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STUDY ON IMPEDIMENTS TO MOBILITY IN THE EU LIVE PERFORMANCE SECTOR AND ON POSSIBLE SOLUTIONS

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Foreword – executive summary

Foreword

Artists, like art itself, know no boundaries. For hundreds of years they have moved from country to country as readily as others workers have moved from town to town within their own countries.

When Mozart's father led him around Europe as a young prodigy, national boundaries meant little to them in their quest for patrons and for audiences. In those days, international travel was for the few. Now it has become a mass habit.

So it is today for performers of all kinds. An actor's mobility may be somewhat constrained by language, but this does not apply to dancers, singers, musicians. Europe's great lyric companies and orchestras typically draw their artists not only from across the continent but also from far beyond; individual performers will take engagements across the world, appearing for a few weeks here and a few weeks there; the best conductors, choreographers, directors and designers are in demand far beyond their national boundaries; and whole ensemble companies regularly tour from one country to another.

It would be easy to conclude from this that there are no barriers to mobility for performing artists. Yet that is far from the case. It is rather that performing artists and performing arts organisations have become familiar with the barriers and have become adept at negotiating them. But the administrative and legislative burdens that they face are often complex and onerous - far more so than those faced by Mozart.

For familiar economic, social and political reasons, the free movement of goods and services is at the heart of modern Europe. It is one of the central tenets of the European Union. In declaring 2006 as the Year for Mobility of Workers, the Commission has sought both to promote mobility and to identify impediments to it.

It is in this context that I am particularly pleased to introduce the following report, which was researched and written by Richard Polack as part of an EU-funded project called mobile.home, in which PEARLE* was one of the partners. Its findings are based on field research. The aim has been not only to identify obstacles to mobility, but also to propose solutions to the various problems identified, based in part on an understanding of 'best practice' within EU member states. The report seeks to be both informative and practical. In this as in many other areas, the performing arts can offer experience and expertise which may be of value far beyond the confines of the cultural sector itself.

Executive Summary

The main sources of information for this study are questions raised by the performing arts sector with a help desk established expressly for this purpose and a large number of interviews of people working in the sector. Existing papers, documentation and the conclusions of previous studies have helped to provide a more structured basis for the study's development.

After an overview of the main outcomes of the study, the report devotes a chapter to each of the following key areas of difficulty:

- visas and work permits for third-country nationals
- double taxation and VAT
- social security regulations
- intellectual property rights

From time to time, the report identifies other cross-cutting issues (such as funding and qualifications) which are variously relevant to the overall picture. But these are not treated in detail.

The problems identified focus very much on administrative procedures. Some are quite basic and recur again and again. These problems are daily reality for many working in the performing arts. Too often individual workers encounter unpleasant surprises even over such basic issues as payment of taxes or claiming social benefits. The cases cited through the various chapters describe every-day situations and illustrate fundamental gaps between legislation and its interpretation and related administrative procedures.

Some of the solutions proposed are ambitious and are unlikely to be achieved in the short term. They may require changes in legislation. But others may be simply addressed by administrative improvements across member states, with particular reference to pan-European co-operation and the accessibility of information.

Annex 4 at the end of the study provides a template which will help workers in the performing arts to make the necessary links with legislation, procedures, documentation and contacts with relevant administrative bodies.

In this context it is plain that practitioners in the performing arts would benefit from some kind of one-stop-shop system which would serve to promote in each member state the mobility on which the sector depends.

Richard Pulford
President Pearle*

Introduction

This study was carried out during the European year of workers' mobility 2006 and is part of a wider project on mobility in the European Union's live performance sector, called "Mobile Home", which was initiated by several European organisations active in the live performance sector in Europe¹.

Pearle*, the *Performing Arts Employers Associations League Europe* has been in charge of running this study. It identifies the most important difficulties with which EU live performance sector has to deal when mobile inside the EU or when hosting live performance companies from other EU countries².

The focus of this study is put on four main areas of difficulties which have been identified as crucial for mobile live performance organisations and venues hosting mobile companies:

- visas and work permits for third-country nationals who are working lawfully with an EU live performance organisation and then go on tour with this EU live performance organisation inside the EU;
- double taxation and VAT;
- social security regulations;
- the use of intellectual property rights.

Each of the four chapters of this study will focus in detail on the existing difficulties, provide some concrete real life examples in order to better illustrate the difficulties and will propose possible solutions. The solutions are targetted mainly at the EU Member States, the EU institutions but also to EU live performance organisations and other organisations such as collecting societies, the aim being to facilitate mobility inside the EU for EU live performance companies and venues.

¹ Mobile Home Partners: IETM aisbl (international network for contemporary performing arts): www.ietm.org; Finnish Theatre Information Centre: www.teatteri.org; Goethe-Institut (Brussels): www.goethe.de/bruessel ; Pearle*(Performing Arts Employers Associations League Europe): www.pearle.ws/; Visiting Arts (UK): www.visitingarts.org.uk ; On The Move aisbl: www.on-the-move.org
Mobile Home Associated Partners: Fondazione Fitzcarraldo: www.fitzcarraldo.it ; European Music Council: www.emc-imc.org
European Culture Foundation: www.eurocult.org ; Trans-Europe-Halles: www.teh.net ; Relais-Culture-Europe: www.relais-culture-europe.org ; Centre Dramatico Aragon: www.centrodramaticoaragon.com ; ELIA: www.elia.ahk.nl ; EFAH: www.efah.org

² The performing arts sector is in essence very international, stretching beyond the border of the EU or Europe. The reader should bear in mind that the difficulties to mobility also apply to other parts of the world.

Methodology

This study has been drafted following a period of 6 months of research. The information contained in this study was collected using four different sources:

1. Sources used for this study

- Helpdesk on mobility

Between June and October 2006 Pearle* provided a helpdesk on mobility, which was accessible via Internet and email. It enabled EU live performance organisations and individuals to ask questions related to mobility in the fields of social security, VAT, copyright, taxation, visas and work permits and other issues linked to mobility.

- Face-to-face and telephone interviews with EU live performance professionals

The main information used for this study has been collected through more than one hundred face-to-face and telephone interviews carried out between mid-May and mid-October 2006. The persons and organisations interviewed include live performance companies, venues, individual artists, festival organisers, agents, researchers and tax advisers from 23 EU countries. Their names can be found in **Annex 1**. They were chosen mainly by the project partners of the "Mobile Home" project. However, other persons and organisations were recommended by those originally selected. Everyone interviewed is actively mobile inside the EU or frequently hosts EU live performance companies and artists from other EU countries. A few organisations and persons replied directly to questions via email.

All the interviews were based on the same set of questions which try to identify the difficulties EU live performance companies and artists and venues face in their day-to-day activity linked to mobility inside the EU. The questionnaire can be found in **Annex 2**.

- Cross-sectorial conference on mobility

A cross-sectorial conference on mobility in the EU live performance sector was organised in Helsinki in November 2006 by IETM and the *Finnish Theatre Information Centre, TINFO* within the framework of the "Mobile Home" project. During this conference, Pearle* organised 4 round tables on each of the four identified key areas. These round tables brought together representatives from the EU live performance sector, and administrators from the European Commission and from EU Member States. The discussions held during these round tables helped considerably to clarify those solutions which need to be adopted in order to remedy the existing difficulties of mobility. The programme of these 4 round tables can be found in **Annex 3**. Each of the 4 chapters of this study contain a list of possible solutions to the existing difficulties and invites all stakeholders (EU institutions, Member States, live performance and other organisations) to take appropriate measures in order to facilitate mobility inside the EU.

- Existing studies, reports and research done on mobility in the EU live performance sector

Existing studies, analyses, reports and position papers of Pearle* have been of precious help in drafting this study³. Special mention should be made of the *On The Move* website which contains information for mobile live performance companies.

3 Dick Molenaar, "Artiste Taxation and Mobility in the Cultural Sector", Report for the Ministry of Education, Culture and Science, The Hague, The Netherlands, All Arts Tax Advisers, Rotterdam, The Netherlands, 26 April 2005; Dick Molenaar, "Taxation of International Performing Artistes, IBFD, Amsterdam, The Netherlands, 2005; Study on the Mobility and Free Movement of People and Products in the

2. Key terminology used in this study

In order to be able to understand fully the difficulties of mobility described in this study and the possible solutions to these difficulties, it is crucial to clarify the key terms used and what they reflect.

- EU live performance organisation

This includes live performance companies such as drama companies, theatres, ballet and dance companies, opera houses, , music ensembles and choirs, orchestras, live performance venues, festivals or other live performance organisations which are based (i.e. have their registered office) in one of the 25 EU countries.

- EU live performance worker

This includes all persons who are nationals of one of the 25 EU countries and who are either artists or technicians, and are either self-employed or employees or have a particular status under the national legislation of one of the 25 EU Member States.

- Third-country national live performance worker

This includes all persons who are artists or technicians and who are not nationals of one of the 25 EU Member States.

- Mobility

For the purpose of this study "mobility" means for a live performance company to be able to perform in an EU country other than its EU country of residence. For an EU individual live performance worker it means to be able to take up employment or a service contract in an EU country other than his/her EU country of residence or to perform as a "posted" worker or self-employed worker with an EU live performance company that is performing in another EU country.

Cultural Sector', Study No DG EAC/08/00, 2002, http://europa.eu.int/comm/culture/eac/sources_info/pdf-word/mobility_en.pdf; Report on the importance and dynamics of the theatre and the performing arts in an enlarged Europe, Report of the European Parliament's Committee on Culture, Youth, Education, the Media and Sport (A5-0264/2002) Rapporteur Geneviève Fraisse, 15th July 2002

Pearle resolution "mobility in the performing arts sector", January 2005 ;
Judith Staines "Tax and Social Security - a basic guide for artists and cultural operators in Europe, IETM and On The Move Publication, March 2004

Main outcomes of the study

To understand fully the difficulties the EU live performance sector faces when mobile inside the EU and the most appropriate solutions, the particular patterns of mobility which exist in the EU live performance sector need to be briefly explained.

1. The particular patterns of mobility of the EU live performance sector

Mobility is undeniably a reality for the live performance arts sector in Europe, and it has been so for many centuries. Inside the EU, mobility is an important aspect in the everyday activity of live performance companies, venues and artists, not only as an artistic need but also as an economic necessity. For many EU live performance companies, especially in smaller countries, a large majority of their activity is being mobile in other countries (both inside the EU and outside).

One of the major problems in evaluating accurately the importance of mobility inside the EU is the complete absence of any official statistical data about the EU live performance sector, in particular as regards the patterns of mobility inside the EU and the types of employment statuses used in the EU live performance sector.

Patterns of mobility in the live performance sector are rarely predictable. Opportunities to be mobile can suddenly appear or disappear in the course of a live performance organisation's activities or live performance worker's life, depending largely on changeable and changing financial and artistic opportunities. Generally speaking, mobility is often short-term (i.e. a few weeks or months), even very short-term (a day or a few days). However, individual live performance workers are more frequently and increasingly becoming mobile over longer periods (i.e. more than a year).

- Mobility of individual live performance workers

Individual live performance workers can be mobile in different ways:

- By taking up an employment as an "employee" with an EU live performance organisation in another EU country;
- By being "posted" as an employee with an EU live performance company when this company is performing in other EU countries;
- By taking up a service contract as a self-employed person in another EU country.

It has also to be stressed that live performance workers often have several statuses at the same time, in particular in a context of mobility. For example a self-employed live performance worker may decide to take up an employment as an "employee" for a short period of time in another EU country, or s/he might have several employment contracts in several EU countries at the same time or alternate employment statuses for limited periods of time during his/her career.

Mobility can be long-term or short-term. Increasingly individual live performance workers spend several years of their career in different EU countries, depending on the artistic opportunities offered to them.

Mobility of EU live performance workers is not limited to the territory of the EU and mobility inside the EU is not perceived as a priority in itself. Many artistic opportunities for live performance workers arise outside the EU.

- **Mobility of EU live performance organisations**

EU live performance organisations such as drama companies, ballet and dance companies, , music ensembles, choirs or orchestras can be mobile with individual live performance workers who work for them temporarily or permanently as employees or as self-employed persons. They can be mobile inside the EU or outside the EU, for very short periods or longer periods of time. Mobility inside the EU means touring one or more EU countries for longer or shorter periods of time.

- **Opera houses, theatres, arts venues and festivals**

Opera houses, theatres, concert halls, venues for live performances and festivals are those which host the mobile live performance workers and live performance organisations. They host companies either for just a very short and limited period of the year (like many festivals) or they regularly host live performance organisations from other countries (in and outside the EU). The choice to host live performance organisations is largely driven by artistic choices.

Other players such as agents, for example, also have an important role in facilitating the mobility of live performance organisations and individual live performance workers. These patterns of mobility take place within a legal context that is still mainly the competence of the Member States of the EU.

The following example shows how complex mobility can become for an EU live performance organisation.

A live performance company established in Belgium has an artistic project for which it managed to negotiate performances in other European countries and non-EU countries.

For this project the company needs 18 persons (not including administrative staff): 10 dancers, 5 musicians and 3 technicians. 3 dancers have been chosen from Russia and China, the other 7 come from France, Italy and Germany; 2 musicians come from Hungary, 2 from the United Kingdom and one from India. The technicians are all from Belgium.

7 persons out of the 18 have the status of self-employed artists in their home country. The other 11 are employed as employees under Belgian law for this project.

During the performance recorded music from 3 different artists from the USA, France and Russia will be used, represented by 3 different collecting societies in Europe.

Two excerpts from 2 different films (one from Germany, another from Italy) will also be used, based on a Swedish play.

For 2007 the Belgian live performance company managed to have contracts for 10 performances in Belgium and 30 performances in: Poland, Slovenia, France, the United Kingdom, Ireland and Switzerland.

2. Main difficulties of mobility

An EU live performance organisation such as the one described above needs at the very least to be extremely well organised and have a sound knowledge of the legislation and regulations of more than one EU country in the following fields:

- Visas and work permits for third-country nationals as not all EU countries are within the "Schengen" area and not all live performance workers who are not EU citizens can travel without a visa inside the EU;

- Social security regulations which have to be applied differently according to the nationality and the employment status of the artists;
- Taxation and in particular bilateral agreements on double taxation and national rules on withholding taxes and value-added tax (VAT).
- The use of intellectual property rights due to a multitude of right holders.

The four above-mentioned areas are those where all those interviewed agreed that the main difficulties concerned the mobility of live performance organisations and workers inside the EU. Depending on the employment status of the mobile live performance workers involved and the duration of mobility, the difficulties linked to visas and work permits, social security regulations and taxation can differ in form and complexity.

Within each of those horizontal key areas following difficulties were listed:

- **EU and national rules are too different and ill-adapted**

EU rules and national rules are not adapted to the patterns of mobility of the live performance sector. In nearly all of the above-mentioned areas there is no EU harmonisation and therefore national rules apply. This "fragmentation of the legal space of the EU" in the four key areas for live performance organisations clearly complicates life for live performance organisations and workers who wish to be mobile inside the EU.

Rules are also often too complex and not transparent enough in order to allow EU live performance organisations and workers to be naturally frequently mobile, for very short periods of time and with live performance workers from third countries.

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- **National administrative procedures are too complex, burdensome, time-consuming, incoherent and expensive**

Due to the diversity of rules, national administrative procedures are consequently also not adapted to the patterns of mobility. They are described by all those interviewed as becoming increasingly cumbersome, time-consuming, inflexible and in some cases incoherent and even expensive. Again, the diversity and complexity of administrative procedures is in itself an obstacle to mobility inside the EU.

- **Information about applicable rules and procedures is insufficient**

In general, many EU live performance organisations declared that their own staff is not well enough informed about applicable rules and procedures. However they nearly all reported that the national authorities themselves are not always well informed about applicable rules in a context of mobility inside the EU. Individual live performance workers are in general insufficiently informed about their rights in the case of short-term or long-term mobility.

- **Financing and funding are problematic**

This issue has been mentioned by many organisations as problematic. Venues, festivals and live performance organisations and workers in the new EU Member States all reported that they are in a difficult financial situation in general and that there is often no special national funding available in order to show their work in other EU countries or to bring over to their country companies from other EU countries. The situation is equally problematic for those live performance organisations and workers from EU countries which are at the periphery of the EU (like Cyprus, the Canary Islands, Finland, Estonia, Portugal, etc.) and thus need to invest more money in order to be able to perform in other EU countries.

All those interviewed were unanimous as regards the EU Culture 2000 programme which has been described as too bureaucratically burdensome and too complex especially for smaller companies and venues. A strong request was voiced for easily

available funds, managed at local level and that would help to cover basic travel costs.

Generally speaking mobility in the live performance sector inside the EU is very much in a “push-pull” dynamic. There are undeniably clear moves to support mobility inside the EU through measures adopted at EU level and by Member States, for example via the coordination of social security systems at EU level, the establishment of a European health insurance card or cultural exchange programmes. However there are also clear signs of continued resistance to facilitate mobility, such as burdensome procedures to obtain E101 forms for posted live performance workers, the reluctance of member states to give up their withholding tax rules for non-resident performing artists or - due to security concerns and the fear of immigration - the restricted visa and work permit regulations for third-country nationals touring with EU live performance companies inside the EU.

3. Possible solutions to the existing difficulties in the four key areas

There is a need to increase transparency through the exchange of information about nationally applicable rules and procedures in the four key areas between national authorities, live performance employers’ organisations, trade unions and also educational establishments in the EU Member States in order to better target professionals and future professionals and prepare them for mobility.

National authorities have a particular responsibility to make relevant information in the four key areas easily accessible, in particular to foreign EU live performance organisations and workers. A database of national legislation and procedures applicable in the four key areas needs to be created and updated regularly. **Annex 4** to this study contains an open list of the data that should be in such a national database.

An EU uniform handbook for professionals and authorities containing all relevant national and EU legislation with relevant links and addresses is much in demand and could be written in a comprehensive style, published and permanently updated, and made easily available and accessible for mobile live performance organisations and workers.

EU live performance organisations but also administrators working for national authorities could receive training in order better to familiarise them with applicable rules, facilitate mutual understanding and thus speed up administrative procedures.

4. Conclusion

When touring inside the EU, mobile live performance organisations operate in a space of legal fragmentation which leads to a general feeling of legal uncertainty and ultimately acts as a disincentive to mobility. The disincentive is particularly strong as regards very short-term mobility and also smaller companies who have fewer human resources, expertise and financial reserves to overcome possible difficulties better. Younger individual live performance workers are also particularly vulnerable, as they are generally less well-informed about the consequences of being mobile. According to many of those interviewed, mobility in the sector is becoming increasingly administratively burdensome and applicable rules are more and more complex.

As a result, there is an urgent need for EU Member States to review their administrative procedures, make them customer-friendly for administrators of mobile live performance organisations and individual live performance workers and more adapted to the particular patterns of mobility (and in particular short-term mobility) of the EU live performance sector. The tendency should be towards the establishment of “one-stop-shop” procedures

where EU live performance organisations and workers can easily access and deal with all necessary administrative formalities in the four key areas, whether this is on a national or European level. There is an urgent need for political commitment on the part of the EU and EU Member States to adopt harmonised and uniform rules and procedures which would clearly encourage mobility.

Easier and less administratively burdensome procedures are essential in order to allow EU live performance organisations and workers to develop their full potential of mobility and thus allow citizens to share and exchange what is the most characteristic feature of our European identity and richness and which the EU has to defend in order to survive: the diversity of our European cultures.

CHAPTER 1

Difficulties of mobility linked to visa and work permits for third-country live performance workers when touring inside the EU with an EU live performance organisation

1. Preliminary remarks: the employment of third-country nationals in the EU live performance sector⁴

Many artists working in EU live performance organisations come from the EU25. However, live performance employers throughout the EU frequently engage for a shorter or longer period third-country nationals coming from EU candidate countries, the Western Balkans, the Russian Federation, Asia, Africa, North and South America. Whether it is an opera house, a theatre, orchestra, dance-company or other performing arts organisation, artists from outside the EU are often invited and employed on the basis of their artistic skills, or because of a shortage of artists with a particular skill. Particularly in the music sector (choirs, orchestras, music ensembles) and the dance sector many nationalities are employed (in Germany, for example, over 90 different nationalities are employed in orchestras and choirs).

In the performing arts sector artists are very often employed within a very short time-frame: a replacement of an artist who falls ill is quite common and there is a great need for procedures which make it possible to obtain the necessary permission very quickly. However, to employ third-country nationals the administrative formalities are laborious and time-consuming, especially because of the high rotation of live performance workers in general and the relatively high number of third-country nationals in some live performance organisations.

Many live performance companies and establishments report on a regular basis that the current rules for employing third-country nationals are lengthy and often difficult to comply with. This is especially the case when the basic principle of the economic needs test has to be applied in order to exhaust the domestic and EU labour market first. However, in the live performance sector, an artistic director, choreographer or stage manager will always be looking at the artistic profile of an actor, singer, dancer, musician or performer according to the play, concert or performance the live performance organisation wishes to set up. The choice of a live performance artist by a director is based on purely artistic criteria. Employers in this sector find it therefore very difficult to explain to the authorities dealing with the work permits the qualifications of one artist compared to another. This might be easier to explain, for example, in the case of the employment of Tibetan indigenous performers for a series of performances, but becomes very complicated in the case of a violinist in an orchestra, for example. In general, employers reported that local administrations rarely have an understanding of the particularities of employment patterns in the live performance sector, especially as regards the employment of third-country nationals. Because of the administrative process, one often has to await the formal approval for several weeks, which causes many practical difficulties for the live performance sector as a whole, hindering the quick dispatch of the production or show. Also, very often administrative procedures do not differentiate between requests concerning the employment of a third-country national for one day and employment for one year or more.

⁴ Pearle comments to the Green paper of the European Commission on an EU approach to managing economic migration (COM (2004) 811final) of April 2005

The recently modified Dutch legislation on immigration and access for third-country nationals to the Dutch employment market is an example of how to deal with administrative obligations in the field of employment of third-country nationals in the live performance sector. The modified legislation takes into account the specificity of employment patterns in the Dutch live performance sector. Live performance workers are defined as “knowledge-based and highly-valuable workers” and can enter the employment market on the basis of a decision of a well established cultural institution in the Netherlands or, if they are self-employed, on the basis of a “reference” given by companies or persons active in the Dutch live performance market. Administrative processes have been reduced to a reasonable degree and it has become significantly easier to employ third-country nationals in the live performance sector in the Netherlands.

The difficulties described in this study as regards touring inside the EU with third-country nationals are part of more wide-ranging difficulties linked to visa and work permits which the EU live performance sector faces in its everyday activity inside and outside the EU. Amongst them, at international level, are the persistent difficulties linked to visas for EU live performance organisations and artists who wish to go on tour to the USA. The temporary work permit restrictions inside the EU25 for employees from the new EU Member States, because of the transitional period after the enlargement of the EU in 2004, are of course another major difficulty to mobility inside the EU live performance sector. However, these other difficulties will not be analysed within this study.

Once a third-country national is legally employed by an EU live performance employer, bureaucratic difficulties might well continue. As reported especially by dance companies, music ensembles and orchestras, who regularly employ third-country nationals, to go on tour with a third-country national even inside the EU remains problematic. An EU established live performance organisation which wishes to go on tour inside the EU with third-country nationals has to deal with a multitude of complex national and EU rules on visas, residence and work permits, which vary widely, depending on the nationality of the third-country national, the length of the stay in particular EU countries in and outside the Schengen area.

2. The current legislative framework on visas and work permits for third country nationals entering the EU and moving inside the EU.

For the time being EU competence only covers the entry and short-stay conditions of up to 3 months within a 6-month period for third-country national who enter the so-called Schengen area⁵. All EU Member States have also established a common list of third-countries whose citizens do not need a visa in order to enter the EU.

⁵ Today the “Schengen area” encompasses 12 out of the 25 EU Member States: Austria, Belgium, France, Finland, Germany, Greece, Italy, Luxemburg, Netherlands, Portugal, Spain and Sweden. Denmark does not participate fully in the Schengen acquis, whereas Iceland and Norway (which are not EU members) are associated members of the Schengen area.

The United Kingdom and Ireland decided to opt-out of the Schengen rules and thus different rules for entry and stay for third-country apply to these countries.

The ten new EU Member States which joined the EU in 2004 (Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia) are not yet members of the Schengen area. As a result, different rules apply to these countries.

Switzerland and Liechtenstein are not EU members nor are they members of the Schengen area. However, Switzerland’s Schengen area accession is planned for 2008, and negotiations are currently on-going with Liechtenstein. As a result, different rules for entry and short stay of third-country nationals apply to these countries.

Any third-country national who wishes to enter the “Schengen area” has to meet the specific entry conditions, which are:

- the possession of a valid travel document and a visa if requested according to Regulation 539/2001 which has to be applied by all EU Member States;
- the capacity of justifying the purpose and conditions of the intended stay;

The rules governing the issue of long-stay visas, work permits and the admission and residence of third-country nationals for the purpose of exercising economic activities have not yet been harmonised at EU level. These issues continue to be governed by the national law of the 25 Member States of the EU.

The following paragraphs explain briefly the multitude and complexity of short-stay and long-stay conditions for third-country nationals once they have legally entered one of the EU countries.

a. Short-stay conditions (limited to 3 months)

- Rules applicable for EU countries, members of the Schengen area

A third-country national subject to the EU visa requirements when crossing the external borders of the EU needs a uniform Schengen visa to enter the Schengen area (or needs a national visa when entering the non-Schengen Member States). With the possession of a Schengen visa a third-country national can stay in the Schengen area for the period of validity of his/her visa, but altogether for a maximum of 3 months within a 6-month period. This period begins when entering the territory of any of the Schengen States.

The Schengen Convention does not preclude a Member State from issuing a new visa within the half-year period in question if necessary (thus enabling a stay longer than 3 months within 6 months), but the validity of this visa is limited to the territory of the Member State issuing the visa.

However, all EU Member States can still require a third-country national who would normally be on the EU visa-free list to obtain a visa if carrying out a paid activity (even for a short stay). As a result it can happen that Spain, for example, requires a separate visa from a third-country national who resides legally in another Schengen area state with a Schengen visa or a residence permit if this third-country national intends to carry out a paid activity in Spain.

- Rules applicable to the new EU Member States which joined the EU on 1 May 2004

As these countries are not yet members of the Schengen area, the allowed period of visa-free stays are governed by the bilateral visa agreements between the third countries and these new EU countries or by their national law. Third country nationals who are subject to the visa requirements under the Schengen agreements have to obtain a national visa to enter the territory of a new EU Member State. With a long-stay visa issued according to Schengen rules, a third-country national can enter and stay for a maximum period of 3 months in that particular new Member State.

- Rules applicable to other EU countries

For countries outside the Schengen area (i.e. Ireland and the United Kingdom), the specific national legislation applies.

- no alert has been issued against the person in the Schengen Information System (SIS) for the purpose of refusing entry;

- the person is not considered to be a threat to public order, national security or the international relations of the Schengen States.

As regards these entry conditions, the staff of a carrier company (airline company) is obliged to check that these conditions have been met and can deny access, if they have not; carrier companies have the responsibility to transport these persons back to the borders of the "Schengen area" in case of non-compliance.

b. Long-stay conditions (exceeding 3 months)

The EU is not competent for long-stay visas. The national legislation of each EU Member State applies for the time being. If a third-country national wants to stay more than 3 months in the Schengen area or in one of the non-Schengen states, - regardless of his/her nationality - s/he has to apply for a long-stay visa in the EU country where s/he intends to stay (and then for a residence permit) or, depending on the Member State, directly for a residence permit, which is issued on certain grounds (e.g. work or study purposes) according to national laws.

In accordance with the present Schengen rules, holders of a long-stay visa issued by a Schengen Member State can move freely in the Schengen area for a period of 3 months from the initial date of validity of the long-term visa. Long-stay visas are valid concurrently as a uniform short-stay Schengen visa for 3 months, if they were issued according to Schengen rules.

3. Main difficulties encountered by live performance companies or orchestras when touring inside the EU with third-country nationals

Difficulties of mobility inside the EU with third-country nationals obviously occur due to the complexity and multitude of the above-mentioned rules applicable to short-stay or long-stay conditions for third-country nationals. Touring to several EU countries during a shorter or longer period of time can significantly increase difficulties. They occur equally, however, to a different degree and in different forms, in the following two situations:

- touring with third-country nationals who are employed on a regular basis by an EU live performance employer and who already have a valid work permit and a long-term residence permit in the country where their EU live performance employer is established;
- touring with third-country nationals who are temporarily working as employees or as self-employed persons for this EU live performance employer.

Many live performance organisations reported that it is particularly difficult to tour with third-country nationals from one EU country which is part of the Schengen area (e.g. Belgium, France or Sweden) to another EU country which is outside the Schengen area (e.g. United Kingdom or, until their full participation in the Schengen area, Slovenia or the Czech Republic), or vice versa. This **"jumping in and out" of the Schengen area** proves to be difficult even for third-country nationals who are long-term residents in one EU country and have valid long-term residence and work permits.

However, even **inside the EU Schengen area** touring with third-country nationals proves to be problematic. For instance, a German theatre company which decides to go on tour to Finland still needs a separate visa for a Russian artist who already has a German residence and work permit.

The following difficulties as regards visas and work permits for third-country nationals have been most frequently reported:

a. No uniform rules, no uniform application of common rules

As already shown above, the rules across the EU are not uniform. For example, the type of documents that have to be presented in order to get a visa from other EU countries for a third-country national with whom an EU company is touring inside the EU vary from one EU country to another. Live performance organisations reported that embassies also sometimes ask for additional documents which in some cases obviously do not make any sense. Due to the complexity and multitude of applicable rules on visas and work permits

it is extremely difficult for live performance organisations to know if the rules are not uniform or if the local consulate or embassy doesn't apply the uniform rules (cf. case study 1).

There are also no uniform EU rules as regards the application for work permits in the countries where the performances will take place. This is particularly difficult to understand when third-country nationals are already legally employed in an EU country where their employer is established, when they have long-term residence and work permits and when they go to another EU country as posted workers for a very short period of time. Depending on their nationality and the length of their stay, some of these third-country nationals still need to have an additional work permit in some EU countries. For example, in the Netherlands third-country nationals in the performing arts do not need to apply for any further work permits, provided they don't stay longer than 3 months. In Austria, no work permits at all are needed for a third-country artist if the EU live performance organisation employing this third-country national stays only a few days.

Many companies also reported that national rules regarding visas and work permits are misleading as some Member States require a work permit before a third-country national can get a visa while at the same time they first need to have a visa before the employer can apply for a work permit.

As many of those interviewed persons said: "the general rule is that there is no general rule".

Case study 1: no uniform rules or no application of uniform rules

Luxemburg orchestra going on tour to Spain with 15 permanent employed musicians from Russia, Yugoslavia, China and Japan

A Luxemburg orchestra permanently employs 15 employees of Chinese, Russian, Japanese and Yugoslav nationality. All of them have a valid residence permit in Luxemburg and for many years have been part of the permanently employed staff of this Luxemburg orchestra. All musicians are covered by social security in Luxemburg and all have medical health insurance there.

In 2006, the orchestra concluded contracts with several Spanish venues to give 4 performances in one week. All the above-mentioned third-country nationals had to apply for a visa for these 4 performances in Spain. In addition the Spanish authorities required the musicians to provide a medical certificate. For previous tours to other EU countries, no such medical certificate had ever been required. It took the orchestra additional and time-consuming administrative efforts to get all medical certificates recognised by the Spanish embassy on time before leaving for Spain.

b. Non transparent rules

Several companies reported that there is no certainty about the accuracy of information available from embassies as regards the conditions that need to be met in order to get a visa for a third-country national with whom a live performance organisation is intending to go on tour inside the EU. The rules for obtaining a visa or work permit can suddenly change at the very last moment (cf. case study 2) or not be sufficiently well known even by competent administrative authorities, which in some cases can lead to increased costs for live performance companies (cf. case study 3).

Even if many live performance employers reported that things often go well, the majority of them said they are constantly on the alert when touring with third-country nationals

inside the EU and that they don't feel entirely confident until the very end of a tour, given that a sudden change of administrative procedures could occur about which they have not been informed sufficiently early. The trust in the accuracy of information received from official authorities remains low. In order to avoid bad surprises at the very last moment, just before starting or in the middle of a tour, many live performance producers, companies and establishments say that it is advisable to double check several times as regards the accuracy of information, even if received from an official authority.

All those interviewed who reported difficulties said that the relevant information regarding visa and work permits is rarely easily accessible or available and that they always have to search for it.

EU live performance companies working temporarily with third-country nationals under their status as a self-employed person (e.g. orchestras working with a conductor who is a third-country national and who is operating under the status of a self-employed person in his/her country of origin) and who then wish to go on tour with an EU live performance company inside the EU also seem to face difficulties as regards the lengthy procedures in order to get visas and working permits and the definition of the applicable rules, i.e. which documents exactly are needed for visas and work permits for self-employed persons.

Case study 2: no transparent rules

British dance company going on tour to France with Indian, South African and Chinese dancers

A British dance company employed for one of its productions one dancer from India, one dancer from South Africa and one dancer from China. The British company negotiated performances in Georgia, Armenia, Austria and France. The third-country nationals had all received a valid residence and work permit in the United Kingdom.

Well before starting its tour, the company completed all the necessary formalities in order to obtain visas and provide all documents required by the embassies of these four countries in London. The company had started its tour in the Caucasus when it was suddenly informed in Yerevan that the French authorities required for the third-country nationals a document certifying the authorisation of third-country nationals to perform in France. This document needed to be picked up and filled in by the third-country nationals at the French embassy in the United Kingdom. For evident logistic and financial reasons it would have been impossible for the company to change its schedule on such short notice, go back to London and fill in the forms. In the end, the French embassy in the United Kingdom agreed exceptionally to send the forms to the French embassy in Armenia where it could be filled in. The company was able to enter France and perform there without any further problems or unexpected requirements.

Case study 3: no transparent rules

French orchestra going on tour to the Czech Republic with a Turkish musician

A French orchestra employs on a regular basis a Turkish musician who has a residence permit in France which is valid until 2010 and a work permit which enables her to exercise any profession in France covered by French legislation.

At the end of 2005 the orchestra had successfully negotiated a certain number of performances in Karlsruhe, Stuttgart, Prague, Brno, Bratislava and Vienna. The orchestra performed in Germany and intended to take a plane to Prague at Frankfurt airport.

After three checks, just before boarding, the employees of the airport asked the Turkish musician for a visa which would permit her to enter the Czech Republic. The French orchestra had previously asked the Czech embassy in Paris if this Turkish musician would need a visa. The Czech embassy had answered that the musician would not need a visa as long as she had a valid residence permit in France. However, as there was no written document from the Czech embassy that could be submitted at Frankfurt airport, the Turkish musician was not allowed to board and could join the rest of the orchestra only in Vienna, once the concerts in the Czech Republic and Slovakia were over. The French orchestra had to pay additional travel expenses for this Turkish musician from Frankfurt to France and then to Vienna as well as a replacement of this musician for the concerts in Prague, Brno and Bratislava.

c. Ill-adapted rules

The multitude and complexity of rules on visas and work permits in the EU, even within the Schengen legislative framework itself are obviously not adapted at all to existing patterns of live performance mobility inside the EU. According to Schengen rules, Schengen visas are only valid for a period where a stay doesn't exceed 90 days. However, a dance company from the United Kingdom which is employing a third-country national and who has negotiated performances in EU countries inside the Schengen area for a total period exceeding 3 months within a 6-month period necessarily faces more difficulties. The company will be obliged to return to the United Kingdom in the middle of its tour, wait for another 3 months to be able to reapply for another Schengen visa and then resume its tour for a limited period of time.

The complexity of administrative procedures becomes even more critical in the case of a replacement at the very last moment of an artist just before setting out on tour - due to illness or any other unforeseen event - by an artist who is a third-country national. In reality replacements at the very last moment are frequently the case for touring orchestras. In such cases the above-mentioned difficulties can easily turn into real obstacles and make a tour planned several months earlier impossible, due to the impracticality of replacing an artist by another artist who happens to be a third-country national.

d. Expensive procedures

In some countries, and especially in the new EU Member States, procedures for obtaining visas and work permits are still very costly. Festival organisers and venues hosting EU companies with third-country nationals especially sometimes face very high costs in order to get visas and work permits for these third-country nationals. These high costs are clear disincentives to inviting EU live performance companies who work with third-country nationals.

e. Administratively burdensome and time-consuming procedures

In order to get a visa, even inside the EU, third-country nationals already legally employed by an EU live performance employer have to present themselves at the embassy of the EU country to which the company or orchestra is intending to go on tour. This is particularly problematic for those companies and orchestras in "bigger" EU countries (e.g. Germany, France, United Kingdom or Italy) where for some companies and orchestras embassies are located far away in the capital. In these cases it can become very time-consuming and also expensive to send all third-country nationals to an embassy in the capital. Planning to travel around several EU countries during the same tour can make things even more complicated. Some companies and producers who planned to go on tour inside the EU with third-country nationals reported that in some cases it took them 6 weeks or more to get all visas and permits for all third-country nationals. Although these rules have been established for security reasons they obviously

do not make sense for third-country nationals who have already been employed or established for many years in an EU country.

Depending on the degree of mobility in the employer's activities, the workload for live performance employers related to work permit and visa applications can absorb an entire part-time or even full-time job. Very often these employers also work of course with companies from outside the EU or they tour outside the EU. However, as many of those interviewed reported, the workload related to efforts to get work permits and visas inside the EU for third-country nationals who are already employed in EU companies still remains a considerable part of the overall workload on this issue.

Live performance employers have indicated that the following elements can help to overcome some of the above-mentioned difficulties:

- to have an experienced staff dedicating time and energy to issues related to visas and work permits;
- to be a recognised live performance organisation;
- to be able to work with very professional agents;
- to have well established contacts in the embassies and with the authorities dealing with work permits or to work on cultural projects which are supported by ministries of culture or well-established cultural institutions which have high-level or well-established contacts with embassies, ministries of foreign affairs or local administrations and which help to overcome potential difficulties linked to visas and work permits.
- to -proactively- provide more documents and information than was asked for at first instance

As a result, for smaller, recently established, less known and lower-budget companies or venues things are much more difficult. They can be discouraged in the face of the above-mentioned difficulties, be inclined to disengage with mobility in the EU and prefer to work with purely national companies or venues.

4. Possible solutions to the existing difficulties

Employing third-country live performance workers in the EU and then going on tour with them inside the EU are very much interlinked. Possible solutions need to tackle both aspects: problems linked to the initial employment of third-country live performance workers and the above-mentioned difficulties linked to mobility inside the EU. The revision at EU level of the *Common Consular Instructions*, which is now under way, has to adapt existing rules and take into account the specificity of employment and mobility patterns of the EU live performance sector. Other aspects like the recognition in other EU countries of national work permits for limited periods of time need to be pushed forward.

When responding in April 2005 to the Commission Green Paper on an EU approach to managing economic migration (COM (2004) 811 final), Pearle already made several proposals regarding employment in the EU of third-country live performance workers:

a. Solutions to difficulties in employing third-country nationals in the EU live performance sector

In the case of EU legislation, artists from third countries should be exempted from economic needs tests or quotas, allowing performing arts organisations to employ third-country nationals whenever this is necessary, based on a principle of freedom of the arts. Admission procedures for artists should be comparable to the engagement of an artist from the host country or from the EU. This means that in principle the artist is chosen solely on the basis of his/her artistic qualities, without having to limit the choice of the

artistic director to questions of the artist's nationality. Employers in the arts or the federations to which they belong can act as a guarantee for the employment of artists who are to receive a work permit for a longer period.

Rapid procedures for admission, or exceptions to the common rules, should exist in order to respond to the urgent need for last-minute replacements of an artist, so that a production or show is not jeopardised by complicated and time-consuming procedures. Any initiative of the European Commission to harmonise national rules on immigration with specific derogation for artists should be welcomed: this would considerably improve the functioning of the performing arts sector and solve many problems related to the mobility of artists.

The legislation on immigration adopted recently in the Netherlands, which provides facilitated employment procedures for third-country live performance workers, is surely a very positive sign and would need to be followed by other EU Member States.

The best solution would be an EU wide one-stop shop procedure allowing the work permit and residence permit to be applied for and delivered together and allowing the artists to perform in other EU Member States when touring inside the EU, hence avoiding unnecessary administrative burdens and unclear or grey zones for workers waiting for one or other permit and avoiding the necessity to apply for additional visas and work permits for artists when on tour within the EU.

b. Solutions to difficulties linked to third-country live performance workers already legally employed or working in one EU country and touring inside the EU

There is an urgent need to adopt short(er), less complicated and ideally EU uniform administrative procedures to deliver visas and work permits for third-country live performance workers when they go on tour with an EU live performance organisation by whom they are employed or with whom they have established a service contract.

Significantly facilitated procedures should be established when third-country live performance workers already have a residence permit and a work permit in one of the EU Member States. In particular, these future facilitated procedures should cover the following:

- The obligation of national authorities to deliver the necessary visas and permits for other EU countries within 24 hours;
- A closed list of documents that would need to be provided:
 - o a valid passport,
 - o the visa or the residence permit the third-country live performance worker has in one of the EU Member States,
 - o the work or employment contract with the live performance organisation which is going on tour inside the EU.
- The costs for obtaining visas and work permits should be reduced to an absolute minimum in order to avoid being a disincentive to mobility of live performance companies inside the EU.
- Third-country live performance workers shouldn't be required to go in person to the other EU Member States' embassies. Visa applications should be made collectively for all employees by the live performance organisation which is employing them. This would help reduce costs and time significantly for all concerned: national authorities, the live performance organisation and the third-country live performance workers. It is understandable that these rules apply today for security reasons. However, a facilitated procedure should apply at least for well established and recognised live

performance organisations, for example those organisations which are members of a recognised live performance employers' organisation.

- Third-country live performance workers who have a long-term residence permit in one country should be authorised to travel for an unlimited period of time within the territory of all Member States. All other third-country live performance workers on tour (if a visa is required for their entry into the EU) should be allowed to enter the EU and move up to six months in the same period of twelve months within the Member States as already proposed in the past by the European Commission⁶.
- A work permit of a third-country live performance worker which s/he has obtained in one Member State should be automatically recognised in any other EU Member State.
- The third-country live performance worker should be the work permit holder and not their employer, in order to enable them to change employers inside the EU labour market, when other or new artistic opportunities arise.

⁶ COM(2001) 388 final, Proposal for a Council directive relating to the conditions in which third-country nationals shall have the freedom to travel in the territory of the Member States for periods not exceeding three months, introducing a specific travel authorisation and determining the conditions of entry and movement for periods not exceeding six months.

CHAPTER 2

Difficulties of mobility linked to social security

1. Preliminary remarks

Social security is a matter of concern for live performance organisations touring inside the EU and for venues which are hosting touring companies in the EU. But maybe most of all social security is an evident matter of concern for any individual live performance worker who is mobile inside and outside the EU during his/her career. From a social security point of view being mobile with and as an individual live performance worker in the EU can be quite challenging, despite a European coordination framework on the application of social security schemes⁷.

The difficulties related to social security are closely linked to the employment status of the individual mobile live performance worker and for this reason the difficulties described in following chapter will be divided according to the employment status of mobile live performance workers.

A live performance worker who is mobile across EU borders can be a “posted worker” because s/he is employed by a live performance organisation from his/her country of permanent residence. Social security contributions will in this case continue to be paid in his/her country of permanent residence.

S/he can of course also be a self-employed live performance worker who will continue to contribute to the social security system of his/her country of permanent residence while “posting him/herself” to other EU Member States for different projects.

A live performance worker can also take up employment (for a short or a longer period of time) with an EU live performance organisation which is established in another EU Member State. The social security payments of the mobile live performance worker will be paid during the time of his/her employment in his/her host country.

However, working on different live performance projects across the border does not automatically mean keeping one’s original employment status. For example, one can be a self-employed live performance worker during many years and then suddenly decide to work for a couple of weeks, months or even years as an employee in another EU country. The reasons for this are that in the live performance sector professional opportunities with very different employment models suddenly appear or disappear in a more unforeseeable way than in any other sector of the economy. There is no established model or practice or any rule which mobile live performance workers in the EU would systematically follow for their careers which can turn in completely unpredictable ways. The difficulties linked to social security are even more complex for these “doubly mobile” live performance workers (workers being mobile during their career between several EU countries and different employment statuses).

Any attempt to coordinate social security better at EU level (while excluding any harmonisation) may well lag behind the reality of the EU live performance sector and its increasingly diverse patterns of mobility and employment status. However, it is important

⁷ Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. This regulation will be replaced by Regulation (EC) No 883/2004 of the European Parliament and the Council of 29 April 2004 once the implementation regulation has been adopted.

For more information, the European Commission’s DG Employment and Social Affairs website provides information about the coordination of social security schemes: http://ec.europa.eu/employment_social/social_security_schemes/index_en.htm

that mobility and diversity of employment status are not to the detriment of the individual mobile live performance worker and his/her rights to social security or that of the mobile live performance organisations which work with them.

2. “Posted” live performance employees and self-employed workers and difficulties linked to the E101 form

Within the logic of the coordination of social security schemes in the EU, E101 forms⁸ are necessary to prove that in a context of mobility a posted “employee” or a self-employed person from one EU country working temporarily in another EU country is covered by the social security in his/her EU country of residence. In the context of mobility in the live performance sector, the E101 form is therefore not relevant for those individual live performance workers who are not “posted” or “self-posted” workers and who directly take up an employment (be it short- or long-term) in another EU country.

The E101 form is a guarantee for the social security institution from the host country that it will receive reimbursement from the social security institution for social security benefits which have been given to the posted employed or self-employed worker during his/her temporary stay in the host country. As such the E101 form is not a right in itself and the social security institution in the home country of the “posted” worker or self-employed worker will have to check thoroughly if all conditions are met in order to issue an E101 form. These conditions depend on the national legislation of the EU Member States, as social security at EU level is not harmonised⁹. They concern the payment of social security contributions and, in the case of an employee, if s/he is actually working for the employer who is posting the employee to another EU country.

According to national legislation a live performance venue that wishes to host a live performance company from another EU country will have to ask the touring company for an E101 form for each self-employed and employed person that is part of this company. If the touring company can’t provide such E101 forms the venue might be obliged – under national legislation – to pay the foreign live performance workers’ social security contributions in the host country, which, in some countries, can amount to huge additional costs for the venues – and which it might ultimately request from the touring company. Many venues stipulate in their contracts that the touring company they are hosting has to complete all the necessary administrative formalities and provide them with the proof that all persons involved in the performance they are hosting are covered by social security in their home country.

E101 forms are also used by venues in some EU countries to prove the specific employment status of a touring artist which will determine if s/he will be subject to additional tax obligations in the EU country where the performances take place and for which a hosting venue might be held responsible (cf. chapter 3 of this study dealing with difficulties linked to taxation).

In practice the situation varies from one EU country to another. In some EU countries venues don’t require or no longer require E101 forms. In other countries, venues are under considerable pressure from public authorities to provide an E101 form for all persons coming with a foreign EU live performance organisation. In France, for example, checks on live performance venues are so strict that, according to a multitude of

8 The E101 form certifies that a worker posted to another country continues to receive his/her salary in his/her normal country of residence and pays his/her social security contributions there. The E101 form certifies that income from work abroad will be liable to social security contributions in the person’s own country and is exempt from contributions overseas. For more information on all available E-forms and their purpose: http://ec.europa.eu/employment_social/social_security_schemes/docs_en.htm

9 For more detailed information on the posting of workers inside the EU, the European Commission’s DG Employment and Social Affairs has issued a “posting guide”: http://ec.europa.eu/employment_social/social_security_schemes/docs/posting_en.pdf

testimonies from touring live performance organisations from other EU countries, French venues are “terrified” by the mere idea of possible administrative and tax inspections. Some have even become reluctant to host foreign EU live performance organisations.

In many EU countries, E101 forms for permanently employed live performance workers (e.g. permanently employed musicians in orchestras) can generally be received without major delays and difficulties when the live performance organisation plans to go on tour inside the EU.

However, several testimonies from Germany, France, Belgium, Sweden and the Czech Republic reported that it is still sometimes “difficult” to get E101 forms. In some rare cases, in very few countries, the staff in some local offices were reported as not being familiar with E-forms and what they are needed for. The following particular difficulties still occur frequently in some EU countries:

a. Bureaucratic and time-consuming procedures

The vast majority of those interviewed reported that in the case of difficulties it is still very hard to find someone competent on E101 matters working for the national authorities and nearly all those interviewed across the EU reported that it is still too bureaucratic and too time-consuming to get E101 forms. In particular procedures are cumbersome when many persons inside a live performance organisation go on tour or when the tour is planned for several countries and several places. In these cases E101 forms have to be filled in for each different place of performance and for each artist who is part of the touring company, which is a huge administrative workload for touring live performance organisations.

Case study 4: Cumbersome and time consuming procedures

A British chamber orchestra applied to the appropriate social security office, HM Revenue and Customs, on 14th September for E101 forms for 40 players to travel to Paris and perform in two concerts on 20th and 21st September. The British orchestra then applied for E101 forms on 22nd September for concerts in Poissy/France on 29th September and Perugia/Italy on 13th October in the same way. In response the orchestra received a letter dated 26th September informing the orchestra that it provided insufficient information for the applications and that it had to reapply using new application forms provided with the letter.

The previous application procedure for E101 forms involved simply providing name, address and National Insurance details for all the live performance workers involved. The new procedure now involves a separate form being filled out and signed by each player for each time a trip takes place. By the time the orchestra received the letter, the players were already in Paris and the orchestra had to fax the documents to Paris and then return them to HM Revenue and Customs, in the hope that they would be accepted. The orchestra had not been informed of the change in procedure.

A very good existing practice has been established in the Netherlands. It’s sufficient to submit an E101 form just once a year for each performing artist who is going on tour with an EU live performance organisation to the Netherlands, even if the organisation leaves the Netherlands after some performances and returns for other performances with the same artists later, during the same year.

b. Difficulties to get E101 forms for certain types of live performance workers

Many live performance organisations regularly experience difficulties when trying to get E101 forms for live performance workers they employ just for a few days of rehearsal before going with them on tour to another EU country. These very short-term employed live performance workers are frequent in the rock and pop music sector. In some countries, national legislation doesn't allow an E101 form to be issued to workers who are employed only for a very short period of time. But in many cases the national administrative procedures are reported as not being sufficiently adapted for this kind of particular situation and are not able to issue an E101 form in time.

Consequently difficulties in obtaining an E101 form also occur frequently in the case of replacements of live performance workers at the very last moment, before leaving on tour. This happens regularly in orchestras and dance companies. As already mentioned, in some countries venues are really worried about not receiving E101 forms from touring live performance organisations from other EU countries and this fear is reinforced in cases of last-minute replacements of live performance workers. Many live performance organisers confirmed that in the case of a last-minute replacement, they were unable to obtain an E101 form and they took the risk of going on tour without one for the replacing artist. The greatest fear they had was that during the tour an accident might happen to this replacing artist. For this reason many live performance organisations also take out additional insurance, which in general applies to all the live performance workers that leave with the company on tour. In some countries this can be quite expensive.

Another problem occurs where live performance organisations work with self-employed live performance workers, especially in EU countries where live performance workers can decide not to pay any social security contributions when they don't have a regular income. This is the case, for example, in Portugal but also in many Central and Eastern European countries, where many live performance workers are not employed on a permanent basis. As a result, these live performance workers don't receive any E101 form from their social security office. Mobility for these live performance workers becomes impossible, if a mobile live performance organisation refuses to employ them as "employees" or can't employ them for financial or other reasons.

3. Self-employed mobile live performance workers and difficulties linked to double payments of social security contributions

Double payment of social security contributions can be the result of the refusal of the host country's national authorities to recognise the status of a self-employed live performance worker from other EU countries and thus the obligation to take up their national employment status and therefore contribute to the social security scheme of the host country. The reason for national authorities systematically imposing on foreign live performance workers the prevailing employment status of an employee in the sector is often to avoid situations of dumping. However it can also clearly be a sign of protectionism and thus become a real obstacle to mobility.

EU law and especially the interpretation given by the ECJ has so far had undeniably positive effects on mobility in the live performance sector, and in particular as regards cases of double payment of social security contributions. In its ruling on 30 March 2002, the ECJ decided in favour of the rights of several self-employed live performance workers who had been employed by the Brussels opera house *Théâtre Royal de la Monnaie*¹⁰. Normally self-employed in the UK, they worked on temporary contracts in Belgium and continued to pay their social insurance in the United Kingdom. Although they could provide the E101 form certifying their status as insured self-employed workers in the

¹⁰ ECJ decision, 30 March 2000, Case C 178/97, Barry Banks and others against Théâtre Royal de la Monnaie.

United Kingdom, they were treated as employees by the Belgian authorities and social security contributions of over 13% of their fees were deducted. The ECJ found in their favour and made an order for the contributions to be repaid.

A recent judgement of the ECJ¹¹, *Commission versus France*, confirmed the previous ECJ judgement in the *Théâtre Royal de la Monnaie* case and condemned France for its legislation which automatically imposed the status of an employee (so-called “presumption of employmentship” [*présomption de salariat*]) on individual live performance workers from other EU Member States who provide a service in France only on a temporary basis and who can prove that they usually operate under the status of a self-employed person in other EU Member States. However, this judgment does not question the application of the protective French social legislation for those live performance workers who have their permanent residence in France and work there on a permanent basis. It will also be possible in the future to apply this legislation to all foreign live performance workers who do not come from an EU or European Economic Area country.

This judgement is of crucial importance as many EU individual performing arts workers who are self-employed and work only on a temporary basis in France had to pay social security contributions, despite the fact that they already pay social security in their EU country of residence. These social security contributions had of course also to be paid partly by the live performance organisation which had to employ the foreign live performance workers under an employment status. In addition the payment of social security in France included particular social security contributions from which foreign live performance workers could never benefit if they worked just for a very short period of time in France, and they couldn’t even transfer these rights abroad to other EU countries. These contributions include for example a paid holidays’ scheme and a professional training scheme.

As this judgement is very recent, many live performance organisations which have been interviewed are still reporting cases where the French authorities refuse to recognise the particular employment status of an individual live performance worker who comes from another Member State. In some cases the French authorities have even started proceedings against live performance organisations.

Case study 5: Double payment of social security contributions

A particularly case has been reported by a French orchestra. . The orchestra concluded several service contracts with a Spanish conductor between 1998 and 2002, each time for a certain number of weeks per year. The Spanish conductor remained affiliated to his social security system in Spain and also pays his taxes there. He has several other commitments across Europe. The French orchestra asked the Spanish conductor to send an E101 form. In 2003, the French authorities inspected the French orchestra and declared that it had made abusive use of the E101 forms of the Spanish conductor and that he should have been employed as a permanent employee by the French orchestra which would have been obliged to pay social security contributions for this conductor in France (the French authorities also ordered the CLEISS (*Caisse de liaison des sécurités sociales européennes/ Centre of European and International Liaisons for Social Security*) to ask the Spanish social security office to annul the E101 form of the Spanish conductor, which has been done. In the meantime, however, the Spanish office reissued the E101 forms for the same conductor).

The case has been brought before a French administrative tribunal and has not yet been decided.

¹¹ ECJ decision, 15 June 2006, case C-255/04C, Commission against France.

Meanwhile the French tax authorities asked the Spanish conductor to pay all his income taxes in France. As the conductor could effectively prove that he pays his taxes in Spain, the French tax authorities finally accepted that only a withholding tax applicable for non-resident performers had to be paid in France; they hence recognised implicitly that the conductor is registered fiscally in Spain as a self-employed person.

While the French tax authorities eventually acknowledged that the Spanish conductor is a self-employed person, the French social security office continues to insist that social security contributions should have been paid for this conductor as an “employee”. The case has been pending before the administrative tribunal since 2003.

Other cases of double payments have been mentioned concerning Germany where legislation imposes employment status on EU live performance workers, provided the worker joins an undertaking and is in a relation of “subordination”. This is for example frequently the case for foreign self-employed dancers who have short-term contracts in well-established institutions in Germany and who are obliged to adopt the status of an employee and pay social security in Germany despite the fact that they are paying their own social security in their home country.

In the future, the recent case law from the ECJ should be able to prevent the double payment of social security contributions inside the EU, which are a clear disincentive to mobility. However, this needs to be done carefully and without endangering the high level of social protection applicable to live performance workers in some EU countries and which needs to be secured.

4. Difficulties for mobile live performance workers to benefit from social security contributions made in other EU countries in a context of mobility

This problem mainly concerns individual live performance workers who - during their career - have taken up employment contracts in different EU countries.

Live performance workers who have changed employment status during their career between different countries (case of “doubly mobile” live performance workers) mainly have difficulties as regards their pension rights.

a. Difficulties for individual live performance workers taking up employment in other EU countries

Nearly all live performance workers’ organisations that were interviewed reported that individual live performance workers have difficulties to benefit from social security contributions they have made and/or that have been made for them by their temporary employer, in particular when they were working for a short period of time in an EU country other than the EU country of their permanent residence. Despite the lack of precise statistics, it has been confirmed by all live performance organisations which have been interviewed that cases of short-term mobility are far from being marginal within the patterns of mobility in the EU live performance sector and are, in fact, one of the most frequent types of mobility in this sector.

Either live performance workers experience difficulties to transfer to their home country the rights to which they are entitled following a period of employment in another EU country (e.g. unemployment benefits) or, due to too short a period of time spent in another EU country, they have not satisfied the acquisition conditions in order to benefit from rights. As a result many live performance workers have the feeling of being “punished” for mobility as they - along with their temporary employers - have paid social security contributions without being able to receive any benefits. The same is true for live performance organisations which employ foreign EU live performance workers on a

temporary basis. They easily get the impression that they have contributed to a social security system which doesn't benefit these temporarily employed foreign live performance workers or at least not proportionally to the payments made. This situation creates clear disincentives to mobility.

Individual mobile live performance workers are in general very badly informed about their social security rights when mobile in the EU and taking up short-term or long-term employment in another EU country. The same is true for live performance organisations which do not always feel well informed about the utility of payments they make for temporarily employed foreign live performance workers. National authorities are reported as not being very helpful in informing foreign artists and local live performance organisations, seem often not to know themselves how to deal with cases concerning mobility and the transfer of acquired rights and rarely appear to be supportive.

As regards unemployment benefits, several live performance organisations reported that individual live performance workers have difficulties to get periods worked in other EU countries recognised. In some EU countries proof that they have been employed for a short period of time is difficult to get or is simply not recognised in their home EU country. Several persons interviewed reported that local authorities often do not know how to deal with an E301 form.

A particular case concerns individual live performance workers who are resident in France and who wish to take up employment for a short period of time in another EU country. Their particular artists' status (*intermittent*) entitles them to a specific unemployment scheme for a limited period of time, provided they have worked a certain number of hours (counted according to precise criteria) over a certain period. This unemployment scheme is financed through contributions made by the individual live performance artist and by the live performance organisations employing this artist and established in France. However, if an individual live performance artist wishes to work temporarily as an employee in another EU country, the time worked in this other EU country does not fully count for the quota of hours s/he has to work in order to maintain his/her status. A cumbersome administrative procedure has to be followed to get the periods worked abroad recognised. Many workers established in France also fear that working abroad might not enable them to meet the necessary quota in order to maintain their favourable status. As a result many individual live performance workers in France prefer not to take up any employment in another EU country. Other foreign employers have started to co-operate with French undertakings which agree to employ the French artist on a temporary basis, thus continuing to pay into the French unemployment scheme for this artist and "sending" the French artist abroad for a limited period so as to enable him/her to work for the foreign EU live performance organisation. This acrobatic legal construction and administratively cumbersome solution doesn't suit all foreign EU live performance organisations and in some cases they clearly prefer to give up employing French artists.

Another problem is the payment of social contributions which entitle an individual live performance employee in some countries to specific social security rights, such as paid holidays or professional training, as already mentioned above. These rights are not necessarily transferable as they do not exist in all EU countries. They are often linked to acquisition conditions, for example a minimum period of contributions to such a scheme. Problems occur when a foreign individual live performance worker has contributed to these schemes but not for a sufficiently long period of time to be entitled to benefits or when s/he can't transfer these rights to his/her home country because no such schemes exist. As a result s/he will not benefit from a scheme despite the fact of having contributed to it.

b. The particular problem of pension rights: “it’s not in the artist’s mind not to be an artist any more”

As regards live performance workers who stay in different EU countries for longer periods during their career, those who have frequent short-term contracts as employees in other EU countries, and “doubly mobile” live performance workers, the most important issue is the portability of pension rights (statutory and supplementary pension schemes).

All those interviewed who have themselves spent bits and pieces of their professional career in several EU countries reported that they are not well informed about the portability of pension rights, be they statutory or supplementary. Many of them believe that it will be complicated to get all their pension rights together and some of them do not expect that the pension rights they have acquired in several EU countries (sometimes with different employment status) will be recognised at the end of their career or that they will have the right to benefit from all the contributions they made. All of them had the feeling that mobility will affect their pension rights. Some few far-sighted self-employed live performance workers have taken out private pension insurance.

In general, pension rights is simply not an issue for many live performance workers as they cannot and often are not willing to imagine that one day they will no longer be working. There is a huge need for information which could be provided at undertaking level, by trade unions, professional organisations and in educational establishments at the very beginning of professional training in order to inform live performance workers properly and comprehensively about their social security rights, including in a context of EU and international mobility.

As regards the particular issue of supplementary pension schemes, it has to be noted that these schemes do not exist in every EU country. In the very mobile live performance sector there is a serious lack of information as regards the portability and the transfer of such pension schemes. No sector-specific impact assessment for the live performance sector seems to exist as regards the recently proposed directive of the Commission on the improvement of portability of supplementary pension rights.

Good practice has been established in Belgium by the Social Fund for Performing Arts in Flanders, which is jointly managed by management and labour of the live performance sector in Flanders. A common supplementary pension scheme has been introduced for all live performance workers who are employed in the Flemish live performance sector, regardless of their nationality. Each year, upon request of the beneficiary, a document detailing the supplementary pension rights is issued. When an employee retires it’s his/her responsibility to claim these pension rights to which s/he is entitled.

4. Possible solutions to existing difficulties

Different solutions could be found to the above-mentioned difficulties. A good solution would be if each live performance worker regardless of his/her employment status could have and keep during his/her entire working life one single social security affiliation despite the many possible work and employment relationships during his/her mobile career across different EU countries. As this might not necessarily be possible in the short term, a distinction can be made between possible short-term and long-term solutions.

The ongoing negotiation within the Council on the implementation regulation of the revised regulation of the coordination of social security schemes (Regulation 883/2004) is an opportunity to adopt simpler and more efficient procedures between Member States’ administrations.

a. In a **short-term perspective** the following solutions could easily be adopted and would not require any legislative action at EU level:

- **Making procedures to receive E101 forms simpler and more adapted to patterns of mobility in the live performance sector**

Procedures with the national authorities in charge of issuing E101 forms should become less bureaucratic and less time-consuming. They should most of all become more flexible and take into account the fact that live performance organisations often might need to employ a live performance worker (e.g. in the case of a replacement) just a short time before leaving on tour to other EU countries. Live performance organisations should be able to receive E101 forms in a fast-track procedure within 24 hours just by proving that they effectively employ these workers.

Procedures should be as simple as possible and should need the involvement of just one administrator from a live performance organisation that is going on tour. There shouldn't be any need to directly involve the employed live performance workers in the administrative procedures. Improved and fast-track procedures could easily be introduced by governmental decrees or any other administrative act at Member State level. There could also be a recommendation at EU level and ultimately a binding decision.

Self-employed live performance workers should be able to receive one E101 form which is valid throughout one calendar year and which they can use for all performances they contract in other EU countries.

- **Monitoring the correct application of ECJ jurisprudence to avoid double payments of social security contributions**

The recent ECJ case law should be fully applied in order to ensure that an individual live performance artist is not subject to double payments of social security contributions. This needs to be done without short-circuiting the high level of social protection applicable to live performance workers in some EU countries. The correct application of the judgements by national authorities and live performance organisations is a question of effective control of EU law.

- **Adopting measures to ensure the full benefit of social security rights for mobile live performance workers**

In order to ensure that mobile live performance workers do not lose any social security rights they have paid for during their career in different countries, the following actions could be taken:

- o **Easier administrative procedures and the effective benefit of social security rights for mobile live performance workers**

- Easier and simpler administrative procedures need to be introduced for live performance workers who have been mobile and worked temporarily or for a long period in other EU countries as well as for live performance organisations which wish to employ them. A specific reception department should be set up by those national and other authorities which deal with live performance workers who have worked abroad and who wish to make sure that the social security rights they have acquired are not lost in a context of mobility.
- acquisition conditions attached to social security rights for mobile live performance workers, should be better adapted to the particular patterns of mobility in the EU live performance sector. In particular, entitlement to the reimbursement of health costs or to the full transfer of pension and unemployment rights should be guaranteed.

- A mobile worker who paid contributions in one particular country -also following a short-term employment- should be entitled to claim the benefits or social security rights that he/she contributed to and which may not exist in the EU country of permanent residence
- **Improving the expertise of the Member States' authorities**
 - Ideally national authorities in the Member States that deal with social security should train some of their staff at local level on the specificities of social security rights and mobility in the live performance sector in order better to receive mobile live performance workers and organisations and in order to inform and advise them exhaustively about social security rights in a context of mobility.
 - A specific EU handbook on social security and mobility in the EU live performance sector could be drafted for each EU country, explaining clearly the applicable rules, the shortcomings in the existing system of social security coordination, plus complex cases of mobility which occur in practice and possible solutions.
 - A network of national contact points could be set up between social security offices dealing exclusively with mobility in the live performance sector. Local authorities could seek advice from these contact points in cases where specific problems or questions arise. These contact points could also be accessible to individual live performance workers and organisations from one EU country that come across a problem linked to mobility and social security. The contact points in the EU countries involved could try to solve the problem. The network of contact points could function in a similar way to the SOLVIT network or be part of the SOLVIT network¹².
- **Raising the information capacity of live performance employers' organisations, trade unions and professional education and training establishments**
 - The above-mentioned handbook on mobility and social security could also be used by trade unions, live performance employers and vocational education and training establishments. A simplified version could be distributed automatically to live performance workers who take up employment in another EU country; a specific version could also be drafted for young live performance workers during their vocational training, informing them in general about their social security rights, including in a context of mobility.

b. In the long term the following reforms could considerably improve the situation for the live performance sector.

- **Replacement of the E101 form by a revised "European health insurance card"**
The E101 form should simply be replaced by a copy of the European health insurance card which could contain additional information contained in the E101 form.
- **Creation of a life-long EU social security ID number for mobile live performance workers**

12 SOLVIT is an on-line problem-solving network in which Member States' administrations work together to solve without legal proceedings problems caused by the misapplication of EU Internal Market law by the public authorities. There is a SOLVIT centre in each EU Member State which helps to handle complaints from citizens and businesses. The network is coordinated by the European Commission and operated by the EU Member States: http://ec.europa.eu/solvit/site/about/index_en.htm

Each individual live performance worker should have a life-long EU social security number containing all necessary information regarding his/her employment status and the affiliation to his/her national social security system. This would significantly reduce burdensome administrative procedures. This EU social security ID number would facilitate the transfer and the portability of social security rights acquired in different EU Member States.

In the beginning this solution would require some efforts in order to set up such a system; however, in the long run it would definitely be time-saving and economical for all those involved.

- **Setting up of EU “one stop-shops” for social security contributions of mobile live performance workers**

Another possibility would be to set up EU “one-stop shops” for social security contributions for mobile live performance workers. When a live performance worker takes up employment in another EU country, his/her employer would not contribute to the national social security scheme but to a European “counter” which would not keep these contributions but would transfer them immediately to the usual country of residence of the mobile live performance worker. This could be used in particular when employment in another EU country is limited to a very short period of time, not exceeding one year. In this case the live performance worker could return to his/her usual country of residence where the European “counter” would have transferred the contributions. The advantage would be that the social security contributions would always be paid in the country where the artist usually resides. In addition, the live performance worker would not need to do anything in order to have his/her rights recognised, as this would happen automatically. S/he could receive a receipt from this European “counter” proving the transfer of his/her social security contributions and explaining the content of the transferred rights. A positive side effect of such a system would be to give clear information about the number of individual live performance workers who are mobile as employees in the EU live performance sector. Moreover, it would not endanger any system of social security which encourages a high social protection of live performance workers. It would also not question the differences of social security systems in the EU.

CHAPTER 3

Difficulties of mobility linked to taxation

Difficulties linked to double taxation and value added tax have been quoted unanimously by all live performance organisations interviewed as the most serious difficulties they encounter in their everyday activity when mobile inside the EU. The vast majority reported that the difficulties linked to taxation and in particular the administrative workload to avoid double taxation and excessive taxation clearly discourage them from being mobile or from hosting mobile organisations. As many of them reported, the administrative workload has increased over the years, and the overall general feeling of the professionals in the sector is that the most mobile sector in the EU is discriminated against when providing services in other EU countries due to specific tax legislation which does not exist for any other “mobile” economic sector in the EU.

1. Rules on double taxation applicable to the EU live performance sector

All EU countries have concluded bilateral tax treaties the aim of which is to eliminate double taxation. These treaties are based on the OECD Model Tax Treaty. Under article 17 of the OECD Model Treaty a withholding tax can be deducted from the performance fees of non-resident artists (both self-employed and employees) and live performance companies in the country where the performance takes place. As a result, non-resident live performance artists and companies are not taxed according to the usual allocation rules in their country of permanent establishment. As explained in 1987 by the OECD¹³, this particular rule has been conceived as an anti-avoidance measure to prevent highly mobile artists from taking gross self-employed income without paying taxes in any country and artists from not reporting the foreign income in their home country.

Following the OECD Model Tax Treaty, all EU countries have signed bilateral treaties which authorise a withholding tax on the fee of foreign, non-resident live performance companies and artists when performing in their countries on a temporary basis. This is done regardless of the fact that the company of the artist comes from another EU country. The national rules on withholding taxes also apply regardless of whether the foreign artist is self-employed or an employee.

As a result, mobile non-resident live performance organisations and artists from the EU have to pay withholding taxes to the tax authorities even if they are performing in another EU country. When returning to their EU country of permanent residence, live performance organisations and artists then have to deal again with their national tax authorities which might also levy taxes on the foreign income. This “double taxation” should normally be avoided by the bilateral tax treaties signed between all EU countries. According to double taxation treaties, a live performance company or artist who has already paid taxes abroad should receive financial compensation in his/her home country in the form of a tax credit or a tax exemption. However, the mobile live performance organisation and artist will still have to complete all the formalities in order to clear the tax situation with the residence country’s tax authorities and in order to avoid “double taxation” or excessive taxation.

EU internal market rules and in particular the freedom to provide services in other EU countries are based on the principle of non-discrimination. However, direct taxation is still the competence of individual EU Member States and not of the EU. The ECJ even

13 « Taxation of Entertainers, Artistes and Sportsmen », in Issues in International Taxation N° 2 (Paris: OECD, 1987).

recently clearly stated that a withholding tax from non-resident artists is in general not in breach of the EC Treaty and the freedom principles, nor is an official procedure for a tax exemption based on a bilateral tax treaty¹⁴. The ECJ also stated that the EC Treaty is not breached by national legislation under which liability is incurred by the recipient of services (e.g. a venue hosting a non-resident live performance company) which has failed to deduct at source the tax that they should have deducted. However, the ECJ has also recently handed down an important decision in favour of mobile performing artists who were victims of excessive taxation inside the EU¹⁵. It has clearly established that the taxation of non-resident live performance organisations and artists inside the EU has to be framed by EC rules on non-discrimination. Other cases related to national legislation on double taxation of performing artists are still pending before the ECJ¹⁶.

The following parts of this chapter on difficulties linked to double taxation will not be a detailed analysis of the existing international tax treaties on double taxation or of particular cases of double taxation or excessive taxation which have occurred in the live performance sector in the EU. Some of these issues have already been analysed in detail elsewhere¹⁷. The following part focuses on the difficulties that all mobile live performance organisations and artists in the EU Member States face every day with the heavy administrative workload that is necessary in order to avoid double taxation and excessive taxation in a context of mobility and which is therefore already in itself an obstacle to mobility in the live performance sector.

2. Difficulties linked to double taxation

It has been reported unanimously by all those interviewed that administrative workload to avoid double taxation acts as a very strong disincentive to mobility for many live performance organisations and artists but also for venues which have to complete all the necessary administrative formalities in order to pay withholding taxes if a live performance organisation or artist from another EU country negotiates a “net fee”. In practice mobile live performance organisations and artists frequently negotiate a “net fee” with a promoter or a venue so that they do not have to pay any more taxes in the country of performance. As a result, the payment of withholding taxes is dealt with by the promoters or the venues, as they are more acquainted with the national legislation and the procedural formalities linked to withholding taxes. Once all administrative procedures have been completed and taxes have been paid, the venues may ask the appropriate tax office to issue a certificate proving that taxes have been paid by the non-resident live performance organisation or artist. It is also very often the case that mobile live performance organisations and artists do not ask for any proof that taxes have been paid in the country of performance.

As many of the venues reported, non-resident live performance organisations or artists, once they have managed to negotiate a higher “net fee”, very often may not wish to bother any more with additional complicated administrative procedures in their home country. They will simply declare the “net fee” as an ordinary taxable income, according to the income tax regulations of their home country, without declaring that taxes have already been paid abroad.. According to many live performance organisations, double taxation and excessive taxation are most probably the result in a lot of cases, though those involved don’t always realise it or report it.

14 FKP Scorpio Konzertproduktionen GmbH versus Finanzamt Hamburg-Eimsbüttel, 3 October 2006, C-290/04.

15 Arnoud Gerritse, 12 June 2003, C -234/01; FKP Scorpio Konzertproduktionen GmbH versus Finanzamt Hamburg-Eimsbüttel, 3 October 2006, C-290/04.

16 Centro Equestre da Lezioria Grande Lda, C-345/04.

17 Particularly precise and detailed analyses have been made by Dick Molenaar, “Artiste Taxation and Mobility in the Cultural Sector”, Report for the Ministry of Education, Culture and Science, The Hague, The Netherlands, All Arts Tax Advisers, Rotterdam, The Netherlands, 26 April 2005; Dick Molenaar “Taxation of International Performing Artistes, IBFD, Amsterdam, The Netherlands, 2005.

a. Lack of clear and accessible information on applicable rules

Tax regulations and in particular the rules on withholding taxes for non-resident performing artists vary considerably from one EU country to another. There is generally a widespread feeling of legal uncertainty amongst professionals in the live performance sector as regards the identification and interpretation of exactly which taxation rules apply to non-resident artists and organisations in a context of mobility. Professional live performance artists and organisations but also tax authorities in the EU Member States are generally ill-informed about the rules and procedures.

All the live performance organisations interviewed reported unanimously that it is extremely complicated to obtain exhaustive information about the rules on withholding for artists' fees in other EU countries and represents an enormous workload. The lack of accessible information concerns the applicable rules and procedures related to all aspects of double taxation: exemption from withholding tax, tax returns, tax credit in the country of permanent residence, deduction of expenses, etc. In addition, there is a general fear amongst live performance organisation and artists that they might not be sufficiently aware of sudden changes to the applicable rules or procedures.

Many live performance organisations confirmed that their national tax authority couldn't always give precise and exhaustive answers to all their questions. In addition, the interpretation of rules depends to a large extent on the person from a local tax office who is replying to a question. There is also insufficient accessible documentation explaining the concrete interpretation and application of general rules. Very often it was reported that the same tax authority has given contradictory information on the same question. In some cities in a few EU countries, however, professionals have managed to establish good contacts with tax office staff who are able to inform them correctly. This remains the exception, however. In many EU countries, and especially in the new EU Member States, tax officials seem not to be familiar with procedures linked to double taxation agreements and the particular case of withholding taxes of performing artists and live performance organisations. According to those interviewed, the overall lack of exhaustive information is partly due to the complexity of the issue. This lack of information also clearly contributes to the perception of complicated procedures.

b. Complex and non-uniform rules across the EU, capable of creating discriminatory situations and excessive taxation

National rules on withholding taxes for performing artists differ widely from one EU country to another and so do their application and interpretation. As a result, many live performance organisations face huge confusion as regards the precise application of the taxation rules of a foreign EU country to their particular situation (e.g. live performance organisations which don't pay taxes at all in their home country due to particular national legislation). Many companies openly said that due to the complexity of the issue they simply do not know how to deal with national withholding tax rules and double taxation agreements or how to interpret them. Many mobile live performance organisations also experience difficulties when trying to explain to the artists they employ for a tour what exactly is at stake.

Bigger live performance organisations touring to several EU countries as part of the same tour or touring with many artists confirmed that they seek advice from tax advisors who are specialists in double taxation in the performing arts field. Smaller companies suffer equally from the extreme complexity of this issue while at the same time their restricted budget doesn't necessarily allow them to consult a tax specialist. They are therefore in a more fragile position and, as a result, become more reluctant to take the risks linked to mobility.

The non-uniformity and complexity of rules have been criticised unanimously. They sometimes create discriminatory situations when compared to taxation rules applicable to national live performance artists and organisations and may also create excessive taxation, due to the following.

- The lack of a clear and uniform EU-wide definition of what has to be understood by an "artist". It is not always clear if a particular performing arts profession is covered by the particular national regulations on withholding taxes. A visual artist might be defined as an artist for tax purposes in some EU Member States and not in others. The applicability of national rules governing withholding taxes for some professions is thus often confusing.
- The lack of a uniform and precise EU-wide definition of the items of income qualifying as taxable performance income. Depending on the tax regulation of the country of performance, it's not always clear what has to be understood by "performer's income". Several EU countries only include the actual performance fee, some add the fees for rehearsals, and some countries even include the "per diems", i.e. subsistence which the artist receives to cover his/her expenses when performing in another country. This also raises the question of deductibility of expenses.
- The lack of a uniform and precise definition of the basis for calculating the taxable income and the lack of uniform rules on deductibility of expenses. In some countries the withholding tax is based solely on the performers' net fee that is paid to the individual artist. In other countries, until recently, the basis for calculating the withholding tax was the artists' gross fee, which raised serious questions of deductibility of expenses.

National rules on deductibility of expenses, in particular, vary widely. Recent ECJ jurisprudence has clarified how rules on withholding taxes should be applied across the EU. On 12 June 2003 the European Court of Justice (ECJ) issued its decision in the *Arnoud Gerritse* case¹⁸. The ECJ decided that the non-deductibility of (production) expenses prior to the performances of foreign artists in Germany is in breach of the EU principle of freedom to provide services, as guaranteed by the EU Treaty and is an obstacle to entering the German market. Subsequent to this decision Germany and other EU countries had to change their tax legislation for foreign artists so that withholding tax can only be levied on the net profit. This has not yet been done throughout the whole EU. In the recent ECJ decision in the *Scorpio* case¹⁹, Germany has again been ordered to change its tax regulations and to allow the deduction of direct expenses at the time of the performance of the non-resident artist. The ECJ also stated that indirect expenses may be allowed to be deductible in a refund procedure afterwards. Other EU countries such as Belgium, France, Spain, Italy and Austria will also need to change their non-resident artist tax accordingly.

- The huge differences in the withholding tax rate across the EU. It can vary between 10 and 30% of the taxable income across the EU and thus clearly discourage live performance organisations from performing in some EU countries.
- The lack of simple uniform rules on exemptions from withholding taxes. The national rules on exemption vary considerably from one EU country to another. Germany and some other EU countries exempt orchestras which are subsidised by national or local authorities in their country of residence from paying a withholding tax. The particularity in Germany is that this exemption for orchestras has to be made at local authority level in the various German regions (*Länder*) which sometimes interpret the rules differently. Obtaining a tax exemption in the country of performance is of crucial

¹⁸ Arnoud Gerritse, 12 June 2003, C -234/01.

¹⁹ FKP Scorpio Konzertproduktionen GmbH versus Finanzamt Hamburg-Eimsbüttel, 3 October 2006, C-290/04.

importance particularly for live performance organisations which are already exempted from taxation in their country of residence, e.g. charitable live performance organisations in the UK. Not receiving a tax exemption in the country of performance puts an additional burden on these orchestras, which they cannot offset in their home country (cf. case study 7).

Case study 7: Lack of simple uniform EU-wide rules on tax exemptions

Withholding tax frequently causes problems for United Kingdom orchestras which are charities and have charitable tax exemption status in the United Kingdom. When on tour in the EU, these orchestras sometimes manage to obtain a tax exemption. However, in Germany, a British orchestra which is a charity and does not pay taxes in the UK had to battle for three years to reach an agreement with the German tax authorities because, strictly speaking, the double taxation agreement between Germany and the United Kingdom is not applicable to the British orchestra as it only applies to organisations which “pay tax in full in the country in which they are located”.

In general, the price of a tour can differ considerably for a mobile live performance company if it does not receive a tax exemption. It can determine if a live performance organisation will go on tour to certain EU countries or not (cf. case study 8).

Case study 8: Lack of uniform rules on tax exemptions - differences of touring costs with and without tax exemptions

A publicly-financed French live performance organisation plans to go on tour to Luxemburg and Germany. The French organisation has a budget of €120,000 for each of the two tours with the same number of performances. It receives a tax exemption from the German tax authorities. The Luxemburg venue informs the French organisation that no tax exemption is possible. It also informs the French organisation of the following:

“The fee as well as any other possible payments by the venue (travel and accommodation expenses) are subject to a 10% withholding tax deduction. This deduction is made directly by the venue and subsequently transferred to the Luxemburg tax authorities.

The fee is also subject to Luxemburg VAT as well as the withholding tax of 10%, calculated on the gross amount.”

The Luxemburg venue made the following calculation and the French live performance organisation had a considerably smaller amount available for the same number of performances than in Germany.

Fee excluding VAT before withholding tax:	€120,000
VAT 12%:	€14,400
Fee gross amount, incl. 12% VAT before withholding tax:	€134,400
Withholding tax deduction of 10% of the total fee gross amount:	€13,440
Net payment after deduction of the withholding tax:	€106,560

Another important and frequently mentioned aspect in the context of exemptions is the difficulty for some live performance organisations to obtain in their home country various certificates (e.g. proving that they receive public funding) which are requested by the tax authorities in the country of performance to be able to benefit from exemptions. As a result many venues end up paying taxes for live performance

artists or organisations which are exempted in their country but can't prove it sufficiently to the tax authorities of the country of performance.

- The differences in rules and procedures regarding the income tax return.

Not all EU countries' tax regulations allow a non-resident artist to file a normal income tax return at the end of the year. Since the ECJ judgement in the *Arnoud Gerritse* case in 2003, EU Member States now have the obligation to insert in their national income tax legislation an option (or obligation) for non-resident artists to file a normal income tax return in order to give the artist the possibility to compare the progressive income tax rates with the withholding tax rate and avoid paying too much tax. However, not all EU Member States have yet changed their national legislation in order to implement fully the *Arnoud Gerritse* decision.

- The absence of standardised forms available at EU level.

The variety of forms and the fact that they are not available in all EU languages creates additional confusion and uncertainty amongst professionals of the sector. However in some countries some good practices have been mentioned. In Estonia, for example, all certificates that are issued by the tax authorities to foreign performing artists and companies are automatically available in English.

c. As a result: long, burdensome, incoherent and incongruous administrative procedures to avoid double taxation and excessive taxation with uncertain outcomes

Given the above-mentioned difficulties, all those interviewed were unanimous: the non-uniformity and complexity of rules creates enormous legal and financial uncertainty.

Procedures that need to be undertaken to avoid double taxation (e.g. applying for exemptions or partial exemptions) are too burdensome and too long. In general, there is a widespread dissatisfaction amongst professional live performance organisations and individual artists as regards the uncertain outcome of procedures linked to the avoidance of double taxation and excessive taxation. Many reported that applications for a refund of paid taxes are not always or not entirely successful and that it's always uncertain how much, when or if something will be refunded or recognised as having been paid abroad. All this makes it very difficult to calculate what the financial outcome of a tour might be in the end. For these reasons, artists and organisations often ask themselves if the benefits of mobility clearly offset the effort required to avoid excessive taxation or double taxation and the legal and financial uncertainty in which they have to operate if they choose to be mobile.

Smaller live performance organisations which don't have sufficient human resources and/or sufficiently competent and specialised administrators to deal with complex taxation procedures and can't afford to consult a tax specialist in particularly difficult cases are undeniably disadvantaged and even more discouraged from being mobile.

The live performance organisations interviewed gave several examples of particularly long procedures when dealing with national tax authorities on the issue of double taxation (cf. Case study 9).

Case study 9: Long administrative procedures

A Czech live performance organisation had given 2 concerts over 2 days in Germany. It took the organisation and the German and Czech tax authorities one year to resolve all difficulties linked to double taxation.

A Belgian live performance employers' organisation received several questions on double taxation from several of its members which planned to go on tour to Spain. All questions related to how to deal with the double taxation agreement between Spain and Belgium and how to deal with taxable income after returning to Belgium and having paid withholding taxes in Spain.

The live performance employers' organisation sent a letter with precise questions to the Belgian tax authorities at the beginning of 2005. The Belgian tax authorities replied to this letter 15 months later, in mid-2006. By that time the tour of the Belgian live performance companies was already over. The answers to the questions were considered insufficient to enable the live performance organisations to deal with withholding taxes and double taxation in any practical way.

The lack of knowledge on the part of some tax offices but also on the part of some live performance organisations clearly makes long administrative procedures even longer.

Language problems with official forms to be used as proof in other EU countries are also frequent. They also make procedures longer and more complex.

Many live performance organisations reported that tax office staff in the same EU country don't always interpret and apply rules consistently. In Spain, for example, a live performance organisation reported that a non-resident EU live performance company used proof from its home country's tax authority in order to benefit from exemptions in other EU countries. Although this certificate was recognised by some tax offices in Spain without any problem, other tax offices in Spain refused to recognise it.

Another criticism is the fact that administrative procedures are not always adapted to further administrative formalities which organisations or individuals have to complete in their home countries in order to avoid double taxation (cf. case study 10).

Case study 10: Unsuitable administrative procedures: difficulties to meet administrative requirements in order to receive tax credit in the home country

A British orchestra which went on tour inside the EU and which had to pay withholding taxes for the orchestra and its employed musicians in other EU countries reported the following problem: "On the rare occasions when a certificate showing what tax has been paid eventually arrives it still does not show any given individual's tax, just a total sum. Individual musicians, when completing their self-assessment tax returns, have to itemise those earnings on which tax has already been paid but there is no definitive way to match this up with the global sum for which we may or may not have a certificate. This system has been developed piecemeal and, so far, no-one has been subject to detailed investigation. However, it does seem that there is an accident waiting to happen here".

3. Difficulties linked to value added tax (VAT)

National regulations related to value added tax (VAT) and their application to non-resident live performance organisations and self-employed artists have also been mentioned many times as being obstacles to mobility inside the EU.

As regards the live performance sector and VAT, an important provision is the sixth Council Directive 77/388/EEC of 17 May 1977 which deals with the harmonisation of the laws of the Member States relating to turnover taxes and a common system of value added tax. Article 13 governs certain exemptions from VAT. It provides among other

things that Member States shall exempt from VAT certain cultural services and goods closely linked thereto supplied by bodies governed by public law or by other cultural bodies recognised by the Member State concerned. According to the ECJ this does not exclude performers supplying services individually such as solo singers²⁰.

Member States are also authorised, but are not obliged, to grant VAT exemptions to bodies other than those governed by public law if they meet one or more of the following conditions:

- they shall not systematically aim to make a profit,
- they shall be managed and administered on an essentially voluntary basis,
- they shall charge prices approved by the public authorities or which do not exceed such approved prices or prices lower than those charged for similar services by commercial enterprises subject to VAT.

All the live performance organisations reported that there is much confusion regarding the exact application of VAT regulations to situations of mobility due to the following facts:

- there are big differences as regards the applicable VAT rates in the different EU countries;
- VAT rates can differ within the same country for the same type of live performance organisation and for different activities within the same live performance organisation. In France, for example, orchestras, depending on the source of their financing, can have three different types of VAT status. Some live performance organisations in some countries have to pay a normal VAT rate for their box office income but have a lower VAT rate for their artistic creations;
- in some countries some venues and live performance organisations and artists are entirely exempted from VAT under their national legislation (based on the 6th EU VAT directive);
- the application of national regulations on VAT to foreign live performance organisations are not understood the same way inside the same country and venues and mobile live performance organisations are frequently confronted with contradictory information.

a. Additional administratively burdensome procedures for VAT registration

A difficulty that has been mentioned several times is the fact that some national regulations oblige mobile live performance companies and artists to register in the country of performance for a VAT number, even if they perform on a short-term basis. This administratively burdensome obligation exists in Denmark, France, Finland, among others. Depending on the applicable VAT rate and on whether or not these non-resident artists and organisations are themselves subject to VAT, this is clearly a disincentive to mobility (cf. case study 11).

Case study 11: Obligation for mobile live performance organisations and artists to register for local VAT numbers

A Swedish theatre director received a contract to direct a play in Finland for three months. He could not invoice a Finnish theatre under his own Swedish VAT number but was obliged to register with the Finnish VAT office and had to pay a higher VAT rate (the VAT rate in Sweden is 6% and in Finland it varies between 8 and 22%).

²⁰ ECJ, 3 April 2003, Mathias Hoffman, C-144/00.

b. Non-extension of VAT exemptions to non-resident artists and live performance organisations

When EU companies or artists from one EU country with their specific VAT regulations give performances in the venue of another EU country with their particular VAT regulations, the diversity of rates and full, part or non-exemption contribute to a general feeling of confusion and legal uncertainty and discrimination.

Difficulties mainly arise when national legislation exempts certain of its live performance organisations from VAT but does not extend this VAT exemption to non-resident live performance organisations. This problem concerns both mobile live performance organisations and resident venues:

- for non-resident live performance organisations or artists if they aren't able to reclaim in their home country the VAT they paid on their fee in the country of performance because they are not subject to VAT in their country;
- for venues, where the agreed fee with the non-resident organisation or artist has been a "net fee without any further taxes to be paid" and thus the obligation to pay VAT is shifted to the venue (cf. case study 12).

As a result, tax regulations in some EU Member States which provide that only their resident live performance organisations are exempted from VAT but not non-resident live performance organisations and artists are discriminatory and a disincentive to mobility.

Case study 12: Compulsory VAT payments for VAT-exempted venues and non-resident mobile live performance companies/artists

A Belgian live performance company which is exempted from VAT in Belgium performs in Germany and has to pay VAT on the fees it receives for its performances there. On its return to Belgium, this company can't claim VAT back from its own tax authorities as it's exempted from VAT. As the VAT is not a withholding tax the Belgian company cannot even ask the Belgium tax authorities for a tax credit.

A Slovakian orchestra exempted from VAT under national legislation invited a Lithuanian orchestra for a guest performance. Under national legislation the Lithuanian orchestra had to pay this VAT to the Slovakian tax authorities. However, national legislation transfers the obligation to pay this VAT to the venue. The Slovakian venue paid this VAT, 19% of the fee agreed with the Lithuanian orchestra. It could have decided to take the VAT from the fee that it had to pay to the Lithuanian orchestra. However, the Lithuanian orchestra can't credit the VAT in its home country, nor will it get the VAT back from the Lithuanian tax authorities, as it is exempted from VAT.

The same problem has been reported by a British festival organiser who is exempted from VAT and couldn't recover the VAT it had to pay for a live performance organisation from Ireland, which negotiated with the British venue a "net fee".

In addition, in some EU countries the usual VAT rate which is then also applicable to foreign live performance organisations and artists can be quite high and can increase considerably the total cost of touring or hosting a live performance company from another EU country. In order to avoid these high VAT payments, live performance organisations in several EU countries have started campaigning for lower VAT rates for

the live performance sector. This has been successful in Lithuania, where professional live performance organisations formed a coalition and managed to convince the government in July 2006 to lower the applicable VAT rate from 18% to 5%. This considerably helped Lithuanian venues to bring over to Lithuania other EU live performance organisations.

In Ireland, live performance organisations are currently still lobbying the government to change the VAT rate and allow VAT exemptions for non-for profit cultural organisations. The arguments advanced by the Irish organisations explain well why VAT in cases of mobility is particularly prejudicial to smaller live performance venues (case study 13):

Case study 13: Arguments put forward by Irish live performance organisations to change the applicable VAT rules in Ireland on non-resident artists and organisations

The new Irish Finance Act 2002 requires promoters of arts events to pay 21% VAT on fees paid to performers who don't live in the Republic of Ireland. The result is an increase in costs especially for non-profit organisations running international festivals and for orchestras, theatres, opera, and dance and theatre companies. For example a medium-scale festival spending up to €100,000 on performing artists' fees is looking at a new VAT bill of up to €21,000 per annum, not including arrears.

These organisations cannot reclaim the VAT because theatre and concert tickets are exempt from VAT, the non-commercial organisations are not VAT-registered and smaller registered charities are not able to register for VAT. Bigger commercial theatres and venues have bar sales and merchandising which allow them to be VAT-registered - so that the VAT rules hurt the bigger organisations less.

Smaller organisations can't put their ticket prices up to offset the VAT payment as the Irish Arts Council already gives grants to make it possible for these activities to happen at all. Increasing ticket prices by almost a quarter would make them unaffordable for many people.

Moreover, smaller companies can't make savings somewhere else as cutbacks will mean bringing in less prominent artists and companies who charge less - or promoting fewer international events.

In addition, the Irish North/South cultural exchange is one of the first casualties of the applicable VAT rules as arts centres and promoters near the border have to pay a 21% premium on artists from Northern Ireland.

A change in the Irish VAT legislation is possible under EU law so that exemption from VAT on fees paid to non-resident artists can be ring-fenced to apply only to non-for profit cultural organisations.

4. Possible solutions to existing difficulties linked to taxation

a. Solutions to difficulties linked to double taxation

The EU Council of Culture Ministers sent a strong political signal when deciding on 15-16 November 2004 to put the topic of "solving obstacles of mobility caused by the taxation of mobile artists" in its Work Plan for Culture 2005-2006 and to "define and assess taxation problems specific to mobile artists in the EU" by mid-2006.

Possible solutions to the existing problems of double taxation and excessive taxation for mobile performance artists and organisations have already been analysed in detail by performing arts tax specialists²¹. Some of the following short and long-term solutions have already been advanced:

a1. The following solutions could easily be adopted and would not require any legislative action at EU level or any major changes to national legislation:

- Full implementation of the ECJ jurisprudence by EU Member States
The EU Member States should accept, adopt and **implement rapidly the ECJ decisions in the Arnoud Gerritse case and the Scorpio case** and the forthcoming decisions of the ECJ concerning taxation of non-resident live performance organisations and artists. This means the full deductibility of all expenses and a normal income tax return for non-resident artists in all EU member countries. All EU Member States also need to provide in their tax systems the possibility for non-resident artists and organisations to deduct direct expenses at the time of the performance.
- Member States need to adopt an **income limit** for the application of their rules on taxation of non-resident artists and smaller live performance organisations. This is already the case in Belgium, the United Kingdom and Germany, for example.
- A **central one-stop-shop** could be set up in each country where mobile live performance organisations and artists could seek relevant and reliable tax information and where they could also directly pay taxes and receive all necessary certificates for their home country's tax authorities.
- More transparency as regards tax systems applying to national artists and the interpretation of double taxation agreements.
In order to increase transparency significantly, a **database** could be created with information about tax systems, rates, allowances, exceptions and refund procedures for national artists and live performance organisations. This database should also contain clear information about the interpretation of double taxation agreements. It should be an easily accessible instrument for live performance organisations and artists. A network of performing arts tax specialists could manage and update this database.
- Improving the exchange of information about performance income of non-resident artists and organisations from the performance country to the residence country. The EU directives for this exchange of information have already been accepted and are in force; the technical means should become available quickly.

a2. The following solution can also improve the situation for mobile performing artists

Harmonisation of the **official tax forms and certificates** for mobile performance artists and organisations could be considered at EU level. They could also be made available in all EU countries in English, German and French in order to help to speed up administrative procedures, and increase transparency and legal certainty for mobile artists and organisations.

²¹ Dick Molenaar, "Artiste Taxation and Mobility in the Cultural Sector", Report for the Ministry of Education, Culture and Science, The Hague, The Netherlands, All Arts Tax Advisers, Rotterdam, The Netherlands, 26 April 2005; Dick Molenaar, "Taxation of International Performing Artistes, IBFD, Amsterdam, The Netherlands, 2005.

a3. Solutions linked to modifications in the OECD-model tax treaty

- The Commentary to the Model Treaty needs to be modernised. Following the ECJ Scorpio case, it would be helpful if paragraph 10 of the Commentary recommended that Member States encompass the deduction of expenses in their bilateral tax treaties, which is consistent with the implementation of the Scorpio case to be adopted by the EU Member States, 19 of which are also members of the OECD.
- The OECD could be convinced to change Art. 17 of its Model Treaty, in which the primary taxing right has been allocated to the country of performance.

a4. A radical change of national tax legislation and bilateral tax treaties would considerably improve the situation of mobility for the live performance sector:

- EU countries need to accept and adopt the decision of the ECJ in the Scorpio case, which results in full deductibility of expenses.
- The European Commission should encourage and monitor the implementation of the ECJ Scorpio decision in the Member States.
- Member States of the EU need to change bilateral tax treaties in order to abolish taxation of non-resident artists and live performance organisations.
- The European Union should invite EU Member States to consider following the example of the Dutch government which took a drastic decision in September 2006 to abolish the taxation of non-resident artists (and sportsmen) as from 1st January 2007. The Dutch government took this decision after concluding that the revenue from this special group of taxpayers is too low and the administrative burden is too high to justify taxation at source. As a result, the Netherlands prefers non-resident performing artists to only be taxed in their country of residence. An official certificate of fiscal residence will be needed for a tax exemption in the Netherlands, informing the country of residence that performance income from the Netherlands can be expected in the next income tax return of the artists. However, this change will apply only to live performance artists living in a country which has a bilateral tax treaty with the Netherlands, in order to counteract tax avoidance schemes with artists claiming they live in tax havens. However, as the Netherlands has bilateral tax treaties with all countries of the EU, for EU mobile live performance organisations and artists there will be no more withholding tax on their performances in the Netherlands. For artists from non-treaty countries the existing taxation at source in the Netherlands remains the same as it has been up till the year 2006.

Other EU Member States should be invited by the EU institutions to follow this Dutch initiative and establish as a general rule that upon official proof of fiscal residence in one EU country, mobile live performance organisations and artists will be fully exempted from taxation in other EU countries where they perform on a temporary basis.

Such a change in national legislation would simply remove a heavy administrative workload as is always easier for live performance organisations and artists to get a certificate in their country of residence rather than in the country where they perform. The ideal solution would ultimately be to create a uniform EU "E101 form for taxation", proving the EU fiscal residence of a person or organisation.

b. Solutions to difficulties linked to VAT

- **EU Member States should fully adopt the ECJ Matthias Hoffmann decision of 3 April 2003** (Case C144/00).
EU Member States cannot make additional restrictions for individual artists on the exemptions made as detailed in Article 13A (n) of the Sixth Directive, on "exemptions for certain activities in the public interest, such as certain cultural services and goods closely linked thereto supplied by bodies governed by public law or by cultural bodies recognised by the Member States concerned".
- **With regard to the 6th VAT directive, Article 13A**
It would be preferable that a performing arts organisation has the option to choose whether or not it wishes to make use of its right to be tax exempted or to apply the low VAT-rate applicable to culture as it exists for example in Finland and Sweden.
- **Update of the 6th VAT directive**
The European Commission's DG Taxation should include culture in the next update of the 6th VAT directive following the provisions of the Treaty related to culture and the European Commission's DG Culture and Education should make sure that the 6th VAT directive is updated with the provisions on culture of the Treaty.

CHAPTER 4

Difficulties of mobility linked to the use of intellectual property rights

1. The use of intellectual property rights in the live performance sector in a context of mobility²²

In the performing arts sector live performance organisations can be both rights holders and users: they may own rights in the case of, for example, producing a performance or a concert when it is recorded. However, in most cases a performing arts organisation is a user or payer of copyrights and related rights, whereby it must obtain clearance for a range of rights in order to be allowed to produce a performance or to put it on stage.

A particular phenomenon in the development of today's live performance sector is the fact that the strict division between various art forms is becoming increasingly blurred. For example, orchestras mix a concert with a film projection, visual artists hire dancers to perform in the creative process of a video art piece, opera or theatre stage directors re-interpret libretti or texts, etc. Authors' rights need to be cleared with composers, script writers, librettists, authors, co-authors, choreographers, stage/light/set designers, visual artists, photographers and video artists in addition to related rights which might need to be cleared with musicians, dancers and actors. Additionally, authors' rights must be cleared with music and text publishers for the rental of the scores or texts and also often with the music or film industry or, in the case of recordings, with broadcasters.

As a result, a live performance organisation producing a live performance has to go through a time-consuming and complex process of dealing with different rights holders with whom copyrights and related rights are to be cleared before a performance can be staged.

In a context of mobility within the EU, the process for clearing rights becomes even more complex. Due to the fact that copyrights need to be cleared at national level (because of the principle of territoriality of the collective management of rights), the whole process for clearing rights may start again for each country where the company goes on tour. If a live performance organisation toured with a production within all 25 EU countries, the strict application of the principle of territoriality could result in a process where rights for the same production would need to be cleared 25 times.

According to national legislation, venues putting a performance on stage will have to pay rights holders or collecting societies representing these rights holders. Additionally, contractual agreements between venues and touring organisations clearly put the responsibility on the venues to deal with the clearance and payment of intellectual property rights. However, this is not always actually the case and the responsibility might as well be on the mobile live performance organisation which will need to clear the rights in each country where the performance is shown. The responsibility may also lie with an agent or producer responsible for the tour of the live performance production across the EU. But even if responsibility lies with the hosting venue, mobile live performance organisations still need to know what the exact rights are and who the rights holders are. Cooperation between mobile and hosting live performance organisations is necessary to help venues with all the administrative steps needed to estimate the overall costs of

²² Pearle contribution in brochure CUP (Copyright Users Platform) issued on the occasion of a seminar 'time to review copyright management in Europe' on 22 June 2006

hosting this live performance. These costs might determine if the venue will in the end host the touring company. In addition a member of the touring company or the company itself might be a right holder, e.g. because the company created its own performance, composed its own music, created its own choreography, etc. As a result, the use of intellectual property rights matters to all persons and organisations involved in live performance mobility.

2. Main difficulties linked to the use of intellectual property rights in a context of mobility

In a context of mobility inside the EU the clearance of authors' rights and related rights is carried out by a very broad range of collecting societies, varying from Member State to Member State. Given the increasing complexity of the creation of performances one may sometimes need to contact several collecting rights management bodies who each collect money for a different type of rights holder and who each have their own calculation methods for the tariffs which depend on a whole range of criteria.

The following difficulties illustrate the complexity of clearing rights and the administrative workload involved when calculating a budget for a mobile live performance production involving a multitude of rights holders. In many cases this results in unpleasant surprises bringing the costs for a mobile production above initial estimates. The administrative workload associated to this issue has been described by many live performance organisations spontaneously as a "nightmare". Smaller companies or companies which are less experienced in mobility might not have sufficient know-how or human resources to deal with this complex issue and prefer to perform solely in their home country. Inexperienced venues might prefer to host only companies from their home country. In order to avoid paying increasing tariffs and copyrights and dealing with the complicated administrative procedures, some touring live performance organisations producing a performance compose their own music and keep away from using protected intellectual property rights. On one side this is a very positive sign as completely new artistic works are created; however, the increasing number of rights holders clearly also discourages the use and dissemination across borders of already protected created works and limits the artistic creativity and the development of new forms of creative content. The complexity of rules, the multitude of rights holders and collecting societies and the fear of having to pay more than initially calculated clearly influence artistic choices and finally discourage in particular smaller companies from being mobile.

a. Non transparent and inefficient clearance procedures

For many live performance organisations the procedures for clearing the use of intellectual property rights are far from transparent and efficient. This criticism concerns several aspects:

- **Non transparency regarding the identity of rights holders, the collecting society responsible, the terms of the license, the scope of the rights concerned and the territory where the rights might be exploited**

Many live performance organisations reported that for some live performances when mobile in several EU countries, it took them a lot of time to identify all rights holders and the collecting societies representing them in the different EU countries. In addition, live performance organisations sometimes have to face confusing situations: some of the live performance organisations interviewed reported cases where two collecting societies declared they were responsible for representing the same right holder in a country. In other cases collecting societies claimed payment for the use of intellectual property rights despite the fact that the right holder him/herself declared

that they were not represented by these particular collecting societies. Regularly rights holders also inform live performance organisations that the rights that have been paid and which have been collected by a collecting society have not been redistributed to the rights holders themselves.

A lot of live performance organisations also reported that there is no clear written information available from collecting societies as regards the terms of the license, the scope of the rights concerned and the territory where the rights might be exploited. Invoices from collecting societies do not always clearly indicate exactly what kind of rights a venue or organisation is paying for and under what conditions.

- **Criteria for the calculation of tariffs**

This point has been systematically underlined by nearly all the live performance organisations interviewed. Collecting societies across the EU use a whole range of different criteria for calculating the tariffs that need to be paid in order to use protected rights: number of seats of the venue where the performance takes place, ticket prices, duration of the performance (in hours, minutes, seconds), box office income, artists' fee, the fact that the performance is done by a publicly funded or commercial performing arts enterprise, minimum rates for small scale productions or for performances with lower box office income than the minimum, etc. There is no uniform way of calculating tariffs inside the EU and this can make the calculation of the necessary budget for a touring production across the EU a rather difficult, time-consuming and administratively burdensome exercise. The choice of the criteria for calculating the applicable tariff can have far-reaching consequences such as the choice of the type of live performances that a venue will schedule and the fees it will pay to artists. (cf. case study 7).

Many live performance organisations also reported that they experience difficulties when trying to explain to collecting societies that a piece of music which is used for example in a dance performance for 5 minutes is not the central element in a performance, and that the calculation of tariffs should take account of this fact. When calculating the applicable tariff there is also a need to take into account the particularly difficult economic situation many live performance organisations, especially in the new EU Member States, are facing.

- **Long delays to settle all rights**

In some countries, live performance organisations reported that five years after a performance from an EU live performance company had taken place, the venues hosting this company were still receiving invoices from collecting societies for rights used during this performance. The result of these lengthy procedures is to make it difficult for venues to work within a foreseeable budgetary framework when hosting EU live performance companies. They are clear disincentives to mobility.

b. Increasing tariffs

Many live performance organisations have reported that every year they face increased tariffs by collecting societies. This either lowers the possible profit margins (if any) of live performance organisations or absorbs an increasing percentage of the public funding which some (not all) live performance organisations receive. In a context of mobility and when facing a multitude of rights holders and collecting societies, increasing tariffs clearly have a disincentive effect on the mobility of performances using already protected works but also on the mobility of performances with new artistic creations (cf. case study 8).

This is especially the case for EU countries where no negotiation of tariffs is possible, like, for example, in the United Kingdom and the Netherlands where negotiation can only be enforced when a court case is initiated. Increasing tariffs are also particularly difficult to

cope with for venues and festival organisers in the new EU Member States which already have to struggle with a very difficult economic situation and don't benefit from the same amount of public financing as their counterparts in some of the old EU15 countries. Collecting societies in some of the former EU15 Member States responsible for clearing rights in new Member States are not always very comprehensive towards this particularly difficult economic situation of live performance organisations in these new EU countries and apply the same tariffs throughout the whole of the EU.

c. Monopolistic position of collecting societies and publishers and the absence of arbitration mechanisms

The majority of the live performance organisations interviewed reported that they can't negotiate with collecting societies in their countries which simply impose their tariffs on users. In addition many live performance organisations criticised the lack of flexible arbitration systems as alternatives or solutions to the lengthy tribunal procedures. This puts live performance organisations as users in a very weak position. In a context of mobility where live performance organisations have to deal with a growing number of rights holders, several collecting societies and various systems for calculating tariffs, the position of a live performance organisation is even weaker and the need for an arbitration mechanism even more urgent.

Case study 14: calculation of tariffs

A German venue in Munich organised a dance festival with a mixture of workshops and performances which the venue co-produced with companies from other EU countries. In the past the German venue had to pay 10% of the box office income for music rights used during a performance.

The box office income for a specific dance performance which took place during this festival was approximately €600. As a result, the music rights for this performance should have been €60 plus tax. However, as regards this specific dance performance, the German venue was told that it had to pay €230 plus 7% VAT in music rights, i.e. €246.10, to a German collecting society which represents the French SACD in Germany. According to this German collecting society, the 10% in music rights had to be based either on the box office income or the fee that is paid to the artists, whichever is the higher. As the artists' fee was €2,300 without per diems and travel, the 10% were calculated on this basis. As a result the venue had to pay €230 in music rights. This amounts to approximately 30% of the box office income. The basis for calculation in this case could not be negotiated with the collecting society.

This German venue started to think about how costs related to the payment of authors' rights could be saved in the future. Two options are possible:

Option A: the producer will never pay higher artists' fees than he can produce with his box office income, i.e. he will commercialise his productions.

Option B: the producer will try to push the artists to lower their fees considerably in order to save costs on authors' rights as well.

Neither option is very supportive of the mobility of young artists or of those productions which do not generate a big audience.

Case study 15: multitude of rights to be cleared and high tariffs

A newly commissioned piece of music had its world premiere in the Netherlands and was then taken on tour through Germany and Belgium. The orchestra performing this piece of music had to pay the following intellectual property rights holders:

1. The composer for commissioning the work
2. The music publisher for preparing the scores, as the piece of music had been commissioned
3. The publisher for the rental of the scores
4. The publisher for an additional amount as this was the world premiere
5. The publisher for an additional amount as this was the German premiere
6. The publisher for an additional amount as this was the Belgian premiere

In addition, if the orchestra decided to record this piece of music and tried to sell it worldwide (at its own risk and expense), the orchestra was informed that it would have to pay in addition the following rights:

7. Recording rights to be paid directly to the music publisher (€85 per minute recorded regardless of the number of items sold)
8. Mechanical reproduction rights to be paid indirectly to the composer through his/her collecting society via the music publisher (approximately €0.80 per item sold).

The orchestra found the rights mentioned under numbers 1, 2 3, and 8 reasonable, whereas the rights mentioned in numbers 4, 5, 6 and 7 were regarded as a disincentive to produce the piece of commissioned music, to go on tour with it inside the EU and to record and sell it.

According to this orchestra the above-mentioned situation as regards recording is even more problematic, given the fact that performing artists are no longer paid any royalties (not taking into account any advanced payments) unless there is a real net profit made on the recorded product. However, a real net profit hardly ever occurs with protected material as the recording rights mentioned under number 7 are very high and the margins on CDs very low.

3. Possible solutions

Several possibilities exist in order to improve the above-mentioned situation. There is obviously an urgent need to consider an EU legislative framework for the management of rights in the EU, which should ultimately facilitate the use of copyrights and support the mobility of cultural productions in the EU.

a. Development of good governance principles and effective control mechanisms

There is an urgent need to establish good governance principles regarding the management of rights by collecting societies and publishers in their relations with live performance organisations which are amongst the most important copyright users. This could be done in the short term relatively rapidly through the adoption of a soft-law, e.g. a code of conduct, but should be made ultimately legally binding upon collecting societies through EU harmonisation. The good governance principles should be as follows:

- Transparency and efficiency

- There should be an easily accessible data base for each collecting society regarding the exact rights holders and the repertoire represented;
- As regards tariffs, collecting societies and publishers should clearly indicate objective rules regarding the criteria for the calculation of tariffs;
- In due course a simplified way for calculating tariffs based upon common principles agreed at EU level should be introduced;
- Basic and simple principles should be developed between and respected by collecting societies and publishers for reciprocal agreements on the clearance of rights based on the type of right, the repertoire and the applicable territory.

A detailed analysis of existing good practices across the EU could be a useful first step in identifying good governance principles which are already in operation.

- Control of collecting societies by independent regulators

Independent “regulators” could be set up in each EU country and monitor the collection of rights paid by users and the distribution of these rights to each of the rights holders. Ultimately a network of European regulators of collecting societies could also intervene in cases where problems of clearance of rights occur in a context of mobility.

b. Reinforcing the position of copyright users

There is an urgent need to reinforce the rights of copyright users, in particular as regards use of rights in a context of mobility.

- Enabling rights users to negotiate the use of copyrights

A clear legal framework needs to be adopted to put live performance organisations who are rights users on an equal footing with collecting societies. Most of all this implies giving live performance organisations across the EU the real possibility to negotiate tariffs for the use of rights with collecting societies. Although to some extent there are already negotiated tariffs in many countries, this needs to be a general rule across the EU.

- Creation of arbitration mechanisms

Another important aspect is the creation of arbitration mechanisms allowing users to find reasonable solutions in a flexible way adapted to the great use of copyrights in the live performance sector and thus diminishing the need to solve disputes in lengthy and expensive court procedures. Such a mechanism would be particularly helpful for mobile EU live performance companies who can't know in detail 25 EU copyright laws and need to find quick solutions to their problems when touring in EU countries.

c. Simplification of administrative obligations in a context of mobility

For mobile live performance organisations a one-stop-shop mechanism could be set up allowing mobile live performance organisations to clear all rights they use during a performance at one central office in each EU country and to receive there all relevant information. Ultimately there should be the possibility to settle all rights for the whole of the EU in the country where the mobile live performance organisation is usually established. A one-stop-shop would avoid repeating administratively burdensome procedures in each EU country and increase transparency, and could thus be beneficial to all those involved: mobile live performance organisations, hosting venues, rights holders and collecting societies.

Annex 1: List of interviewed organisations and persons

	Country	Name of organisation/ Place	Type of live performance activity	Type of mobility	Interviewed person	Internet contact
1	Austria	Wiener Bühnenverein	Live performance employers' organisation	Members are touring and hosting	Reinhard Tögl	http://www.buehnenverein.at/
2	Austria	IG Freie Theaterarbeit	service provider for artists in the field of independent theatre	Clients are touring and hosting	Andrea Wälzl	http://www.freietheater.at/
3	Austria	Cie Willi Dorner	Dance company	Touring	Kathy Punzmann	http://www.ciewdorn.at/
4	Belgium	Rosas	Dance company	Touring	Hanne Van Waeyenberge	http://www.rosas.be/
5	Belgium	Les Ballets C de la B	Dance company	Touring	Erna Van Akoleyen	http://www.lesballetscdela.be/
6	Belgium	Ictus	Contemporary music ensemble	Touring	Eric Krols	http://www.ictus.be/
7	Belgium	Kaattheater	Theatre Venue, Producer	Hosting	Hugo Vanden Driessche	http://www.kaaitheater.be/
8	Belgium	OKO, Overleg kunstenorganisaties v.z.w.	Flemish live performance employers' organisation	Members are touring and hosting	Liesbeth Dejonghe	http://www.overlegkunsten.org/index.php
9	Belgium	Open Zomer van Antwerpen	Festival	Hosting	Michel Uytterhoeven Steven Warmenbol	www.antwerpenopen.be
10	Belgium	Kunsten Festival des Arts	Festival organiser, Producer	Hosting, touring	Roger Christmann	www.kunstenfestivaldesarts.be
11	Belgium	Zoo/Thomas Hauert	Contemporary dance	Touring	Ruth Collier	http://www.zoo-thomashauert.be/zoo-thomas-hauert.php
12	Belgium	Chassepierre – International Street Arts Festival	Festival	Hosting	Alain Schmitz	http://www.chassepierre.be/fr/chassepierre.htm
13	Belgium	CAMPAI, Creative Arts Management	Producer and management for contemporary live performance creations	Touring	Bruno Heynderickx	http://www.campai.be/
14	Belgium	Le Théâtre de la Place, Liège	Live performance venue	Hosting	Céline Bilginer	www.theatredelaplace.be
15	Belgium	Frans Brood Productions	Production	Touring	Greta Depaepe	http://www.fransbrood.com

16	Belgium	Fédération de compagnies professionnelles du secteur des arts de la rue, du cirque et foraines en Belgique		Members are touring	Jean Philippe Tircieau	http://www.la-far.be/far_iframe.php
17	Belgium	Sociaal Fonds voor de Podiumkunsten	Social fund for live performance workers employed in Belgium		Jan Vermoesen	http://www.podiumkunsten.be
18	Czech Rep.	Archa Theatre	Venue	Hosting	Ondrej Hrab	www.archatheatre.cz
19	Czech Rep.	Tanec Praha	Dance festival	Hosting, touring	Yvona Kreuzmannova	www.tanecpraha.cz
20	Czech Rep.	Prague Philharmonic Orchestra	Orchestra	Touring	Radim Otepka	www.pkf.cz
21	Cyprus	Alexandra Waierstall	Choreographer Dancer	Touring	Alexandra Waierstall	http://www.alexandra-waierstall.com/
22	Cyprus	Cyprus Theatre Organisation	Organisation of live performance venues and companies	Hosting, touring	Andy Bargilly Marina Maleni	www.thoc.org.cy
23	Estonia	Eesti Teatrijuhtide Liit	Live performance employers' organisation	Members are hosting and touring	Indrek Saar	http://www.estoniantheatre.info/index.htm?action=organ&rub=1&id=41
24	Estonia	Eesti Riiklik Sinfoniaorkester	Orchestra	Hosting, touring	Andres Siitan	http://www.erso.ee/
25	Finland	Tampere International Theatre Festival	Festival	Hosting	Raija-Liisa Seilo	http://www.teatterikesa.fi/
26	Finland	Association of Finnish Theatres	Members are live performance establishments /venues	Members are hosting and touring	Matti A. Holopainen	http://www.teatteriliitto.fi/index_eng.htm
27	Finland	Association of Finnish Symphony Orchestras	Members are professional orchestras	Touring	Antti Häyrynen	www.sinfoniaorkesterit.fi
28	Finland	Espoo City Theatre	Theatre venue	Hosting	Jussi Helminen	http://www.espoonteatteri.fi
29	France	Syndicat des Directeurs de Théâtres Privés (SDTP)	Members are directors of private live establishments	Hosting	Georges Terrey, Isabelle Gentilhomme	
30	France	Former « Cie Fattoumi - Lamoureux »	Dance company	Touring	Florence Francisco	
31	France	Syndicat national des théâtres de ville (SNDTV)	Live performance employers' organisation (French municipal theatres)	Members are hosting	Marc Lesage	http://www.sndtv.org/index.php

32	France	Syndicat national des Entrepreneurs de Spectacles (SNES)	Live performance producers' organisation	Members are producing and diffusing (touring) live performance productions	Philippe Chapelon	www.spectacle-snes.org
33	France	Syndicat national des orchestras et théâtres lyriques (Synolyr)	Private orchestras publicly financed	Members are touring	Catherine Baumann/ Catherine Delcroix	http://www.synolyr.org/
34	France	Association Française des Orchestres	Members are professional orchestras	Members are touring	Philippe Fanjas Florent Girard	http://www.france-orchestres.com/
35	France	Moovin'Action	Hip hop dance company, Producer	Touring and hosting	Dirk Korell	
36	France	Chambre Professionnelle des Directeurs d'Opéra	Live performance establishments	Members are hosting and touring	Jacques Hedouin	http://www.directeur-s-opera.org/
37	France	Syndicat National des Entreprises Artistiques et Culturelles (SYNDEAC)	Members are live performance establishments	Members are touring and hosting	François Caillé	http://www.syndeac.org/
38	France	Orchestre National de Radio France	Orchestra	Touring	Samuel Serin	http://www.radiofrance.fr/chaines/orchestres/national/accueil/
39	France	Orchestre de Picardie	Orchestra	Touring and hosting	Rose Lowry	http://www.orchestre-de-picardie.com/
40	France	Orchestre de Montpellier	Orchestra	Touring and hosting	Anne Lafargue	http://www.orchestre-montpellier.com/
41	Germany	Deutscher Bühnenverein - Deutsche Theater und Orchester	Live performance employers' organisation	Members are hosting and touring	Rolf Bolwin Ilka Schmalbauch	www.buehnenverein.de
42	Germany	Joint Adventures	Production company for dance companies	Touring and hosting	Walter Heun	www.jointadventures.net
43	Germany	Sasha Waltz & Guests	Contemporary dance company	Touring	Anja Schmalfuss	http://sashawaltz.com/
44	Germany	Schaubühne am Lehniner Platz	Theatre	Hosting and touring	Friedrich Barner	http://www.schaubuehne.de/start/index.php
45	Germany	Lokstoff	Theatre company	Hosting	Andrea Koch	http://www.lokstoff.com/lokstoff3.html
46	Hungary	Budapest Artist Management	Producer	Touring	Ildiko Gedenyi	
47	Hungary	Hungarian Symphony Orchestra	Orchestra	Touring	Gabor Bolvari-Takacs	www.telekomzenekar.hu
48	Hungary	Honved Ensemble and the National State Folk Ensemble	Dance ensemble, traditional music ensemble, orchestras	Touring	Gabor Holerung	www.honvedart.hu www.bdz.hu

49	Hungary	TRAFO House of Contemporary Arts	Venue for contemporary dance	Hosting	Erdödi Katalin	www.trafo.hu
50	Hungary	Budapest Festival Center	Festival	Hosting	Zsolia Zimany	http://festivalcity.hu/btf2007/
51	Hungary	MU Színház	Live performance theatre company	Touring	Zoltan Imely	http://www.mu.hu/
52	Ireland	Theatre Forum Ireland	Members are theatre production companies, theatres, arts centres, festivals, opera and dance companies	Members are hosting and touring	Tania Banotti	http://www.theatreforumireland.com/
53	Italy	Associazione Danza Arti Contemporanee	Contemporary Dance companies	Members are touring	Elena di Stefano	http://www.adactoscana.it/
54	Italy	Associazione culturale Fabbrica Europa	Promotion of contemporary dance	Hosting	Marina Bistolfi	http://www.fabbricaeuropa.com
55	Latvia	The New Theatre Institute of Latvia	Gives advice to hosting venues and touring companies		Zane Kreicberga	www.theatre.lv
56	Latvia	National Opera of Latvia	Opera house	Hosting	Beata Galzone	http://www.opera.lv/
57	Lithuania	o.k. theatre	Drama theatre company	Touring	Audra Zukaityte	www.okt.lt
58	Lithuania	Lithuanian National Philharmonic	Orchestra	Hosting and touring	Danas Skramtai	http://www.filharmonija.lt/en/
59	Lithuania	International Vilnius Festival "Sirens"	Festival	Hosting	Elona Bajoriniene	http://www.sirenos.lt
60	Luxembourg	Kulturfabrik/Esch	Live performance venue	Touring and hosting	Serge Basso de March	www.kulturfabrik.lu
61	Luxembourg	Fédération Luxembourgeoise des Théâtres Professionnels	Members are live performance establishments	Hosting	Jemp Schuster	http://www.theatre.lu/
62	Luxembourg	Orchestre Philharmonique du Luxembourg	Orchestra	Touring	Jean-Jacques Schaeffer	http://www.opl.lu/da/ta/fr/index.php
63	Luxembourg	Philharmonie Luxembourg	Orchestra venue	Hosting	Matthias Naske	http://www.philharmonie.lu/fr/home/home.php
64	Malta	St. James Cavalier Centrum	Live performance venue	Hosting	Christopher Gatt	http://www.sjcav.org
65	Netherlands	Vereniging van Nederlandse Theatergezelschappen (VNT)/ Contactorgaan van de Nederlandse Orkesten (CNO)	Public financed Theatre companies and orchestras	Members are hosting and touring	Jaap Jong	http://www.vnt.nl

66	Netherlands	Vereniging van Schouwburg en Concertgebouwdirecties (VSCD)	Live performance establishments	Members are hosting	Hans Otto van den Berg	www.vscd.nl
67	Netherlands	Van Baasbank & Baggerman	Producer	Touring, hosting	JG Baggerman, Dick Vos	www.baasbank-baggermann.nl
68	Netherlands	Bureau Berbee	Producer	Touring	Inke Berbee	http://www.bureauberbee.nl/
69	Netherlands	Stage Entertainment	Producer	Hosting touring	Jacques de Cock	http://stage-entertainment.com/
70	Netherlands	Rotterdam Schouwburg	Live performance venue and producer	Touring, hosting	Annemie Vanackere, Maartje van Doodewaard	www.schouwburg.rotterdam.nl
71	Netherlands	Supierz Artist Management	Agent, Producer	Producing, touring	Zdzislaw Supierz	http://www.supierzar-tistmanagement.nl/
72	Netherlands	All Arts tax Advisers	Specialist on Taxation issues. Advises live performance artists and organisations	Clients are hosting and touring	Dick Molenaar	http://www.allarts.nl
73	Poland	Polish Theatre Union	Members are public funded theatres and operas	Hosting, touring	Warcislaw Kunc	http://www.uniapolskichteatrow.pl/
74	Poland	Centre for Contemporary Art in Warsaw	Venue	Hosting	Janusz Marek	http://csw.art.pl/
75	Poland	Festival of Theatre meetings, Dramatic Theatre Warsaw	Festival, Live performance establishment	Hosting, touring	Piotr Cieslak/ Marta Michalak	www.teatrdramatyczny.pl
76	Poland	Polish Jazz Society	Musicians' Union	Members are touring	Krzysztof Sadowski	http://www.psi.stoart.org.pl/
77	Poland	State Baltic Opera/Gdansk	Opera house	Touring, hosting	Anna Czekanowicz	www.operabaltycka.pl
78	Poland	Baltic Sea Culture Centrum - Gdansk	Live performance producer	Hosting	Lidia Makowska	http://info.galerie.art.pl/galerie/nadbalt.html
79	Poland	Teatr Okazjonalny	Contemporary dance company	Touring	Joanna Czajkowska	www.occasiondance.com
80	Poland	Cialo Umysl – Body-Mind International Theatres Festival	Contemporary dance festival	Hosting	Edyta Kozak	www.cialo-umysl.home.pl
81	Poland	National Philharmonic Orchestra	Philharmonic	Touring, hosting	Wojciech Nowak	www.filharmonia.pl
82	Poland	Stary Teatr Krakow	Theatre	Touring, hosting	Agata Siwiak	http://www.stary-teatr.krakow.pl/
83	Portugal	Alcantara	Venue	Hosting	Catarina Saraiva	http://www.alkantara.pt/alkantara.php

84	Slovakia	Divadelna Nitra	Theatre festival	Hosting	Katarina Dudakova	http://www.nitrafest.sk/
85	Slovakia	State Philharmonic Kosice	Orchestra	Hosting and touring	Julius Klein	www.sfk.sk
86	Slovakia	Slovak Philharmonics Bratislava	Philharmonic orchestra	Touring, hosting	Petr Stilicha	www.filharmonia.sk
87	Slovenia	Exodus	Festival organiser and producer	Hosting and touring	Natasa Zavolovsek	http://www.exodos.si/intro.php
88	Slovenia	Cankarjev dom, kulturni in kongresni center / Cultural and Congress Centre	Live performances venue	Hosting	Dimitrij Rotovnik	http://www.cd-cc.si/Cankarjev_Dom/prvastran/index.php
89	Spain	State Federation of Associations of Theatre and Dance production enterprises	Live performance employers' organisation	Members are hosting and touring	Kathleen Lopez Kilcoyne, Jesus Cimarro	www.pentacion.com
90	Spain	Artcelona/ Odas Africa	Producer	Hosting and touring	Agnès Blot	
91	Spain	Festival d'Opéra de Butxaca	Opera Festival	Hosting	Dietrich Grosse	http://www.festivaloperabutxaca.org/
92	Spain	Marta Oliveres Tortosa Management	Producer	Hosting and touring	Marta Oliveres	http://www.martaoliveres.com
93	Sweden	Svensk Scenkonst	Live performance employers' organisation	Members are touring and hosting	Björn Karlsson/ Sture Carlsson	http://www.svenskscenkonst.se
94	Sweden	Adekwhat/Loco Motion	Dance company	Touring	Asa Edgren	www.adekwhat.com
95	Sweden	Intercult	Producer	Touring	Chris Torch	http://www.intercult.se/
96	United Kingdom	(Society of London Theatre) SOLT, TMA (Theatrical Management Association)	Live performance employers' organisation	Members are touring and hosting	Richard Pulford	http://www.solt.co.uk/ http://www.tmauk.org/
97	United Kingdom	Independent Theatre Council	Live performance employers' organisation	Members are touring and hosting	Charlotte Jones	http://www.itc-arts.org/
98	United Kingdom	Association of British Orchestras	Live performance employers' organisation	Members are touring and hosting	Owen Mortimer	http://www.abo.org.uk/
99	United Kingdom	Visiting Arts	UK organisation encouraging cultural exchange		Melissa Naylor	www.visitingarts.org.uk
100	United Kingdom	Akram Khan Company	Dance company, Producer	Touring	Farooq Chaudhry	http://www.akramkhancompany.net/

101	United Kingdom	Artsadmin	Advise to touring and hosting companies and artists		Nicky Childs	http://www.artsadmin.co.uk/
102	United Kingdom	Fierce Earth Festival	Festival	Hosting	Helga Henry	http://www.fiercetv.co.uk/
103	United Kingdom	UK Arts International	Producer, Manager	Hosting, Touring	Jan Ryan	http://www.ukarts.com/
104	Europe	Opera Europa	Network of opera houses in Europe	Members are hosting and touring	Nicholas Payne	www.opera-europa.org
105	Europe	European Festival Association	Members are festivals and festival associations	Members are hosting	Hugo de Greef	http://www.efa-aeef.org/
106	Europe	European Cultural Foundation	Organisation promoting cultural cooperation		Bertan Selim	www.eurocult.org
107	Europe	Pearle* - performing Arts Employers Associations League Europe	European federation of national live performance employers' organisations	Member organisations have members which are hosting and touring	Liesbeth Dejonghe, Anita Debaere	www.pearle.ws/
108	Europe	On-the-move	web site dedicated to information about professional mobility in the areas of theatre, dance, music and other performing arts disciplines		Judith Staines	www.on-the-move.org
109	Europe + World	International federation of Actors	Trade union federation	Members are touring (within orchestras, companies or independent)	Bianca Busuioc	http://www.fia-actors.com/
110	Europe + World	International Federation of Musicians/Paris	Trade union federation	Members are touring (within orchestras, companies or independent)	Benoît Machuel	www.fim-musicians.com
111	Europe + World	Informal European Theatre meeting	Organisation stimulating the quality, development and contexts of contemporary performing arts in a global environment		Mary Ann De Vlieg, Katelijn Verstraete	www.ietm.org

Annex 2: Questionnaire used for the interviews



2006 - European Year of Workers' Mobility - Towards a European Labour Market

"Mobile.home" is a year-long project celebrating the "European Year of Workers' Mobility 2006". It has been initiated by *Pearle** (*Performing Arts Employers Associations League Europe*), *IETM* (*Informal European Theatre Meeting*), *Goethe-Institut*, *Visiting Arts UK*, www.on-the-move.org, the *Finnish Theatre Information Centre* and associated partners.

"Mobile.home" is supported by the European Commission, DG Employment, Social Affairs and Equal Opportunities. It will look at successes and obstacles to the movement of arts and artists across European borders. It will also commission stories from artists who make their work and lives in different EU countries and create a help-line for frequently asked questions about legal and fiscal issues of artists travelling across national borders for their work.

All these strands will be brought together in a major conference in Helsinki (9-12 November 2006), inviting arts organisations, employers, public administrations, networks and others to discuss and debate key topics, look at good practice models and propose practical solutions to existing obstacles.

The attached questionnaire shall help Pearle* and its project partners of "Mobile.home" to identify those obstacles and difficulties you experience as live performance artists, companies or establishments with regard to mobility in the European Union (25 member States).

Thank you for taking the time to answer to this short questionnaire and for sending it back at latest on 30 september 2006 to:

mobile.home@vdponline.be

Questionnaire on obstacles and difficulties to mobility in the EU live performance sector
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Please indicate your name, the organisation you represent, your country and your coordinates.

Name:

Organisation:

Country:

Coordinates:

Date:

PART 1.

Questions for live performance artist and live performance companies who wish to perform or are performing in other countries of the EU

Please answer the following questions and indicate if the obstacles and difficulties make it impossible for you as live performance artists or company to work in other EU countries or if they just make it more complicated or cumbersome and therefore “discourage” you.

When performing or intending to perform in other EU countries, do you encounter any obstacles and difficulties linked to national or foreign regulations or practices on:

- 1.) education of live performance artists, the access to the profession and the exercise of the profession of live performance artists (including visa and work permits for non EU countries’ nationals regularly employed by live performance companies in EU countries)?
- 2.) labour law and social protection of artists?
- 3.) fiscal issues?
- 4.) intellectual property rights?

5.) Do you encounter any other obstacles and difficulties?

6.) What positive measure could facilitate and encourage live performance artists and live performance companies to perform in other countries of the EU?

PART 2.

Questions for live performance establishments, venues and festivals who wish to host or who are hosting live performance artists and companies from other countries of the EU

Please answer the following questions and indicate if the obstacles and difficulties make it impossible for you as a live performance establishment to host live performance artists/ companies from other EU countries or if they just make it just more complicated or cumbersome and therefore “discourage” you.

When hosting or intending to host live performing artists or live performance companies from other EU countries do you encounter any obstacles and difficulties linked to national or foreign regulations or practices on

1.) education of live performance artists, the access to the profession and the exercise of the profession of live performance artists (including visa and work permits for non EU countries’ nationals regularly employed by live performance companies in other EU countries)?

2.) labour law and social protection of artists?

3.) fiscal issues?

4.) intellectual property rights?

5.) Do you encounter any other obstacles and difficulties?

6.) What positive measure could facilitate and encourage EU live performance establishments, venues and festivals to host foreign live performance artists/companies?

Annex 3.

Programme of the round-tables on difficulties to mobility organised by Pearle* during the "Mobile Home" conference in Helsinki, 9-12 November 2006

Pearle*
*Performing Arts
Employers Associations
League Europe*



*"MOBILE.HOME" is supported by the
European Commission's Directorate General for
Employment, Social Affairs and Equal Opportunities.*

Conference – Mobility in the EU live performance sector

Project "Mobile.Home"

Helsinki, 9-12 November 2006

Round-tables on difficulties of mobility in

the EU live performance sector

co-organised by PEARLE*

Kiasma, Museum of Contemporary Art, Mannerheiminaukio 2, room "Seminaari"

Friday 10th November 2006

14.30 – 15.00

Info Cell: **The main outcomes of the mobility research study:
"Existing difficulties and obstacles of mobility in the EU live performance sector
and possible solutions in the current EU framework"**

Richard Polacek, Consultant European affairs, Pearle*

This Info Cell will present the provisional conclusions of a research that is undertaken by PEARLE* (Performing Arts Employers Associations League Europe) on the topic of mobility including approximately 100 face-to-face and telephone interviews with performing arts companies, venues, individual artists, festival organisers from over 20 European countries. The focus of the research are main difficulties to mobility linked to:

- Social security
- Taxation (double taxation, VAT)

- Use of intellectual property rights
- Visa and work permits for third country nationals when touring inside the EU

The final research report will be available at the end of this year and contain also recommendations for the European institutions and the EU Member States in order to facilitate mobility in the EU live performance sector.

This Info Cell gives also a short introduction into the different 4 working groups co-organised by Pearle* which will discuss more in detail possible solutions to the difficulties to mobility linked to taxation, social security, the use of IPR and visa and work permits for third country nationals inside the EU

15.00 – 16.30.

Round-table n° 1: Solutions to difficulties of mobility linked to taxation

Chairmen:

Dick Molenaar, Tax advisor, All Arts, Rotterdam, The Netherlands

Rolf Bolwin, Deutscher Bühnenverein, Germany

Panel Participants:

Harald Grams, Tax advisor, Grams und Partner, Germany

Richard Polacek, consultant European Affairs, Pearle*

This roundtable brings together performing arts tax specialists, representatives of the European Commission and national administrations dealing with taxation and professionals of the live performance sector. The roundtable tries to find pragmatic solutions to the following difficulties:

- the absence of uniform rules and transparency in relation to double taxation and VAT in Europe in the context of mobility in the live performance sector;
- the incoherency and the unequal treatment of live performance artists and companies as regards double taxation;
- the huge amount of administrative work that needs to be undertaken in order to avoid double taxation of EU companies/artists performing in other EU countries;

16.30 – 18.00.

Round-table n° 2: Solutions to difficulties of mobility linked to visa and work permits for third country nationals touring with EU companies inside the EU

Chairman: **Richard Polacek**, Consultant European affairs, Pearle*

Panel Participants:

Rita Nagy, DG Justice, Freedom and Security, European Commission

Tomas Bokstad, Intercult, Live Performance Producer, Sweden

Richard Poláček, Consultant European affairs, Pearle*

What visa and work permit is needed when a British dance company employs an Indian dancer for a project and wishes to go on tour to Poland, France and Spain? What rules on visa and work permits should a French Orchestra comply with when employing regularly a Turkish musician and when planning to go on tour to the Czech Republic and Slovakia? Live performance companies and venues in the EU employing regularly artists who are not from the European Union are frequently confronted with these difficulties when touring inside the European Union. This round table tries to identify possible solutions to these difficulties.

Saturday 11th November 2006

10.00 – 11.30:

Round-table n° 3: Solutions to difficulties of mobility linked to social security

Chairman: *Jacques Hedouin*, former Director General of the Paris Châtelet Theatre, France

Panel Participants:

Hélène Michard, DG Employment and Social Affairs, European Commission

Essi Rentola, International Affairs Office of the Social Insurance Institution, Finland

Roger Christmann, Kunsten Festival des Arts, Belgium

Marja-Terttu Mäkiranta, Ministry of Social Affairs and Health, Finland

Richard Poláček, Consultant European affairs, Pearle*

This roundtable tries to identify possible solutions to the following questions:

- How to improve the functioning of the E101 form?
- How to avoid difficulties when being mobile as/with a self-employed artist?
- How to improve the knowledge about the various social security systems in the EU in order to help professionals to be well informed before they start working for a short/long term period in another EU country?
- How to increase transparency about domestic and foreign social security legislation for theatre venues and festival organisers who frequently work with foreign artists?
- How to ensure that artists who work temporarily abroad don't lose important social rights to which they are entitled in their home country?
- How to ensure that artists profit from social contributions (payments for accident at work, for health care, for pension rights, unemployment aid and other payments like training, artists' holidays etc.) they have made during their career in different EU countries?
- How to improve the cooperation of national administration in order to ensure the recognition and payment of pension rights accumulated by an artist in different EU countries during his/her career?

11.30 – 13.00:

Round-table n° 4: Solutions to difficulties of mobility linked to the use of intellectual property rights

Chairman: *Hans Onno van den Berg*, Dutch Association of Theatres and Concert Halls

Panel Participants:

Mikko Huuskonen, Government Secretary of the Ministry of Education, Finland

Walter Heun, Joint Adventures, live performance producing firm, Germany

Richard Poláček, Consultant European affairs, Pearle*

What solutions could be found to simplify administrative obligations for the demand on the wide range of rights which are to be observed by live performance companies when touring around the EU or by venue and festival organisers when hosting companies from other EU countries? How to increase transparency with regard to the term of licences, the calculation of tariffs, the domain of application of the rights concerned, the territory where rights might be exploited and the distribution of the income collected from copyright users to the right holders? This round table tries to find pragmatic solutions to these and other questions linked to the use of copyrights in the context of mobility in the EU.

Annex 4.

Standard template for information available in national data basis on relevant national legislation and procedures relevant to mobile live performance organisations, artists and workers from other EU countries

The following standard template is an open-ended list of information that could be contained in a national database in each EU Member State covering national legislation and procedures in the four identified key areas in this study (visas and work permits for third-country nationals already working for an EU live performance company in another EU country; social security regulations; regulations on taxation; and legislation related to the use of intellectual property rights) and that are relevant to temporarily mobile live performance workers and organisations from other EU countries or returning to their home EU country after having performed abroad temporarily in another EU country. The information in this template is not exhaustive and obviously needs to be adapted to each country's specific national legislation and procedures. However it reflects the information that most live performance organisations will need in order to be able to go on tour. The standard template can only be a useful if it contains both the general rules as well as in particular also the applicable rules for artists. It could also serve as a check-list for mobile live performance organisations and mobile workers in the sector.

Relevant key area	Relevant legislation	Relevant administrative procedures
Visas and work permits for third country nationals who are legally employed by an EU live performance company in another EU country (and those who are self-employed) and go on tour inside the EU with this EU company.	<u>References to</u> national legislation on visas and in particular information on: <ul style="list-style-type: none"> - list of countries whose nationals need a visa - closed list of conditions to receive a visa - duration of a visa - conditions for renewing a visa - specific conditions for self-employed persons 	<u>References to</u> national procedures and in particular information on: <ul style="list-style-type: none"> - duration of application procedures for a visa - duration of procedures for renewing a visa - specific procedures for self-employed persons
	<u>References to</u> national legislation on work permits and in particular information on : <ul style="list-style-type: none"> - list of countries whose nationals need a work permit - closed list of conditions to obtain a work permit - duration of a work permit - conditions for renewing a work permit - specific conditions for self-employed persons 	<u>References to</u> national procedures and in particular information on: <ul style="list-style-type: none"> - duration of application procedures for a work permit - duration of procedures for renewing a work permit - specific procedures for self-employed persons
	<u>Links to</u> the relevant legislation on visas and work permits	<u>Links to</u> relevant central authorities in charge of visas and work permits

Relevant key area	Relevant legislation	Relevant administrative procedures
Social security regulations	<u>For live performance organisations from other EU countries :</u> <ul style="list-style-type: none"> - specific national social security legislation to be complied with as foreign live performance organisation when posting workers 	<u>For live performance organisations from other EU countries:</u> <ul style="list-style-type: none"> - national procedures related to social security, to be complied with as foreign live performance organisation when posting workers
	<u>For individual live performance workers from other EU countries taking up employment temporarily:</u> <p>References to national legislation on social security and in particular rights and obligations related to:</p> <ul style="list-style-type: none"> - sickness and maternity - unemployment - pensions - injuries at work, occupational diseases - invalidity <p>References to national legislation on health insurance</p> <p>Particular focus on acquisition conditions and transferability of social security rights</p>	<u>For individual live performance workers from other EU countries taking up employment temporarily:</u> <p>References to national formalities to be completed in order to be entirely covered by social security</p> <p>References to national formalities to be completed to be covered by health insurance</p> <p>References to national formalities to be completed for an individual live performance worker who wishes to enjoy full social security benefits when returning into his/her home country</p>
		References to national formalities for those live performance workers who have been employed abroad temporarily and who wish to enjoy full social security rights they have contributed to in another EU country during a temporary stay
	Links to relevant national legislation	Links to relevant authorities in charge of social security for companies and mobile workers from other EU countries

Relevant key area	Relevant legislation	Relevant administrative procedures
Taxation	Relevant bilateral tax agreements between EU countries regarding withholding taxes for non-resident performing arts organisations and artists	
	Relevant national legislation on <u>withholding taxes</u> for non-resident EU live performance workers and organisations and in particular rules on: <ul style="list-style-type: none"> - the professions covered by the applicable legislation - the definition of income qualifying as taxable income - the basis for calculating the taxable income - deductibility of expenses - exemption from withholding taxes - income tax returns 	Relevant national formalities on <u>withholding taxes</u> for non-resident EU live performance workers and organisations and in particular procedures for: <ul style="list-style-type: none"> - exemption from withholding taxes - deductibility of expenses - income tax returns
	Rules on taxation applicable for those organisations and artists who have already paid withholding taxes in another EU country	Procedures applicable for those organisations and artists who have paid withholding taxes in another EU country and want to have what they have paid abroad recognised
	National legislation on <u>value added tax (VAT)</u> applicable to non-resident EU live performance organisations and workers performing temporarily in this EU country In particular rules on : <ul style="list-style-type: none"> - applicable VAT rate - exemption from VAT - payment and refund of VAT 	National formalities related to obligations on <u>value added tax (VAT)</u> that need to be observed by non-resident EU live performance organisations and workers performing temporarily in this EU country In particular procedures related to: <ul style="list-style-type: none"> - exemption from VAT - payment and refund of VAT
	<u>Links to</u> relevant national legislation	<u>Links to</u> relevant authorities in charge of taxation for non-resident live performance companies and workers from other EU countries

Relevant key area	Relevant legislation	Relevant administrative procedures
Use of intellectual property rights	Relevant national legislation on intellectual property rights	
	<u>Relevant rules</u> of main collecting societies on: <ul style="list-style-type: none"> - Clearance of rights - Payment of rights - Criteria for the calculation of tariffs - Description of the terms of licenses, including duration and territory covered by license 	<u>Relevant procedures</u> defined by main collecting societies for the payment for the use of intellectual property rights and in particular information on: <ul style="list-style-type: none"> - The usual length of procedures necessary for clearing rights and payment of rights
	<u>Links to</u> main collecting societies in this EU country	Links to easily accessible list or database of members of collecting societies