers the choice whether or not to accept the work offered. Other contracts stipulate that the worker undertakes to work on demand but do not specify the working hours (e.g. the minimum number of hours required). Conversely, other contracts may provide for the performance of a minimum number of hours of work ("min-max" contract). Following the enactment of a law on flexibility and job security, it is now possible to move from a flexible contract to a fixed-term contract. Furthermore, a worker is now entitled to a permanent contract after having completed three temporary contracts with the same employer.

It should be noted that collective agreements govern most of the provisions of all employment contracts, including flexible employment contracts. The so-called "theatre collective agreement", for example, establishes which categories of workers can be employed on a flexible basis and what kind of flexible employment contract applies in each case.

2- INDIVIDUAL CONTRACT

2-1. The contract
Employment contracts in the Netherlands are not required to conform to a particular model. They can be written, verbal or even tacit agreements. However, workers are entitled to

request the employer to provide a written description of the principal working conditions applicable to them. On the other hand, the law or a collective agreement may stipulate that the employment contract or certain specific clauses must be in writing. The collective agreements applicable to the entertainment sector require employment contracts to be in writing.

In the entertainment and audio-visual sectors, collective agreements often contain model contracts that must be followed. Such model contracts exist for all employees, whatever their particular status may be, and specify the beginning of the employment relation, the job description, gross pay and the category of personnel in which the worker is classed.

As a rule, unilateral changes are not allowed. However, in his capacity as manager, the employer may modify working conditions to the extent allowed by the nature of the conditions themselves and in accordance with the clauses of the employment contract and any relevant collective agreements. Only in the event of changes to collective working conditions is the employer under an obligation to inform and consult the works council. If the latter does not agree to the changes, the employer may have recourse to a sectoral equal-representation arbitration committee and, failing this, he may lodge an appeal with a law court.

In this respect, the role of the administrative authorities is limited to authorising the termination of a fixed-term contract that has been previously renewed.

Public registration of the contract by the contracting parties

In the Netherlands, legislation does not provide for any specific cases where the contract must be entered by the employer in a public registry.

In principle, the law on flexibility and job security limits the extension of fixed-term contracts to three successive contracts. A person who has worked regularly for the same employer for three months is deemed to have an employment contract. However, an employer may re-employ on a temporary basis a person who has already been employed on three successive occasions under fixed-term contracts, provided that the last period of employment ended at least three months before the commencement of the new contract. In the entertainment and audio-visual sectors, collective agreements regulate the terms and conditions of fixed-term contracts. They also allow for one-day contracts ("dagcontract"), which are covered by the legislation protecting working conditions.

As regards temporary workers, the law on flexibility and job security has abolished the six-month maximum limit on the duration of temporary contracts.

As regards copyright, no limits are set. In practice, this implies a transfer of rights for the whole period during which the work in question is protected.

2-2 The breach of contract

Dismissals must be authorised by the director of the local office of the Department of Employment. Any dismissal must be sufficiently justified. Upon further examination of the case, a magistrate may rule that a dismissal is manifestly unfair. In such cases, the magistrate examines not only the reasons for dismissal, but also the dismissal procedure that has been followed. The magistrate may also conclude that the dismissal was manifestly unfair if the compensation accorded to the worker was insufficient. The dismissal is considered null and void and the worker is deemed to be still legally employed if the director of the Department of Employment does not authorise the dismissal on such grounds or because the dismissal contravenes explicit prohibitions concerning dismissal (pregnancy, sickness, status as a

representative of the workforce, etc.). The magistrate may order the reinstatement of the worker or, alternatively, the payment of compensation.
A judge may order the reinstatement of a worker, but the employer is always entitled to reject this option and to pay a larger amount of compensation instead.

2-3 The plurality of contracts
In general, there are no restrictions preventing a worker from carrying out a secondary professional activity, unless an agreement to the contrary exists. However, the worker may not engage or cooperate in any form of disloyal competition during the period of employment. If the worker's secondary activity is liable to seriously jeopardise the interests of his/her main employer, the latter is entitled to seek to prevent this secondary activity. Trade union organisations have pointed out that some employers have a tendency to "monopolise" freelance workers.

2-4 The intellectual property rights protection
As regards performers, the law establishes that the employer is entitled to take over the rights of performers and to utilise the latter's performance, provided that an agreement to this effect exists between the contracting parties or that such a utilisation flows from the type of contract they have concluded, from customary practices or from reasons of fairness and equity. The employer has an obligation to pay the performing artist or the relevant right holders equitable remuneration for each form of utilisation of the rights surrendered. The collective agreement for orchestras defines the amounts to be paid to artists for each form of utilisation.

As regards film production, legislation has established a "presumption of transfer" of copyright and of the rights of performers in favour of the producer of a cinematographic work. Performers are deemed to have transferred their rights as from the moment when the cinematographic work can be considered to be finished and complete. The "presumption of transfer" grants the producer the right to "make the cinematographic work public, to reproduce it, to add subtitles to it, and to dub the dialogues".
The following categories of workers are protected by intellectual property rights: composers, directors, scriptwriters, playwrights, translators, set designers, costume designers, performers (musicians, actors, dancers, singers, etc.) and visual artists.

2-5 The transfer of the contract to a third party
Contracts are transferable provided the clauses of the contract are respected.

2-6 The conditions subject to which a worker is eligible to retire
The state pension plan is financed on the basis of tax contributions. Complementary retirement plan are only available, in principle, to employees. Employer contributions are usually between 6 and 10% of the gross salary, while employees contribute between 3 and 7% of the same.

2-7 The compatibility with different statuses
Workers in the Netherlands can simultaneously have different legal statuses and this practice is widespread in the entertainment and audio-visual sectors. This enables workers employed on a flexible basis and who, in addition, hold a permanent job, to benefit from the most advantageous social protection scheme among those applicable under the different employment contracts.

3- COLLECTIVE AGREEMENTS

The clauses of collective agreements apply to all employees (including "flexible" employees), even if they are not members of the union concerned.

4- REMUNERATION

Unpaid work is not prohibited in the Netherlands.
Minimum wages are fixed by national regulations, following consultations with the social partners. All workers are covered by the provisions in force. The law provides for the automatic adjustment of average salaries. However, as a result of the implementation of restrictive policies, this mechanism has often become inoperative, so that currently the minimum wage is barely higher than ten years ago. In view of price increases, the minimum wage has lost about 10% of its purchasing power over the past decade.
The law on wages not fixed through collective agreements and the provisional law on the income of self-employed professionals establish minimum levels for workers who are not covered by collective agreements.

The notion of "amateur" does not play a significant role in abuses concerning minimum pay levels in the live performance and audio-visual sectors.

Pay for overtime is not regulated by law but only by collective agreements or individual employment contracts. As a rule, rates for overtime vary between 150 and 300% of the normal hourly rate, depending on the number of hours of overtime performed. The collective agreements applicable to the entertainment and audio-visual sectors limit the amount of overtime that can be performed and establish specific arrangements for different types of employment.
In practice, collective agreements fix the deadline for payment for different kinds of contract. They provide for payment by the end of the month in the case of permanent contracts and for a short deadline in the case of fixed-term contracts and flexible employment. In the event of a delay in the payment, the employer is liable to pay interest on the outstanding amounts. Trade unions monitor the implementation of the agreed rules and, if necessary, take legal action against the employer.

In the event of bankruptcy of the employer, the department of social security pays the workers concerned a salary or wage for a maximum period of 13 weeks. Only employees are covered by this scheme.

5- WORKING CONDITIONS

5-1 The general system
As regards the establishment of minimum standards for working conditions, the relevant labour legislation is contained in a whole series of isolated laws and does not apply to self-employed workers. The collective agreements applied in the entertainment and audio-visual sectors improve on the minimum standards established by law or, in specific cases, provide for exceptions where justified by the nature of the work. As regards working hours, the law sets the maximum number at 45 per week, with an average of 40 hours per week for each period of 13 consecutive weeks. Exceptions to the regulations on working hours are possible. The law establishes specific limits to the longer working hours that may be fixed under

collective agreements with the trade unions or under an agreement with the works council or other representative body of the workforce.

"Arbowet" legislation does not apply to self-employed workers. In certain circumstances, however, a self-employed worker performing a job in a company employing workers must respect the relevant legal provisions established for the protection of the workforce. As regards the responsibility of self-employed workers for their own health and safety, the law on working conditions does not generally apply to them unless they operate as a company or legal entity. As regards their responsibility for the health and safety of third parties, a number of provisions of the law on working conditions are applicable in the event of cooperation work carried out jointly with third parties. When such third parties are not workers, the applicable provisions as regards liability are those of civil law. Self-employed workers do not benefit from health care specific to the occupational hazards they face.

5-2 The regulations on paid holidays leave

All employees (including temporary, permanent, part-time workers, etc.) are entitled to paid holidays. Self-employed workers do not enjoy this benefit. Collective agreements stipulate even more advantageous regulations for certain categories of employees.

The law on financial aid in the case of a leave of absence offers workers and civil servants wishing to take a leave of absence for training purposes, or for the purpose of looking after a dependant, a financial benefit of up to EUR435.63 per month for periods ranging from two to 18 months. It is up to the workforce and the employers to conclude an agreement regulating this kind of prolonged leave of absence. The granting of a benefit is subject to the obligation to replace the worker taking the leave of absence with a recipient of unemployment benefit and/or other benefits, a worker returning to the labour market or a handicapped person.

5-3 The allowances in the case of accident at work

Social security legislation entrusts the employer with the task of providing (at least in part) for sick pay. A law passed in 1996 obliges the employer to continue to pay the worker's wage/salary for up to a year in the event of sickness. As regards the amount of the benefit, the worker is entitled to receive at least the minimum wage and the established percentage of 70% of daily pay is often augmented by collective agreements. The employer cannot terminate the employment contract during the first two years of sickness, but an exception to this rule may be provided for in the relevant collective agreement.

5-4 The role of the Labour Inspectorate

The labour inspectorate is an agency operating under the responsibility of the Ministry for Social Affairs. Labour inspectors have considerable influence on industrial relations. Their role is particularly important in relation to health and safety issues, the establishment of an employment contract and the payment of social security contributions. The labour inspectorate also monitors the health and safety conditions in which self-employed people work. It is entitled, in particular, to issue injunctions and order the cessation of work.

6- SOCIAL PROTECTION

The Dutch social security system is essentially based on two types of insurance: a national insurance scheme, which covers all residents on the territory of the Netherlands, and a more specific scheme for employees and waged workers. The basic principle of the scheme is that

any insured person who is not in a position to earn sufficient income is entitled to a supplementary allowance which will raise the means available to the person to a level equivalent at least to the value of the net minimum wage.

Wage earners are automatically covered by all the forms of insurance provided under the social security system. In order to benefit from sickness and maternity benefits, they must register with a sickness insurance fund. To benefit from a disablement allowance, the inability to work must exceed the 52 weeks covered by sick pay, whatever the reason for the disability. Self-employed workers are affiliated to the relevant professional association of the industry they work in.
As regards sickness insurance, the national insurance scheme covers all major health risks. The insurance scheme for wage earners complements the national insurance system, providing cover for additional health care as well as daily benefits. The contribution to cover major health risks and the attendant expenses amounts to 5.40% of the taxable base. As for ordinary health care, the contribution rates are as follows: for the employer, 4.85%, and for the employee, 3.05%. The Dutch civil code obliges the employer to pay the employee, for up to six weeks, an amount equivalent to the minimum wage to which he or she is entitled, minus the amount of the sickness benefit. Sickness benefit amounts to 70% of the daily wage.
As regards disablement insurance, the national insurance law (AAW) establishes a tax-like contribution calculated on the basis of income. The law on the insurance of employees (WAO) establishes a contribution payable by wage earners which is equivalent to 12.15% of their wages.

Artists (creative artists and performers) are protected by a social security system known as WIK. The WIK system is intended for professional artists whose income is insufficient, i.e. less than or equal to the maximum amount of the basic supplementary benefit provided under the national insurance scheme. WIK provides an amount equal to 70% of basic supplementary benefit, i.e. EUR 468,75 for a single person. This amount can be increased up to an amount equivalent to 125% of supplementary benefit through the income derived from the utilisation of artists' works, i.e. up to EUR837.22 per month. Furthermore, professional expenses are tax-deductible; the actual amount deducted varies depending on the professional activity in question.

In order to determine whether an individual artist is eligible for a WIK benefit, his/her income, any other means available to him/her, and his/her professional qualifications are all examined. The maximum duration of the benefit is four years, i.e. 48 months, but this period may be curtailed depending on the beneficiary's circumstances. Should the beneficiary start earning sufficient income, the benefit may be interrupted. If subsequently the income should drop below the established level, the worker will again be eligible for a WIK benefit. However, the entitlement to a WIK benefit ends after 10 years from the date of the worker's last employment. It should be noted that the WIK scheme includes medical insurance. However, no allowances are paid specifically as sickness insurance or family allowance.

The law on old age insurance is subsumed under the legislation governing the national insurance scheme. Dutch legislation does not provide for a general mandatory complementary retirement scheme applicable to all wage earners. However, it does establish obligatory contributions to a retirement fund which covers all the activities in each industrial branch. Any person under 65 years of age, whatever his or her nationality, is obligatorily included in this insurance scheme. Any resident aged 65 and over is entitled to old age insurance. The right to a pension is maintained in the event of the person moving abroad. The old age

pension is paid in full to any resident that has contributed to the fund during the period from 15 to 65 years of age.

In principle, complementary retirement schemes are only accessible to wage earners. The employer's contributions generally range from 6 to 10% of the gross wage or salary, while the rate for employees is between 3 and 7% of the same. Specific funds have been established for the payment of complementary retirement pensions in accordance with collective agreements for different categories of entertainment artists.

The WW law on unemployment benefit is subsumed under the legislation concerning the insurance of wage earners. All wage earners are covered by this law. The insured must be under 65 years of age. The minimum required period of work is 26 weeks over the 12 months preceding the loss of employment. The maximum period is three years over the five years preceding the loss of employment. In this case, the ordinary 26-week period is reduced to 16 weeks over the last 12 months.
Unemployment benefit is funded through contributions paid by the employers as well as the employees. Contributions amount on average to 1.99% for employers and 1,19% for employees. The state also contributes to financing the system. Unemployment benefit amounts to 70% of the daily wage, with a ceiling limiting the maximum daily amount. An effective overall duration of work of 26 weeks over the 12 months preceding unemployment entitles the worker to six months' benefit.

In this connection it is worth noting a decision taken by the European Commission, on the basis of Article 226 of the Treaty, with regard to the refusal by the Dutch authorities to continue to pay unemployment benefit to a frontier worker who wished to seek employment in France for three months. The Commission believes that Community Law obliges the Netherlands to "export" unemployment benefit without drawing a distinction between frontier workers and other workers.

7- TAXATION

A new system was introduced on 1 January 2001, providing for three forms of income tax. Thus, for taxation purposes, income is classed under three categories: the first includes taxable income from work; the second category includes income from interest, and the third taxable income from savings and investments. The amount of tax owed is calculated by applying the established tax rates to the taxable base. The result is then reduced by applying any rebates to which the worker is entitled. A minimum flat deduction of EUR1,576 is applied by default. It should be noted that, for artists, it might be more advantageous to request a deduction of actual professional expenses by submitting a list of such expenses.

The tax rate varies in accordance with four tranches: 32.35% on income up to EUR14,870; 37.60% on any additional income up to a maximum of EUR12,139; 42% on the next EUR19,300; and 52% on the rest. The 32.35% rate is composed of 2.95% in respect of national insurance contributions and 29.40% in respect of taxes; the rate applicable to the second tranche is composed of 8.20% in respect of contributions and 29.40% in respect of taxes; finally, the 42% and 52% rates consist solely of taxes.

Self-employed artists are subject to VAT at the rate of 19%.

PORTUGAL

PRESENTATION
The general legal framework

1- STATUS
The legal framework specific to worker in the entertainment industry

2- INDIVIDUAL CONTRACTS
2-1 The contract

3- COLLECTIVE AGREEMENTS

4- REMUNERATION

5- WORKING CONDITIONS
5-1 The general system
5-2 The vocational training

6- SOCIAL PROTECTION

7- TAXATION

PORTUGAL

01/03/2002 original version: French

PRESENTATION

The general legal framework

The general legal framework provided by labour law is similar to that in force in France or in Spain. Those who are employed as self-employed workers use a "green receipt", which shows the percentage of the remuneration which will be allocated, at the worker's responsibility, to the payment of the social security contribution (20 %, instead of 32.75 % under the general scheme for employees). The government is planning to submit workers using "green receipts" to a global rate of social security contributions of 32.75 %.

In principle, contracts of employment have no specific form and may be in writing, verbal or even tacit. However, a written contract is required for fixed-term contracts, temporary contracts of employment, apprenticeship contracts, for foreigners and for certain categories of workers (professional sportsmen and women, professional actors, etc.).
Fixed-term contracts are regulated by a specific legislation, *article 41* of the *Decree-law n° 64-A/89* of 27/02/1989 with the modifications of the law 18/2001,of the 3rd of July . The use of fixed-term contracts must be justified under special circumstances, related either to the employer (start of the company's activity or start of a new activity), or to the worker (worker looking for his or her first job or a long-term unemployed person). The maximum duration of a fixed-term contract is 3 years, and 2 years in case of a contract for the launching of a new activity .
The normal minimum duration is 6 months, but in some cases, it may be less, if the contract corresponds to an activity scheduled for a shorter duration. The contract may be renewed twice in the limit of a total duration of 3 years (or 2 years),
The automatic conversion of a fixed-term contract into a contract of indeterminate duration is the rule, when the contract is continued beyond its term. In theory, it is possible have a fixed-term contract reclassified as a contract of indeterminate duration before the end of the 3 year duration.

The regulations related to the *Law on employment procedures*, in force since 1 July 1990, include some reforms with regard to redundancy or dismissal measures. They define 5 series of circumstances in which errors committed by the employer during the procedure invalidate the worker's dismissal or redundancy and entitle the worker to be reinstated.
If the worker chooses to receive a compensation instead, this will be as high as a 1 month pay per year of seniority, subject to a minimum of 3 months pay.
Worker representatives are entitled to special compensation if the court cancels a dismissal for disciplinary reasons: 2 months pay per year of seniority, with a minimum of 12 months.

The minimum wage is fixed each year by a national regulation. This system covers all workers from the age of 20. Young workers are entitled to a fixed percentage of the minimum wage fixed for adults.

Overtime is limited to 2 hours per business day and to 160 hours a year. The law provides for a remuneration increased of 50% for the first hour and or 75% thereafter. If the overtime is worked on a daily rest day or a bank holiday, then the increase will be of 100 %.

The wage guarantee fund only covers permanent employees.

There is no law imposing a delegate for health and safety in the workplace. This may be provided by collective agreements (when they exist). Self-employed workers are covered by the regulation on health and safety at work which applies to all workers, whether they are self-employed or employees. Self-employed workers receive specialised medical care, specific to their occupational risks: the law guarantees free medical supervision by the National Health Service for Independents.
The *General Labour Inspectorate* controls working conditions (both in compliance with the legislation and collective agreements), job safety and unemployment. The general labour Inspectorate (named IDICT) intervenes to control the working conditions of self-employed workers from the point of view of health and safety. It has extensive powers but never uses it because of the pressure put by employers.

Employees and self-employed workers must be registered with the local social security services which report to the Ministry for Employment and Social Security. They benefit from social protection cover under the following conditions:
- in order to be eligible for daily sickness benefits, the insured person must be able to prove that he or she has been registered for 6 months and has paid 12 days of contributions in respect of days effectively worked during the 4 months preceding the sick leave (however, it seems that the 6 month rule cannot be applied when there has been a change of employer during that period, since it is not possible to accumulate the months worked for several employers);
- in order to be eligible for the daily maternity allowance, women who are insured must justify an affiliation for 6 months to the general scheme ;
- in order to be eligible for the disability allowance, the insured person must have contributed for 60 months to the general scheme;
- only employees are entitled to benefits in case of a work accident ;
- in order to be eligible for family allowance, the insured person’s affiliation to the general scheme must not suffer any interruption.

The daily allowances are paid after a qualifying period of 3 days for employees and 60 days for self-employed workers. These allowances represent 65% of the average wage received during the 6 months preceding the second month before work interruption. The maximum period during which they are paid is 3 years for employees and 1 year for self-employed workers.
The daily maternity allowance is equal to 100% of the average daily wage during the 6 months preceding work interruption. It is paid for 120 days.

For self-employed workers (the “green receipt” system), no social security contribution is deducted when the remuneration is paid if the amount is too low; it is regularised at the end of the year.

The retirement pension is normally paid at 65 for men and women. Workers must have contributed for 10 years to the general social security scheme. The surviving spouse is entitled

to a pension if the insured person had contributed during 36 months. The surviving spouse must have been married to the insured person for at least 1 year.

There are 2 unemployment protection systems, regulated by the decree-law 119/99 of the 14Th April 1999.
a- an unemployment insurance scheme, with the payment of basic benefits,
b- system of welfare payments to unemployed people who are no longer entitled to unemployment benefits.
The 2 systems fall within the scope of the general social security scheme and only cover employees.
In order to be eligible for unemployment benefits, a worker must have worked for 540 days under a contract of employment during a period of 24 months of effective work or assimilated, immediately prior work interruption.
The amount of the benefits is calculated on the average daily wage received during the 6 months preceding by 2 months the date of unemployment, and amount to 65% of the "reference wage".
Unemployment benefits are paid during a maximum period of two years to insured persons who have effectively worked for 24 months as employees, or during 3 months if the effective work period was only of 6 months.

A law enacted in 2000 authorises unions to refer cases to the labour inspectorate and to start legal proceedings in case of behaviours affecting the interests of the sector.

1- STATUS

The legal framework specific to workers in the entertainment industry

Most casual performers work with the status of self-employed workers, with a "green receipt" established for each provision of a service. A worker can be an employee for a short duration (example: one month), but the cost is higher for the employer, specially because of the payment of insurance for accidents at work (which is not payable under the "green receipt" system).
In order to work with a "green receipt", workers must register with the Ministry for Finance in order to obtain the authorisation to keep their separate accounts in respect of their business activity.
The "green receipt" indicates the gross amount of remuneration, the social service contribution deducted (20 %) and the tax deducted at source (20 %).
Regarding musicians working for the Opera, a "green receipt" is issued monthly whereas they should quite clearly have employee status!
Permanent musicians employed under a contract of indeterminate duration by State orchestras have the employee status. Nevertheless, musicians in regional and municipal orchestras are employed under the "green receipt" system.
The Fado musicians (even permanent musicians) are also employed under the "green receipt" system.

Only 8 actors in a public theatre have employee status. Actors in audio-visual productions, hired for 3 to 5 months, are employed under the "green receipt" system. In Lisbon, only 2 out of 20 private theatres employ actors under the employee status.

In fact there are widespread infringements of the social legislation, including by the State, and the status of employee is refused to workers who should be entitled to it. Recently a court ruled that a musician had the employee status and that his dismissal was accordingly unfair. However, the regularisation of the situation by the employer is extremely slow. No such legal proceedings have been taken concerning the employment status of actors, especially as the actors union itself is very conscious of the extremely precarious financial situation of small theatres.

Over the last 20 years, actors preferred to work under the self-employed status in order to have greater "freedom" in their choice of work. Today, they are returning to the idea of their need of a true social status.
Trade unions are now demanding that performers should not be employed under the "green receipt" system for the future, and that a single social security rate specific to casual performers should be created.

As regards technicians, they are no longer obliged to obtain a "special licence" since 1983. Journalists shall have a special licence since 1998. The STT wants the special licence system to be re-introduced for technicians, with the issuance of the licence being decided by a tripartite committee (State, employer associations, trade unions). The government is not against this idea.

In the radio/TV sectors, technicians generally have the "green receipt" status, including in the catholic radio even if this radio has signed a collective agreement with STT and SJ.

2- INDIVIDUAL CONTRACT

2-1 The contract
Many musicians or teachers did benefit from a contract of unlimited duration only after 3 years ! The succession of fixed-term contracts is sometimes interrupted few months before the year limit has been reached, and then restarted after a period of few months! According to the musicians unions, it is impossible for a fixed-term contract to be reclassified as a contract of indeterminate duration if the employee has less than 3 years of seniority.

A common practice is to agree with performers on the assignment of their related rights. Moreover, the contracts concluded by artists in respect of the production of phonograms are very unfair: no fees, no advances on royalties, and royalties of 2 or 3 %!

3- COLLECTIVE AGREEMENTS

No collective agreement exists in the field of phonographic and audio-visual production. There is no employer's association in this sector (!). Nor is there a collective agreement with the National Theatre or with the Opera. Only one collective agreement is in force (extended by ministerial decision) for private theatres. Some agreements have been concluded with private radios, including the catholic radio.

Trade unions are trying to promote the signing of "Protocols", which are not collective agreements, but which allow minimum pay levels to be fixed. The one which was in force with the national radio, in respect of the theatre productions broadcast on the radio, has been

terminated since the radio refused to increase by 5 escudos the amount of the minimum wage(!)

4- REMUNERATION

Technicians earn twice as much in the private sector, but without contractual guarantees. Moreover, half of the remuneration is often classified as a bonus or benefits in kind so that it avoids social security contributions. There are currently strong demands for such forms of additional remuneration to be included in the basis for the calculation of social security contributions. STT and SJ succeeded in October 2001 in signing a collective agreement with the main news radio which include bonus in the official salary.

There is growing trend towards the use of amateurs in professional productions. For example, on TV. A working group has been set up by the Ministry of Culture and the trade unions to look into the question of creating professional certificates in the artistic sector, and possibly also employment conditions..

There is no wage guarantee fund for casual worker, due to the opposition of employers.
In the event of repeats, an additional remuneration of 20% of the initial fee is paid to the collecting society. This company has formal relations with the musicians union and the actors union.

Immigration has not yet created any specific problems, but a recent phenomenon is the massive immigration of workers from Ukraine who accept wages that are 10 to 20 % lower (which will become a serious problem once they have learnt Portuguese). However, the few long films produced (15 to 20 a year, including European co-productions) rely a lot on qualified foreign technicians (French, Italian, etc.).

5- WORKING CONDITIONS

5-1. The general system
According to the trade unions, the private TV and radio companies (except for the catholic radio) are guilty of numerous illegal practices as regards working time, night-work and bank holiday work, overtime.

5-2. The vocational training
There is no vocational training, other than that financed by the European Union. Employers do not provide any financing for training. Moreover, following a legislative change, trade unions are no longer authorised to provide vocational training!

6- SOCIAL PROTECTION

Artists frequently work for a year under the two systems: “employee” and “green receipt”. In that case, no social security contributions are paid in respect of the employment under the “green receipt” system, and consequently, sickness benefits and pension allocations do not take into account the remuneration received under the “green receipt” system.

Portuguese legislation provides performers with 2 special benefits :
- a maternity benefit, for cases where it could be dangerous for a future mother to continue her activity: the artist must have contributed to the general scheme for a full 6 month period;
- a retraining allowance, for cases where it is impossible for a performer to continue to work in his or her profession: the artist must have worked as such for a period of at least 10 years, have contributed to the general scheme for at least 5 years and not have reached retirement age.

Retirement pensions are calculated on the basis of the 5 best years on the last 10 years. Consequently, it is often unsatisfactory for performers, bearing in mind that (in general) they earn less at the end of their career. Since 1999 dancers have benefited from a specific retraining allowance.

For workers under the "green receipt" system, there is no unemployment insurance cover. Worse: the president of the musicians union, who found himself unemployed after 20 years as an employee of a permanent orchestra, was refused unemployment benefits since he had also worked during that period under the "green receipt" system (which is incoherent and unfair since he had paid his unemployment insurance contributions as an employee).

7- TAXATION

Artists are not allowed to "smooth out" their earnings over several years.
Technicians are not allowed to deduct their professional expenses, unless they work under the "green receipt" system.
Artists, including "employees", are allowed to deduct professional expenses (for example up to 35 % on average for actors).
Usually, "green receipt" are subject to VAT, but authors, graphical artists and performers do not have to pay this tax.

SPAIN

PRESENTATION
The general legal framework

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SPAIN

01/03/2002 original version : Spanish

PRESENTATION

The general legal framework

The general legal framework applied in Spain is similar to those also applied in France and Portugal. Contracts of employment must be drawn up in writing in almost every case. Otherwise, in cases where a written contract is compulsory, the working relationships are considered as full-time and for an indeterminate duration, unless the temporary nature or the part-time nature of the rendered services is proven. The breach of this obligation is punished with a 50.000 to 500.000 Pesetas' fine decided by the Labour Division, that in practice never does.

The legal entity using the services rendered by an independent worker ("autonomo") shall verify his affiliation to social security.
The employer shall (in theory) give to the workers' representative a basic copy ("copia basica") of each compulsory written contract. The breach of this obligation may justify a 5.000 to 50.000 Pesetas' penalty. Moreover, the administrative authorities intervene in contracts of fixed duration by their prior registration before the INEM (a copy shall be sent to the body in charge with the reception of the social security contributions). Unions are entitled to ask the INEM for a copy of any registered contract.

The use of a fixed-term contract must be justified by particular circumstances. For some categories of work, a maximal duration is determined by the law. In some cases, a minimum duration is also determined by the law. When a contract has been signed for a duration inferior to the maximal duration provided by the law, this contract may be renewed several times, provided the cumulated duration does not exceed the maximal authorised duration.
A fixed-term contract must be converted into a contract for an unfixed duration if it continues beyond its expiry date, but the employer can still prove the precarious nature of the contract. The presumption of unfixed duration always authorised the contrary proof to be brought.
In case of redundancy without a legitimate cause, the indemnity due to the employee is fixed by the law at the level of 45 days of salaries per year of seniority. Moreover, substantial modifications regarding the amount of the redundant indemnity (often to reduce this amount) flew from recent reforms, in order to promote conclusion of unfixed duration contracts. These indemnities cannot benefit performers in the field of their working relationships.

The minimum salary is fixed by the mean of a national regulation. Every worker is covered by this system. This system is applied since the worker is 18 years old.
The minimum salary is fixed every year by the Government, after prior consulting of trade unions (72.000 pesetas per month, in 2001).
Until 1994, the *Status of workers* was fixing at 75% the minimal increase of the payment of the overtime. Since the legislative reform of 1994, this issue, as many others, was planned to be regulated by way of collective bargaining, with the possibility of increasing or reducing the aforementioned 75% and including progressively forms of compensatory periods of rest.

In conformity with the Directive 80/987/CEE, a national wage guarantee fund has been created. Nevertheless, when applied to cases of insolvency of companies in the artistic sector, workers (performers) are seriously armed since the limits fixed by the fund are lower than the existing salaries.

The law about health at work imposes the existence of committees or delegates for the prevention of risks at work. Within units where professional elections were organised, a committee for the prevention of risks at work (for companies or units of more than 50 workers) or a delegate for the prevention (for companies or units of more than 6 workers and less than 50 workers) shall be created. In companies where no professional elections took place, workers can elect a delegate for the prevention by means of a direct election. Sectors of arts and entertainment have little experience on this field and meet with many difficulties in making the minimal conditions of safety and health at work respect.
Independent workers do not benefit from the vocational training, except in the field of health and safety at work.

The contract of employment is suspended in case of work accident. In this case, the payment of the integral salary for the first day of cessation from work shall be the burden of the employer and, since the second day, the payment of the injury benefit shall be the burden of the social security. The amount of the legal indemnity is as high as 75% of the contribution basis in case of work accident.
In this respect, it is important to notice that the specific norm for artists establishes a direct payment of the benefits, whereas the other workers receiving indemnities for temporary incapacity (whatever the covered accident) benefit the payment through the company. Those indemnities shall be asked by the artists before the managing entity in charge of their recognition.

Theoretically, labour inspectors have a big role to play : they can intervene as regards health and safety, the existence of written contracts and the payment of social contributions. The Labour Inspectorate does not intervene regarding independent workers.

The Spanish social security scheme is made up of a general scheme to which all employees of the trade and industry sectors are made liable to, and specific schemes managed by the same entities as the general scheme, including regarding independent workers. Nevertheless, independent workers are not entitled to unemployment insurance.
In order to benefit from the protection for temporary incapacity provided by the social security general scheme, employees shall have contributed at least 180 days during the 5 years prior cessation from work.
Retirement is not compulsory, only a minimum age of 65 is provided by the law. Exceptionally, employees may benefit from early retirement since they are 60, if some conditions are fulfilled and with a reduction of the payment rate (8% per year prior 65). The right for an old-age pension is acquired after a period of minimum contribution of 15 years (including 2 during the 8 years prior retirement). An employee shall work for 35 years to benefit from a 100% basic allowance.
In the general scheme, the right for unemployment benefits with a contributing basis is allocated after a minimum period of employment and contribution of 360 days during the 6 years prior the end of the employment contract. From 360 to 539 days of contribution, the allowance shall be paid for a 120 days' period. From 540 to 719 days, it will be paid for a 180 days' period (etc.) until a maximum of 720 days for more than 2.160 days of contribution.

The amount of the contribution is as high as 70% of the marker salary for the first 180 days, then 60%.
The same conditions shall be fulfilled regarding the specific working relationships of artists, but the working periods may not match with the contributing ones, the integration of this sector to the general social security scheme involving that a day of work may be equal to more than a day of contribution to social security, depending on the salary received.

Working conditions in Spain are individually and collectively regulated : individually, by employment contracts entered into between employers and employees according to the minimum legally fixed ; collectively, by labour agreements signed between the representatives of a legal entity of a professional sector and the representatives of workers of the said legal entity. Two categories of agreements do exist : statutory agreements that shall fulfil a certain number of conditions provided by the *Status of workers* and concerning the representativeness of the negotiating parties, etc., those conditions depending basically on the existence or the absence of elections of worker representatives ; and extra-statutory agreements signed by lack of sufficient representativeness or regarding sectors or companies in which no professional elections took place.

1- STATUS

The legal framework specific to workers in the entertainment industry

Article 2.1 e) of the worker Charter and the royal decree n°1435/1985 provide performers with the status of employee, without taking into account their having or not a regular job. The only performers that may be legally considered as independent workers are those who self-produce their performances (direct connection with the audience and collection of the receipts) ; this means working without a link of subordination and behaving like an entrepreneur. Nevertheless, a pressure is constantly exercised on performers in order for them to work as independent workers even if their situation is in fact one of employees (FALSOS AUTONOMOS).
Companies hiring artists shall ask for a specific employer number.
Illegal work ("*clandestin work*") is a criminal offence (art. 311 to 318 of the Criminal Code), but the penalty is almost never applied in addition to the administrative sanction.
Technicians have usually more stable jobs although always under fixed-term contracts.

The royal decree n°1435 of 24 December 1984 provides with the obligation for cultural workers' employment to be formalised in writing. However, the decree does not provide the breach of this obligation with a specific sanction.

The royal decree states that every contracts shall be registered. Nevertheless, as far as the registration is concerned, the following difficulty occurs : workers begin their performance before establishing in writing the terms of the contract so that difficulties may occur regarding disagreements on the construction or recognition of those terms. That is why, in the field of the convention of actors, to give a copy to the artist before its registration at the INEM is compulsory.

The integration system to the social security general scheme gave rise to a very complex procedure that generates too much paperwork regarding the contribution to Social Security by

the artist and his employer. Unions are currently trying to eliminate this accumulation of paper.
The breach of the obligation of registering the contracts is theoretically punished by a fine from 5.000 to 50.000 Pts. Some says this reform immediately increased the number of non-written agreements and lowered the working conditions. In fact, very few fixed-term contracts are registered at the INEM in the entertainment industry. According to some unions, the obligation of registration is positive theoretically because it unables the control of social security obligations. However, a specialised body in the Labour Inspectorate does not exist in the entertainment and audio-visual sector, so that the payment of the salary is made without payment of the social contributions.
Anyhow, some highly-paid artists may forget to mention the amount paid in the contract. The aim is not to hide the amount received, that does not invalidate the contract, but to avoid this big amount to be considered as a pension on employment, treated differently. Therefore, an agreement of sub-contracting on services is established and is not illegal as of today.

2- INDIVIDUAL CONTRACTS

2-1 The contract
The content of individual contracts is fixed by way of collective bargaining concluded between the actors' union, including regarding the work calendar, the periodicity of payments, the dubbing conditions and the transfer of some intellectual property rights.

ALMA, in its position of professional association, has not drafted contracts in standard forms for directors of audio-visual works, but its lawyer intervenes for assisting its members during negotiations. There is also no contract in standard form drafted by unions representing musicians.

Unions in the arts and entertainment sectors underline the problem of the construction of a contract may be important, so that every signed collective agreements provide joint or equal representation committees for the follow-up and the construction of the convention's agreements. Partly composed of representatives of employers and partly composed of representatives of workers, these commissions are in charge of the construction of the contracts' clauses depending on the collective agreement's provisions.

The working relationship of an artist in public entertainment is considered as "specific", comparing to the other working relationships considered as "common". In this field, the primary aspect is "temporality". Therefore, fixed-term contracts may be concluded although undefined in time (for example, *contrat d'œuvre*) without any limitation, unless there is fraudulent abuse of the law, the contract being requalified as contract of unfixed duration in this case. Dancers are covered by a fixed-term contract except those of the National Ballet. Permanent orchestra's musicians are mostly covered by a fixed-term contract although their job is stable *de facto* and shall be requalified as an unfixed-term contract. The other musicians are always covered by a fixed-term contract.

2-2 The breach of contract
In the specific area of artists' working relationships, indemnity for failure of the employer to comply with his obligations depends on the terms of the agreement. In case of absolute non performance of the artistic work, i.e. in the event where the artistic work could not have been

made, provisions of the Civil Code will be applicable (indemnity with damages if the plaintiff prove the existence of a prejudice).
Regarding collective agreements covering theatre actors, indemnities due for failure of the employer to comply with his obligations (equivalent to an unfair dismissal), is of the same amount than what the actor/actress was expected to receive for his/her work, i.e. the entire negotiated remuneration.
In case of unfair dismissal, collective agreements entered into by actors bring some elements to calculate the indemnity due to the worker. The convention relating to audio-visual production contains the following provisions :

- if the shooting does not start, the actor shall receive 75% of the remuneration provided for in the contract;
- if the shooting has been interrupted, the actor shall receive 100% of the remaining remuneration to be paid;
- if the shooting has been suspended because of illness or accident linked to the shooting, the minimum indemnity shall be of 75% if it does not flow from the employer's fault, and of 100% otherwise (of the rest of the remuneration to be paid until the end of the contract).

In case of modification of the composition of a permanent band of soloists (rock, pop, chamber music, etc.), it has been judged that the resolution of the contract entered into by the employer with the band was justified.

At the termination of the contract, the employer shall give indemnity to the artist on the basis of 8 day salary per year of seniority, in proportion to the time effectively worked. This indemnity is usually not paid by the producers and is more and more considered as a part of the global amount negotiated by the artist. This practice is denounced by unions.

2-5 The intellectual property rights protection
According to the Spanish rule regulating intellectual property, the existence of an employment contract in the audio-visual field implies the assignment of the neighbouring rights on the performance and the fixation. Such a presumption of assignment may be discussed by proving otherwise. The terms of the assignment are subject to an agreement according to the law, although many disagreements do exist regarding its construction.

The convention on the audio-visual sector as a public matter provides that the minimum amount for the assignment of rights of exploitation (fixation, reproduction and distribution) is as high as 5% of the salary negotiated by the actor.
According to the actors' union, the assignment of intellectual property rights is imposed by the producers and always for a maximum duration of protection provided by the law. Moreover, composers-performers of music are in conflict with producers, because they pretend to benefit from an assignment of the right to an "equitable remuneration" regarding broadcasting and communication to the public of commercial phonograms.

According to ALMA, the Spanish law introduced a high level protection of copyright, including as regards Internet's uses (with an obligation to pay the authors).

3- COLLECTIVE AGREEMENTS

Collective agreements entered into by the actors' union regarding cinema, television and theatre oblige the employers to provide the union with a copy of each hiring contract of

actors, including non unionist actors. This obligation is not always complied with, unless when the union lodges a complaint against employers.

The collective agreement entered into by the union of theatre actors provides that exclusivity shall be compensated by a remuneration that cannot be lower than 30% of the agreed salary. Regarding musicians, it appears that no collective agreement does provide them with the amount of such a compensation which is actually integrated to the main remuneration.
In the art and entertainment field, the following conventions are applicable on all the Spanish territory : actors in audio-visual work, audio-visual technicians, artists and technicians of night clubs, dance halls and discotheques, technicians and dubbing actors, negotiate theatre agreements (for actors but also for the crew) that do exist only in the most important regions of Spain (Madrid) or for musicians.
Company level agreements do also exist (some big theatres, some audio-visual producing companies, or mainly symphonic orchestras, but do not concern working conditions).

Three collective agreements entered into by the actors' union are in force :
- cinema,
- theatre,
- dubbing.

FCT/CCOO entered into a collective agreement on the employment of technicians in the field of audio-visual production and cinema and a collective agreement on the employment of technicians and musicians in community hall and ballroom.

4- REMUNERATION

Gratuity is incompatible with the conclusion of a work contract and would be forbidden regarding artists performing in paying access public places. Article 8 of the royal decree prohibits the obligation to rehearse for nothing. But reality is different… Exemption from payment is prohibited by collective agreements regarding theatre and big productions (ballets, opera). But it is systematically tolerated regarding short films.

Collective agreements regarding actors provide with a scale of minimum remunerations, but these minima are not often respected. In some orchestras, an additional remuneration is awarded due to the bring of the instrument. A collective agreement on employment in community halls or discotheques, co-signed by SPME provides with a minimum remuneration of 1.995 Pesetas per day.
In any case, unions lodge complaints for these minimum remunerations to be paid and the other terms of the contract to be respected by employers.
Scriptwriters are less and less paid. They are back to the remunerations awarded 10 years ago, whereas needs are increasing (6 national TV channels). Moreover, semi-professionals are appearing and accept less protective working conditions. A script-writing supporting fund has been created but only one screenwriter sit in this commission. Audio-visual producers are used to sign fake contracts with authors so that their budgets increase permitting them to obtain subventions from the ministry of culture.

The use of "amateur" work contracts may be a way of avoiding the prohibition of exemption from payment, these "amateurs" being employed in much inferior terms than professionals. According to SPME, those who signed articles of apprenticeship may be paid only 75% of the

minimum agreed with unions, but with the burden for the employer to give them effective training.
Collective agreements of actors provide with a remuneration increased of 75% in case of overtime. However, the agreement in the audio-visual field provides with a limitation of overtime which is rarely respected.

According to SPME, the royal decree does not provide that the wage guarantee fund protect workers in the entertainment industry. There is a doubt in this respect and the FOGASA did not give an answer to this question formally asked by SPME yet. However, the wage guarantee scheme does not match with the casual workers' situation, because the possible payment is calculated on the basis of the national minimum salary (not specific to the artistic sector).
According to actors' unions, this mechanism does not match with the usual remuneration of artists which taking into account their "occasional character of their work" are usually superior in their amount to the remuneration of usual working relationships. They are very inferior to the amounts paid by the FOGASA in the so called insolvency declarations of employers.

5- WORKING CONDITIONS

5-1 The general system
Many health (unlimited sound intensity, etc.) and safety (electrical facilities, moveable stages, etc.) problems are stated by unions of artists and technicians. CCOO published a guide on psycho-sociological risks in the audio-visual sector and is terminating a study on health of musicians in symphonic orchestras.

5-2 The regulation on paid holiday leave
Regarding casual directors and salaried technicians in the production of long length films, the law provides with paid leaves which are not often respected by producing companies.
According to the royal decree 1435 of 2 August 1985, each artist employed under the working relationship regime are entitled to 1 month of paid holiday leave per year.
Nevertheless, taking into account the brief and temporal working relationship, negotiated salaries include the proportional part related to paid holiday leave. This means that only artists hired for one year do benefit a one month paid holiday leave.

5-3 The vocational training
A plan regarding vocational training of performers was created in 1994, with creation of a tripartite commission by sector. Nevertheless, employers do not recognise their work.
Within the framework of the national agreement on vocational training, a tripartite commission was created (the most representative unions, employers and administrations) regarding the development of training programs for workers in the audio-visual sector (mainly technicians), whereas actors and other artists attend or look for private or individual training systems which are not regulated by this agreement.
Nevertheless, as far as training of artists is concerned, unions play an important role in the organisation of specific retraining courses in every areas of the performing sector and are usually organised thanks to public funds. This mechanism is positive but makes these unions dependent from the annual budgets of their sponsors.

5-5 The role of the Labour Inspectorate

The intervention of the Labour Inspectorate is very slow. Artists almost never refer a matter to the Labour Inspectorate by fear from employers to take reprisals. Nevertheless, artists dare more and more to claim their rights before competent authorities and after consultation with their unions. According to the latter, a reform of the Labour Inspectorate is more than necessary.

6- SOCIAL PROTECTION

The royal decree n°2621/1986 integrated a specific regime for artists to the general social security scheme (except some provisions).
Actors' unions, dancers and technicians in the audio-visual field created, with the consent of other organisations of this sector, a platform to claim before the Labour ministry for the effective implementation of this regulation. Since it came into force (1987), this regulation is unknown from the bodies in charge of its implementation under the name of "contributions' regularisation" or equally "definitive determination of artists' contributions". Its implementation depends on a regularisation of the contributions paid by workers and employers. This procedure came effectively into force in 2000 but without taking into account the calendar established by the administration and the group of artists.

Briefly speaking, the characteristics of this integration system are the following :

- the contribution is done by means of payment on account for workers and employers,
- the definitive contribution shall be calculated by the year (outstanding term),
- the calculation legally fixed ("regularisation") consists in operations based on the principle that one working day for an artist may be equivalent to more than one day of contribution, depending on the salary received by this artist.

Once the difference between what was effectively paid by the artist as contributions and the definitive contribution rate (with compliance to the minima and maximum) is calculated, both the worker and the employer will have to pay the difference of contributions resulting from the calculated difference.
These operations were never made since the creation of the system. For now, the current operations are related to the year 1994.

The contribution basis is made of payments effectively made to the artist and payments he shall receive (royalties). Artists are divided in 7 professional categories, depending on whether they perform live or in the audio-visual sector, corresponding each with minimal and maximal contribution basis.
In 2001, as far as artists are concerned, one shall have worked for 120 days per year to benefit from the general regime of social protection (health insurance), even one hour of work being assimilated to one day of work. The ceiling of the gains submitted to contributions is fixed on the annual basis, and not per month, taking into account the variations of performers' gains. In case of short period of working incapacity, contributions are not based on the gains of the previous month but on the average of the previous 12 months.
Regarding maternity insurance, the minimal period of affiliation is reduced from 180 to 90 days, taking into account the casual aspect of the performers' work.

Regarding authors, social security is their own burden (without implementing the independent workers' scheme), with a minimal monthly contribution of 33.000 Pts per month. In fact, there is no real social protection for authors : their protection is liable to the independent workers' scheme.

The rent is calculated according to contribution bases during the last 156 months. According to SPME, artists in the entertainment industry (except actors who do not qualify for) can ask for the benefit from early retirement at 60, where they can prove a minimum of 8 years of work during a period of 21 years prior retirement. In this case, the amount of the rent is reduced of 8% per missing year until 65. This reduction is not applicable to lyric singers, dancers and trapeze artists. SPME underlines that a famous performer can work a hundred days per year so that he shall work for 54 years to acquire the right to pension.
In fact, most of the artists cannot benefit from this allocation, even if they regularly contributed. In case of unemployment periods without allocations, the reduction of the retirement allocation is huge.

Independent musicians can only benefit from a retirement pension provided they are 65 and they contributed for 30 years.
Casual workers do not benefit from a system of unemployment insurance, due to the absence of a system in compliance with their specific situation.

7- TAXATION

Regarding the treatment of professional expenses, there is a uniform deduction for professional expenses burdened by workers : performers deduct in this case the same amount or the same percentage of their incomes as other employees. Indubitably, this situation disadvantages performers comparing to workers who benefit from the independent worker status.

However, in the absence of specific taxation for artistic professions, there is no smoothing of the taxable incomes. Artists are taxed year by year, without taking into account the very irregular nature of their activity, whereas the smoothing on a 5 year period is applicable to companies.

Some authors work through a unipersonal company, so that they can invoice (and deduct VAT from their income) and moreover benefit from a smoothing on a 5 year period of their taxable incomes (among others, advances).

SWEDEN

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SWEDEN

01/03/2002 original version : French

PRESENTATION

The general legal framework

Professionals work either as employees (A-licence) or as entrepreneurs (F-licence). The law does not provide with an intermediate category such as independent workers.
Consequently, artists and technicians benefiting from permanent contracts are employees. A majority of casual artists and technicians are employed workers. Moreover, it may happen that an employed worker is hired for a short term period (one day).

Labour law and the obligation for the employer to pay social wage costs to the government only concern employees (A-licence). Employers usually prefer to deal with an entrepreneur (F-licence).
Nevertheless, working as an employee does not mean necessarily to benefit from the protection of Labour and social security law. For example, a casual artist has often difficulties in obtaining a guarantee for his wages to be paid in the event of his employer's bankruptcy. Taking into account the difficulties for the employee to obtain deduction of his professional expenses from his taxable income, some casual artists and technicians chose to work as entrepreneurs.

It appears that the general labour legislation does not define the term of "employee". The principal criteria are those existing at the European level : the work on behalf of third parties in exchange of a remuneration and under a legal relation of subordination. Nevertheless, those general criteria do not suit to the entertainment sector.

Working conditions are partly regulated by the law and partly by collective agreements. On certain aspects, the legislation is influenced by the "liberal" philosophy and presupposes the existence of collective agreements. Therefore, many difficulties occur regarding workers employed by companies which are not covered by a collective agreement.

The general labour legislation creates rights to employees mainly on the following grounds : unions' prerogatives, working duration, dismissal or breach of working contract, right to paid holiday leave, guarantee of salaries in case of bankruptcy. There was little protection regarding contracts. There is no minimum salary at the national level (minimum salaries shall be fixed by way of collective agreements).
The remuneration's requirements are enumerated by some collective agreements. For example, in the theatre sector, such agreements do exist for public theatres, private (independent) theatres and independent dance troops. The same situation is met in the music sector.

Only "employees" (as opposed to independent workers) benefit from the rights created by collective agreements entered into by unions.
Collective agreements protect employees belonging to the sphere of representativeness of the contracting unions, including non members, regarding their relationships with contracting

employers. Collective agreements may not be extended to a whole professional branch by decision of the government.

Employees benefit from every general social security schemes in the following areas : illness, invalidity, widowhood, maternity, retirement, industrial injury, unemployment.
The funding of those general social security schemes is based on the contribution of employers regarding the protection of employees, including in some cases regarding casual workers when assimilated to employees.
Workers under an F-licence pay by themselves their social security contributions and do not benefit from the unemployment insurance.

1- STATUS

The legal framework specific to worker in the entertainment industry

No specific legal rule provides with the classification as "employee" of cultural worker. Nevertheless, the grant of an F-licence excludes the possibility of working as "employee" for the same kind of work. However, some musicians are still cumulating the status of an "employee" for their work within a permanent orchestra and the status of a casual worker under an F-licence.

Sometimes, obtaining an F-licence is difficult, especially when the competent authority estimates that the worker in the entertainment industry does not comply with sufficient guarantees. An F-licence may be withdrawn in case of non payment of social contributions. A union (for example SMF) may intervene to support the submission of one of its members to an F-licence. In fact, from the requirements regarding the allowance of an F-licence and the frequent deny from employers to consider as "employees" workers in the entertainment industry, flow an emerging "grey zone" of works without status. Unions usually favour the "employee" status and militate in favour of the recognition of this status by employers. According to TF, "we shall teach employers to be employers". TF entered into a collective agreement on dancers favouring their employment as "employees". Besides, TF is working on a project for the union to create a company in charge of employing actors under the "employee" status and of concluding contracts with show promoters.

An important reform came into force during 2000 for public theatres, admitting "long term contracts" for artists. They are long term contracts from 2 to 5 years (2 years minimum and 5 years maximum). TF is basically in favour of the use of such contacts for actors and dancers. For example, by this use, employers are able to keep high level singers without being competed by German operas. Nevertheless, SIF is not in favour of the use of these "long term contracts" for technicians ! Technicians working for public companies benefit from collective agreements limiting *de facto* the duration of fixed term contracts to 2 years, then the employee shall be replaced or benefit from an unfixed term contract.

There is a serious problem flowing from an uncontrolled immigration, many musicians, dancers and circus artists, originated from countries of the centre of Europe, come to work in Sweden without working permit and pretending they do so in the name of "cultural exchanges", or because they are members of amateurs bands. SMF and SYMF have currently no influence on this issue. Remunerations granted to these artists are only subject to a 15% withholding tax.

2- INDIVIDUAL CONTRACTS

2-1 The contract

There is no legal obligation concerning the written form of an employment contract and, consequently, no written form is compulsory regarding fixed term contracts. Collective agreements rule the form of contracts, although regarding casual workers, this area is not covered by a collective agreement. Technicians very often benefit from a written contract.

Unfortunately, the Swedish "liberalism", inspired by the Anglo-Saxon tradition, is not compensated by a right to claim for a revision of contracts agreed on an unequal basis. SMF develops an important activity regarding individual contracts entered into by its members with phonograms' producers and music publishers. For example, SMF claims that the duration of music publishing contracts shall be limited to 7 years (and not equal to the total duration of the work's protection).

2-2 The breach of contract

The employer cannot modify the contract he entered into with the employee (for example, regarding the consistence of his position) without prior information of the union the latter belongs to, although this rule is effectively applied regarding permanent jobs. In case of disagreements regarding the construction of a collective agreement, the opinion of workers' unions shall prevail until a court takes the decision.

The law is effectively protective regarding redundancy of employees benefiting from an unfixed term contract. The worker benefits also from significant support before courts. Nevertheless, the employee has important latitude to dismiss for economic reasons. Indemnities due to employees in case of unfair dismissal vary from 16 to 36 months of salary depending on seniority. Union representatives are protected employees. Unions are entitled to receive indemnities in case of dismissal breaching a collective agreement.

2-6 The transfer of the contract in favour of a third party

The law of 1 January 1998 imposes a presumption of transfer of the performers' rights to film producers , in the case where no other agreement has been concluded. However, according to TF, this presumption has no effect because of the transfer of these rights to TROMB (collecting society created by TF). In case of breach of the conditions provided by a collective agreement, one shall consider that TROMB did not allow the concerned use.

3- COLLECTIVE AGREEMENTS

TF entered into collective agreements with audio-visual producers, establishing for actors a minimum salary, an additional remuneration in case of TV repeats and a remuneration for secondary uses (tapes, cabled TV, etc.) collected by TROMB. TROMB distributes to non members remunerations for private copies and for cabled TV.
Usually, unions consider that collective agreements should fix the conditions of remuneration of secondary uses.

Regarding workers represented by SIF, including costumers, decorators, etc., collective agreements settled with radio stations and public televisions permitted the creation of equal representation managing committees entitled to fix conditions under which employers

individually distribute “collective” royalties. The original system may coexist with copyright individually used by some authors (such as directors and scriptwriters).

TF entered into a collective agreement in the media sector which creates a standard of individual contract regarding the remunerations of secondary uses to artists working as entrepreneurs (F-licence). TF is currently trying to obtain that public subsidies to small show places shall be conditioned by the respect of fixed conditions provided by collective agreements.
TF also entered into specific agreements with around 40 small entertainment companies (theatres for children, etc.) not willing to belong to an employers’ organisation and therefore not covered by a collective agreement. These specific agreements provide for the respect of main obligations fixed by the collective agreements.

The use of fixed term contracts is not very regulated. For example, there is no provision for a maximal duration of the contract, except in some specific cases. There is no limitation in time of the contracts’ renewal. There is also no limitation regarding replacement contracts. Some musicians in permanent orchestras are being working under a fixed term replacement contract for 10 or 15 years ! Nevertheless, SYMF obtained by way of collective bargaining a right to paid holiday leave for seasonal workers employed by the same employer for more than 3 years. The positive aspect is that the breach of a fixed term contract create the obligation for the employer to pay the entire remuneration due to the employee until the end of the contract.

4- REMUNERATION

Many collective agreements do exist, including for example provisions fixing the minimum remuneration (unfortunately low) of dancers. TF entered into a collective agreement with small theatres fixing the minimum salary of actors to 13.000 SK per month.
TF underlines the fact that small theatrical bands do not pay for rehearsals. TF drafted a guide for these theatres to improve the situation.

Technicians and directors of films are usually paid 40% above the union minima ; with a small gap between the different professions. On the advertisement field, technicians’ salaries are two or three times as high as the minima ; this means in fact that the minima concern only unskilled workers. On the television field, technicians’ salaries are 15 to 20% above the union minima.

Employers refuse to participate to the drafting of statistics on the evolution of technicians’ salaries. It is especially true regarding artists and casual technicians’ salaries.

Regarding musicians in permanent orchestras, overtime after 6 hours a day and 29 hours a week is double paid (2X109 SK). Hours worked after 6 pm, Saturdays, Sundays and holidays are subject to an equal additional remuneration for all musicians of 59 SK.

No regulation does exist regarding “amateur” works, so that difficulties may occur sometimes when some employers try to avoid collective agreements’ obligations by hiring musicians who do not comply with the professionality criteria.

In case of bankruptcy of the employee or the producer, only “employees” are effectively protected, but the case law refuses to consider remunerations of casual workers as protected salaries in case of bankruptcy.

5 – WORKING CONDITIONS

5-1. The general system

Working time is partly regulated by the law (unless the entry into force of a collective agreement) and partly by collective agreements. Negotiations took place on the theatre field regarding the implementation of new rules by which employers try to obtain more flexibility. It appears that compatibility of these new rules with the Directive on working time is not questionable.

Regarding technicians, the general rule of 40 working hours per week is modified by collective agreements entered into by SIF providing, per year, a reduction of 1 day in 2001, 2 days in 2002 and 3 days in 2003. Time spent for transport is counted as working hours, with a maximum of 13 hours per day.

Entrepreneurs (F-licence) are only partially protected by the regulation on safety and health. They are even liable vis-à-vis third parties for damages they provoked.

5-2. The regulations on paid holiday leave

Casual employees may benefit from paid holiday leave by the implementation of collective agreements financed by employers to the level of 12% of gross salary. Entrepreneurs (F-licence) shall individually foresee this issue by negotiating a remuneration covering annual holidays but it is not compulsory so that it is not very common.

5-3 The vocational training

SIF entered into collectives agreements charging employers to finance vocational training and creating a mechanism to discuss with unions' representatives the determination of the needs of each company. However, this mechanism does not benefit to casual workers.

5-4 The role of the labour inspectorate

Show places are regularly inspected, but only as far as health and security are concerned. The labour inspectorate does not intervene regarding the respect of labour law and payments of social contributions. Sometimes, unions do statements.

6- SOCIAL PROTECTION

In the general social security scheme, protection is not complete for those who worked at least one year and is the same for all whatever the amount of received salary is. The daily indemnity is of 80% of 15.000 SF per month maximum. Regarding casual workers, the daily indemnity is strongly limited so that they use private insurance (where they can). Nevertheless, these insurance do pay a replacement salary only after 90 days.

Casual artists who do not work under an F-licence are usually assimilated to "employees" when they work within permanent establishments (hotels, restaurants, etc.), so that they can benefit from compulsory social security contributions from "employers".
Workers under an F-licence benefit from the same social security protection than "employees", except regarding unemployment insurance and finance themselves their social security protection.

By way of collective agreements, SIF created with employers a joint management mechanism of social protection for technicians. By using the same means, TF created with public theatres a joint management system giving rise to the benefits for around 10% (regarding actors). However, TF did not manage to extend the system to the private sector. Finally, TF works on the creation of an invalidity insurance scheme.

Regarding retirement, artists benefit from the general scheme and not from a specific regime ; most of them consequently do not benefit from a rent when they are 60 or 65. They shall pay (for themselves) a complementary insurance. Regarding technicians, SIF created by way of collective agreements a complementary retirement allocation of 10% minimum calculated on the basis of the salaries at the time of retirement reduced in case of high increase in the salaries during the last 5 years.

Regarding unemployment insurance, the status of casual worker is not clear and depends on the rules fixed by each union. Unemployment insurance funds are managed by unions of employees, without the employer. Regarding artists, SYMF and TF are linked to the same unemployment insurance fund. SMF has its own fund.
Non members of unions may be affiliated to unemployment insurance funds but have to comply with less advantageous conditions than members and shall meet with professional criteria entitling them to become members of the union.
In order to benefit from unemployment insurance, the beneficiary shall work 73 days per year (the notion of “days” is linked to the fees’ amount : important fees for a day or a session shall be assimilated to fees for more than one day).
The general unemployment insurance scheme requires now artists to accept non artistic jobs, creating an insurance’s loss when artists refuse.

7- TAXATION

Employed artists benefit from the same system of deduction for professional expenses than artists working under an F-licence.
Workers in the entertainment industry do not benefit from a smoothing on a 3 to 5 years’ period of their taxable incomes.

The remuneration of artists working under an F-licence are exonerated from VAT regarding their artistic work (but not regarding supplementary services).

VAT on rights of author is of 6%.

UNITED-KINGDOM

UNITED-KINGDOM

01/03/2002 original version :English

1- INDIVIDUAL CONTRACT

1-1 The contract

Contracts must not necessarily be concluded in writing: they legally exist when an individual starts work and, by so doing, proves that he/she accepts the terms and conditions offered by the engager. Both parties are bound by the terms offered and accepted. Often the contract is verbally agreed. Most employees are entitled by law to be given (within two months from the beginning of employment) a written statement setting out the main aspects of their employment. Workers can also qualify for the statement, although independent contractors cannot. In the entertainment, actors are mainly contracted under union agreements and up to 90% of them do sign a written contract. Verbal contracts are however often the rule with entertainment workers .

Nothing in UK law prevents individual contractual negotiation between the parties. Some statutory provisions are imperative and do not need to be expressly included (e.g. regulations on working time, transfer of undertakings or health and safety, State minimum payment), although some of them do not apply to the self-employed. In the entertainment, although collective agreements do not have a binding force, they always provide for better minimum work conditions and payment than statutory provisions. Some features in the agreements are not negotiable.

In practice, although unions try to discourage this practice, it is not rare for EW to accept lower fees and conditions, especially - but not exclusively - when the employer is not a member of the association having signed the collective agreement. Often the EW will accept the conditions set up by the employer which, in the best cases, will be based on the collective agreements.

In the case of actors, and where collective agreements do not provide guidance, the producer has the obligation to come the union to negotiate the specific aspect of that individual contract. Generally speaking, self-employed EW are mainly exposed to contracts which are imposed and do not respect – when they exist – the provisions set in collective agreements.

Once a contract is signed or concluded in any other form, it can only be modified by mutual agreement. The contract can, however, be interpreted by the competent judicial authority in case of dispute and possibly found to be in breach of statutory provisions. In practice, if the employer/engager decides to change some provisions in the contract, the EW will often have no other choice but to resign and claim constructive dismissal. If the statutory provisions of the land change, such modifications are automatically incorporated in the individual contracts, without the need for an explicit change.

Contracts are not required to be registered. Musicians' contracts are registered to facilitate payment of secondary uses with the union, which is the only depository of those contracts.

There is a presumption of continuity in employment contracts, unless the contrary is shown. This is not meant, however, to transform the relationship into permanent employment but to

help workers with irregular service (short term contracts are now the rule) prove they have the necessary continuity of employment to establish their right to employment claims. Under UK employment law, a worker can only take action and claim employment rights if he/she has been employed for a minimum period of one year. When signing short term contracts longer than one year, the employer and the employee could in the past agree to waive the right to claim unfair dismissal, although such waiver had to be agreed in writing and had to be signed every year.

The Employment Relations Act 1999 has stated that temporary employees can no longer be made to sign such waivers, except for redundancy rights. Self-employed people are less protected but can sometimes benefit from particular schemes. Off-camera technicians working in the BBC will, for instance, be offered a permanent contract, provided they have worked for three years in consecutive contracts and their qualification is still needed. In other cases, similar schemes exist, although the only guarantee is a general commitment of the employer to "review" the contract.

Contracts are usually limited in time. Collective agreements might have specific clauses to extend these contracts if so required. Such extension will have to be agreed by both parties. In the case of self-employed entertainment technicians, the short term is generally indicated in terms of a service to provide and is therefore extended till the work is done.

Contractual transfers of IP rights can be for a limited or an unlimited time. In practice they are unlimited in time but limited as to the uses they concern. There are no statutory limitations. In the music area, contracts with record companies are based on a commissioned work and set the ownership of the record in the hands of the company. In the case on jingles for commercials, they can normally be used on TV and radio for three years. In the rest of the cases, producers tend to purchase the rights in perpetuity. Collective agreements are strict about the type of uses that can be purchased. All of them are listed and no transfer can be made of a use which is not in the list. Producers often argue that any new use is in fact just the expression of another use, already agreed and paid for.

1-2 The breach of contract

Several reasons can lead to a unilateral termination of contract. Some of these relate to contractual law, others to employment law.

Under the first category, every unilateral divergence from the originally agreed contract clauses can be a reason to claim a termination of the contract, although breach of contract will have to be assessed in Court. According to the *Employment Rights Act* 1996, a dismissal is presumed to be unfair, unless the employer gives evidence of at least one of six reasons for a lawful dismissal: redundancy (requiring compensation), conduct, capability or qualifications to perform the work, compliance with legislation, non-renewal of fixed term, and few other substantial reasons (e.g. confidentiality breach, or other commercial matters).

The law protects workers with a minimum of one year's service from being unfairly dismissed. The length of service, though, does not matter in some cases where dismissals are automatically unfair (e.g. union membership, pregnancy or maternity leave, sale of business). Dismissing in breach of procedure, so that the timing means the worker does not have enough service to claim unfair dismissal, may give him/her the right to claim monetary damages for wrongful dismissal (this would include the loss of opportunity to claim unfair dismissal). Reintegration of the worker in his/her job is a possible outcome, although more often the sanction is likely to be an economic one.

Compensation has two main elements: a basic award and a compensatory one. Sometimes there is also an additional award. The basic award (for workers) depends on the length of employment and the age prior to dismissal. The number of "week's pay" depends on the age and on the length of service:
Age under 22: half a week's pay for each complete year worked under this age;
Age 22 to 40: one week's pay for each complete year worked between those ages;
Age 41 to 65: one and a half week's pay for each complete.

For the purposes of the calculation, a week's pay is fixed at a maximum of 240 GBP and the maximum number of years of work that can be taken into account is 20. Payment is based on gross pay and - where earnings are irregular - is averaged over an eight-week period. However, a higher payment can be set by agreement. Since the right to claim compensation is effective after one year of service, sometimes employers do terminate the contract with their workers just before the end of the first year.

Any compensatory award will be based on loss sustained as a result of dismissal to include: expenses incurred by reason of the dismissal, loss of wages (current and future), loss of holiday entitlement, loss of pension rights, loss of accrued statutory protection, future unanticipated loss. The statutory maximum compensatory award is 50,000 £. This cap can be breached on specific cases, specified by the *Employment Relations Act* 1999. These include discrimination, health and safety reasons or whistleblowing.
Sanctions are normally fines: it is unlikely that an employee is reintegrated in his/her work by a decision of the Court. However, workers have an obligation to "mitigate their losses" by, for example, looking for alternative work. The burden of proof that they have failed to do so rests with the employer. The additional award applies where the worker asked for re-instatement or re-engagement but the employer refused to comply with the Tribunal or Court order. It gives between 26 weeks' and 52 weeks' pay.

Genuinely self-employed people, including in the entertainment, will have no access to employment remedies.
If the worker asks for re-instatement or re-engagement, the Tribunal or Court might issue an order to the employer, who will then decide what to do. Additional award applies in case of refusal to abide the order. In the entertainment, sanctions have almost always an economic nature.

1-3 The plurality of contracts
No statutory limitations preclude multiple job holding. It depends on the first contract and on the time the entertainment worker is supposed to dedicate to his/her first employer. In some cases, the contract might expressly preclude the worker from taking a contextual job (e.g. an actor might commit himself/herself not to take the same role in a different production at the same time). In such a case, however, this preclusion should be reasonable compared to the aims. Multiple job holding however is not generalised in the entertainment industry, where most jobs are short-term. Sometimes, the contract might set conditions to the worker for taking up another job (e.g. ask for prior authorisation and, like in the case of musicians, that the first employer gets credits) or ask the worker to declare this interest before he/she signs the first contract.

1-4 The exclusivity rights
Contracts with record companies are always exclusive. The exclusivity normally covers the work of the musician (prohibition to record for other companies, with the exception of non

featured session work with other artists, provided the record label gives prior authorisation and gets credits), the recording (prohibition to re-record for other companies the same tracks for a specific time after the end of the previous agreement), and the contractual situation of the musician (no outstanding contracts with other companies). Creative grades (e.g. writers, directors) who might have claims to copyright are bound to exclusivity if they work as employees.
As to agents, most actors will have only one although the exclusivity will only work one way. Musicians will have one agent with exclusive competence in the territory covered by the agreement. The territorial span of the exclusivity will often depend on the bargaining position of the artist. The stronger the actor is, the more he/she will be able to limit a manager to specific territories.

1-5 The intellectual property rights protection
The main legislation on copyright can be found in the *Copyright, Designs and Patents Act* 1988 as amended.
Performers (both audio-visual and sound) have exclusive rights on the broadcasting and recording of their live performance, reproduction, distribution, rental and lending of recordings of their performances as well as a right to equitable remuneration on the broadcasting and public performance of sound recordings.
There is a rebuttable presumption of transfer of rental right in a film production agreement. Where the transfer takes place, actors still retain a right to equitable remuneration (as in case of a transfer concerning a sound recording). In practice, UK actors do not share in the revenues generated by the rental market since the producers argue that the provision in the collective agreement which states that a further 25% of a performers initial fee is paid for videogram use constitutes equitable remuneration. Performers do not enjoy moral rights nor are they entitled to equitable remuneration for private copying. Thanks to labour agreements, performers do get paid by some TV channels for the simultaneous cable retransmission of their programmes made under union collective agreements in some foreign countries.

Self-employed writers, directors, designers, photographers, animators, visual artists will also have copyright. When the work is made by an employee in the course of his/her employment, copyright belongs to the employer (unless the contract says otherwise). This therefore depends on the type of work and on the contractual basis on which the work is undertaken.

1-6 The transfer of the contract to a third party
Contracts may be transferred to third parties but contractual obligations have to be maintained, according to the rules set by the Transfer of Undertakings Regulations. Rights can also be sold on, provided they have been lawfully acquired. Whoever holds the rights will be bound to make due payments. However, such ownership might be difficult to establish in case of subsequent sales and payments be eluded. In the music business, it sometimes happens that the engager transfers more rights than he/she actually owns according to the original contract and then goes out of business. In such case musicians have no right of action.

1-7 The conditions subject to which a worker is eligible to retire
State pension age is currently 65 years for men and 60 for women and it is embedded into contracts. All who meet their National Insurance requirements are entitled to draw pension at this age. After retirement age, employment rights (redundancy, dismissal, etc) do not apply anymore. In the music business, the BBC is an exception as their employees (musicians) must retire at the age of 60.

The minimum retirement age contractually agreed can be as low as 58. In this case, however, employers do retain employment rights till they reach the State pension age. State pension provisions are modest and to improve this situation, stakeholders pension schemes has been set up by law. According to this scheme, every employer of more than 5 employees may have to offer their employees access to stakeholder pension scheme. Trade unions often provide own pension schemes to their members, which are particularly important for self-employed individuals who could not otherwise benefit from other provisions than the State pension.

2- COLLECTIVE AGREEMENTS

Collective agreements are not legally binding but they apply to non-members insofar as they are engaged by an employer who is a member of a signatory employers' organisation. It is illegal to discriminate between workers on the basis of their union membership or non-membership. In case of self-employed individuals this is not easy to monitor and, in practice, their contracts can be very different from the collective agreements.
Actors have a number of statutory and contract-based neighbouring rights, regardless of their status. Those working with a non-Equity contract might not benefit from rights which have a contractual nature or might find it difficult to bargain them according to specific uses. Some of these rights are unwaivable in practice (e.g. rental/) as actors will keep a right to receive equitable remuneration. If a composer is employee and his job is to compose music then all the rights in that composition will belong to his employer (e.g. BBC). Free-lancers will often have to assign their rights to get the job: it is a market transaction and they can retain these rights if they are highly regarded.

3- REMUNERATION

Gratuity is not forbidden by law. Unions require their members not to be working for free nor under the minimum negotiated in the collective agreements.
However, this often happens in the entertainment industry. In some extreme cases, EW even have to pay to work (e.g. when they are required to invest in the company with the possibility to share on future benefits or also the case of deferred payment terms). Generally, though, a performer cannot work under an employment contract if he/she does not get paid (minimum wage legislation applies). All union collective agreements provide for level of payment higher than the State minimum. EW to which the PAYE *(Pay As You Earn)* system applies, can claim that the minimum wage legislation also applies to them. This becomes difficult if they are *schedule D*.

In 1998 the UK government established a national minimum wage system, which applies to all workers (part-time, full-time, casual or permanent, home workers alike) excluding self-employed individuals. There are two levels of minimum wage, depending on the age. The full rate for an adult worker (over 22 years) is currently (2001) 3.70 £/hour. Workers aged 18-21 inclusive are entitled to a lower rate (3,20 £/hour), known as development rate. The development rate can also apply to workers aged 22 and above, during their first 6 months in a new job with a new employer and who are receiving accredited training (a course approved by the UK government to obtain a vocational qualification). After the six initial months, the worker must get at least the full adult rate. There is no minimum wage for workers who are under 18 years old. In all collective agreements, minimum rates are set at a higher level than the national minimum. Overtime work is also subject to a specific premium, calculated on a

fraction of the daily rate. Special payments are also provided for unsocial hours (e.g. hours worked at night or during declared holidays, hours worked which cut short the minimum eleven hour break between working periods, etc.).

It is sometimes the case that the employer seeks to prove that individuals are not employees but self-employed, either as a way of avoiding payment of national insurance or to deprive individuals of their statutory protection. This will not happen if the work is undertaken under an Equity contract, since the performer will automatically be qualified as worker. As for self-employed musicians, although they do not qualify for State minimum pay, they are covered by the BMU agreements, which all set minimum pay to a higher level.

Extra hours or periods of work are regulated in the *Working Time Regulations* (setting a cap on the total amount of extra hours that can be worked) as well as in collective agreements (which quantify the amount due and the basis of calculation). The *Working Time Regulations* do not apply to genuinely self-employed people. Often the remuneration depends on the type of contract used and the collective agreement it is based on. Session musicians' contracts, for instance, are very strict, since the musician is contracted to play in the specific time given to him/her and there is no extra working time. As to off-camera technicians, the union negotiates premium rates for extra hours but self-employed individuals in independent productions often negotiate buy-outs and waive their right to claim overtime (forfeit payment). The union does not recommend this practice but has no way to stop it.

Contractual rules set the time when a worker must be paid. If payments are not done, the only issue is litigation for breach of contract. The *Late Payment of Commercial Debts (Interest) Act* 1998 applies to full self-employed individuals. The Act sets out to persuade businesses to pay their commercial debts to other businesses on time, by providing a statutory right to a high rate of interest on the late payment of commercial debts. The interest rate is 8% above the bank base rate (currently 6%). Interests start to run from the day after "the relevant day", i.e. either the date agreed for payment or 30 days after either the date when the supplier's obligation is performed or the date when the purchaser had notice of the amount claimed. This provision often applies to musicians, less so to other EW.. *Schedule D* workers can try and claim interests according to the Act.

There is no statutory protection of workers against the possible bankruptcy or other financial failure of their "contractor". The remedy will be litigation, although this is not a satisfactory solution, since EW usually get way down the list of creditors and often end up with nothing. Furthermore, whenever the employer is a limited company, its liability is insignificant. For actors, this is not an issue as far as big companies are concerned (BBC, ITV, etc) but is a matter of concern with independent producers. The union would normally require a letter of financial guarantee to be provided by the commissioner or its parent company. If this is not possible, Equity requires that money be posted in advance in an escrow account managed by Equity. In the worst of cases, EW who have been made redundant and are unable to secure moneys owned to them by their former employer – e.g. arrears of pay, holiday and redundancy pay - may be entitled to payments by the Department of Trade and Industry of certain debts, up to up to eight weeks' arrears of pay, up to six weeks' holiday pay, and up to twelve weeks' pay as compensation if the employer fails to give the proper period of notice of dismissal. In each case, the maximum payment for a week is £240

4- WORKING CONDITIONS

4-1 The general system

The main protection is provided by statutory law (e.g. Working Time Regulations, Health and Safety legislation, Transfer of Undertakings Regulations, Rules on statutory sick pay and statutory notice). These are imperative provisions, reflected in the collective agreements. Once more, in the entertainment business, the situation of genuine self-employed people is less protected, since some of these statutory rules will not apply to them.

4-2 The regulations on paid holidays leave

Workers in the UK have an individual right to 4 paid week holidays a year. Currently the law states that this right only kicks in after 13 weeks of continuous work with the same employer. This made it impossible for most EW to benefit from paid leave. The European Court of Justice declared this rule to be against the EU Treaty and that workers must be able to build up their entitlement from day one – the right to paid leave must be effective from the first working day. The calculation is based on an average of the last 12 weeks of work. The weekly salary is assessed in the collective agreements. Often, performers are paid their fee for turning up and prepaid for certain uses. In cinema they get the fee plus 280% of the original fee paid up-front. This tends to be the basis for the calculation and any payment after that (royalty) is not taken into account. Self-employed EW still have difficulties accessing this right.

4-3 The vocational training

There is no statutory entitlement to professional training. Although it is certainly a good employment practice, it is rather unusual and often depends on the size of the company. Unions do try to set up alternative schemes with the employers' organisations, in which case the right to training becomes a contractual benefit. Some external schemes have been set up, with the support of government and industry funding.

4-3 The role of the Labour Inspectorate

According to the *Health & Safety at Work Act* 1974, the employer is legally responsible to ensure safety at work for all the workers he/she employs, during their working time. The employer has to take reasonable steps to ensure the health and safety and welfare of his/her workers at work. Failure to do so could result in a criminal prosecution. In case of personal injury, legal action is the normal way forward (there is a presumption of responsibility on the employer's side). The loss of earning is usually the basis for such compensation, although additional payments can be awarded, e.g. for loss of capability. In the case of self-employed individuals or the public, the employer is generally not liable.

It is the duty of the H&S Executive to make sure legislation is respected. The Government (or the local authority) issues the laws, the H&S Commission interprets it and the Executives enforce it and send inspectors to the work places to ensure that risks to people's health and safety from work activities are properly controlled. Production companies have an obligation to have their own H&S Officer and to produce H&S guidelines if they employ more than 5 workers. In practice, H&S Executives make very few inspections, due to their lack of resources. Unions usually appoint safety representatives in the workplace. Usually self-employed people have to look after their own health and safety.

5- SOCIAL PROTECTION

There are four main classes of National Insurance (NI) contribution in the UK, depending on the professional status of a person.

Class 1 contributions apply to employees whose earning are at or above the lower Employee's earnings threshold (76 £/week or 329 £/month or the equivalent amount if the person is paid at other intervals), calculated for each employment. The amount to pay depends on the gross earnings, up to a maximum NI contribution that an employee can pay in one year (535 £/week or 2,319 £/month or equivalent amounts if the person is paid at other intervals. The maximum amount of contributions that an employee can pay in one employment is 2,432 £). This contribution is deducted at source from the wages (primary contribution). The employer also has to pay NI contributions (12.2%) for employees whose earnings are at or above the lower Employer's earnings threshold, i.e. 84 £/week or 365 £/month or the equivalent amount if the employee is paid at other intervals (secondary contributions). There is no upper earnings limit for the employer's share of the NI contribution due.

Class 2 and 4 contributions apply to self-employed people. The first ones have to be paid in respect of each week in which the worker is self-employed. The worker pays the same flat-rate amount (2 £/week) however much he/she earns. If he/she earns below a certain amount in a year they can apply not to pay them. Class 4 contributions are for self-employed people whose net profits (often from businesses) are over a certain amount. These are normally paid by self-employed people in addition to Class 2 NI contributions and are collected with Income Tax.

Class 3 contributions are voluntary contributions and can be paid by those who want to protect their right to some social security benefits and are not liable to pay Class 1 or Class 2 NI contributions. They are also paid by people to fill in gaps in a person's National Insurance record.

The class of NI contributions paid affects the benefits that can be obtained. Class 1 contributions are the most advantageous, as they allow the higher number of benefits, i.e. maternity allowance, contribution-based job-seeker's allowance, incapacity benefit, widows benefits, basic and additional retirement pension.

EW (mainly performers and musicians) are considered to be self-employed by the Inland Revenue for tax purposes. It will therefore be assumed that the individual EW is liable for self-employed National Insurance (Class 2 and, depending upon earnings, Class 4). However, if the EW works under a contract of service (e.g. and Equity theatre, film or television contract), he/she will be liable for Class 1 NI on his/her earnings from the contract. EW will be considered to be "employed earners" for NI purposes if they work under contracts of service, despite being self-employed for tax. When EW work under contracts of service, they will need to apply for deferment of Class 4 contributions in order to avoid paying self-employed national insurance on earnings which have already been subject to employed earners national insurance deductions.

Some EW are considered to be fully self-employed (for National Insurance as well as for tax purposes). For example, performers working on non-Equity contracts often pay self-employed National Insurance on their earnings. Off-camera EW (e.g. technicians) will usually be in a clearer situation (i.e. they would either be employees or fully self- employed).

In the case of unemployment benefits, performers frequently need to claim "Jobseeker's Allowance" when they are between contracts. There are two types of Jobseeker's Allowance, Income-based JSA and Contribution-based JSA. Income-based JSA is means-tested and non-

contributory. Contribution-based JSA is non-means-tested and contributory. Only Class 1 National Insurance contributions count towards entitlement to contribution-based JSA

Both types of JSA are earnings assessed. A claimant will not be entitled to either type of JSA if s/he is assessed as having earnings above his/her JSA applicable amount (the amount the law says s/he needs to live on). A claimant's earnings are assessed differently if s/he is a self-employed earner, as opposed to an employed earner. Performers who work under contracts of service are employed earners for JSA purposes. The DSS often erroneously assesses performers who work under contracts of service as self-employed for benefit purposes, due to their self-employed tax status. This frequently results in the refusal of benefit to the claimant and subsequent tribunal action by the performer is necessary to secure benefit entitlement.

6- TAXATION

Actors and musicians are often taxed as self-employed professionals (the main exception perhaps being fully employed orchestra musicians). The *Income and Corporation Taxes Act* of 1988 defines a self-employed person in very broad terms – i.e. someone pursuing a trade or a profession – and makes it possible to bring the profession under this category.

Prior to 1990 actors were generally regarded as self-employed for tax purposes and required to fill in *Schedule D* tax declaration. The Inland Revenue were unhappy with this treatment and announced they were to apply employed *Schedule E* status from April 1990 to all new actors signed to a standard Equity contract or engaged in repertory, unless they could claim "reserved *Schedule D* status" (i.e. actors who had at least three full years of assessment under *Schedule D* prior to 1990). Employed *Schedule E* status meant that actors were deduced at source (PAYE) and unable to offset business expenses against income, which was possible under *Schedule D*, and therefore resulted in much higher tax liabilities. However in 1993 with Equity support, two actors (Alec McCowen and Sam West) appealed to the Special Tax Commissioners and successfully argued that their income from standard Equity theatre contracts did not fall within *Schedule E*. The Inland Revenue did not pursue the case further and from August 1994 again accepted that an actor's earning will normally be taxed under *Schedule D*. Actors who are registered as self-employed for tax purposes will be sent a tax return every April to account for the previous tax year. Importantly, they will be able to claim expenses incurred in carrying on their profession against their taxable income. The same applies to a large number of musicians who are considered self-employed to tax reasons and employees for National Insurance benefits.

One of the issues which is more penalising for performers in general when they travel abroad are the "foreign artists tax" policies, striking not only the artists' fees but also their transport, flight and hotel costs. Those taxes can be so high in some EU countries that they virtually dissuade touring.