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**STUDY ON THE MOBILITY AND FREE MOVEMENT OF PEOPLE AND
PRODUCTS IN THE CULTURAL SECTOR**

INTRODUCTION

The aim of the requested study is to identify and list any obstacles that may affect:

- 1) the mobility and free movement of people working in the performing and visual art sectors,
- 2) the freedom of provision and circulation of cultural products within the Community area.

It does not however set out to carry an in-depth analysis of the obstacles enumerated or to draw up solutions for their removal.

The method consisted of administering as comprehensive a questionnaire as possible to a broad and representative panel of professionals and experts from the world of visual and performing arts in the EU Member States during on-the-spot interviews.

General preliminary remarks

a) Absence of an instrument for measuring, which would make possible the evaluation of the mobility of the professionals in the cultural sector: There are no figures capable of measuring the actual extent of exercise by artists and cultural workers of the right to move and circulate their products around the EU.

b) Distinction to be drawn between obstacles and hindrances: A clear distinction must therefore be drawn between obstacles as such and minor hindrances to moving around. The rules and practices that actually do prevent cultural workers and their products from moving around the Community area and constitute real obstacles to the freedom of movement are indeed comparatively few. Shortcomings, deficiencies or other constraints which hamper or are a disincentive to mobility, without actually proving an obstacle, are on the contrary more numerous and ultimately make up the overwhelming part of the problems enumerated in this report.

BREAKDOWN OF THE OBSTACLES, DIFFICULTIES, AND OTHER HINDRANCES TO THE MOBILITY AND FREE MOVEMENT OF PEOPLE AND PRODUCTS IN THE CULTURAL SECTOR IN THE EUROPEAN UNION

Synthesis

The breakdown given below is designed to facilitate the reading of the study. The study classifies all the problems encountered into two broad categories in decreasing order of importance. The first category groups the main problems generically as genuine obstacles and serious difficulties, that is to say those which prevent artists and cultural workers and their products from moving around the Community area or seriously hamper mobility. The second category lists shortcomings, constraints and minor problems, which act more as a disincentive to free movement.

-the *genuine obstacles* represent the rules and practices which deprive the cultural worker from the right to free movement he/she has been granted, for him/herself and his/her works, around the European Community. The present study could pinpoint one obstacle: the absence of recognition for professional purposes, by certain member states of degrees awarded by other member states.

-the *serious difficulties* cover the whole of the norms and practices which, either resulting in the artist or the cultural worker incurring a significant financial loss, or by compelling him/her to assume additional expenses of a considerable amount, dissuade him/her from making use of his/her right to move inside the Community and thus result in seriously hindering his/her free movement around the European Union.

-under the denomination of *shortcomings* are gathered all the deficiencies and weaknesses, which affect the rules and practices in force in different member states and which result in the fact that the national populations are neither prepared nor incited to on the one hand move around the communal space for professional purposes, and on the other hand to welcome into their territory artists and cultural workers from other member states of the European Union.

-the *minor hindrances* present all constraints, obligations, and restrictions, which discourage any inclination towards professional migration and greatly reduce the attraction to mobility. In particular all the complications and administrative problems which could be faced by the artist and cultural worker working away from his/her home country, as well as losses of a social or financial nature which, even if not significant or immediate, affect nevertheless the interest in moving away from his/her home country to another member state for professional ends.

| Field | Genuine obstacles and serious difficulties | Minor hindrances and shortcomings |
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| <p>Training for, taking up, and pursuing arts professions</p> | <p><u>Access to the profession</u> -the fact that for professional purposes certain Member States do not recognise qualifications issued in others.</p> <p><u>Pursuit of art professions</u> -the obligation to use the services of a specific professional for the pursuit of art professions</p> | <p><u>Training</u> -insufficient or no co-operation and exchanges at the Community level between training institutions in the Member States (schools and vocational training centres);</p> <p>-the lack of a real policy for training in the arts in the European Union;</p> <p>-insufficient teaching of artistic subjects in secondary schools;</p> <p>-insufficient teaching of foreign musical repertoires in national music schools;</p> <p>-insufficient teaching of foreign languages in Conservatories and academies;</p> <p><u>Pursuit of art professions</u> -the obligation to open a bank account in the host country;</p> <p>-the establishment of a quota for national artists in international co-productions and foreign productions</p> <p>-problems in promoting disseminating artists' work outside their country of origin.</p> |
| <p>Employment and social protection status</p> | <p>-loss of entitlement to unemployment benefit and pension' s payment.</p> | <p>-comply, on behalf of his employer in the other country, with the formalities concerning payment of social security;</p> <p>-absence of insurance for work-related accidents;</p> <p>-loss of entitlement to paid leave;</p> <p>-when calculating pension payments, problems of tracking artists' careers when they have worked in another country;</p> <p>-problems involving payment of entitlements (pension, social security, unemployment) due to the lack of co-ordination between the national organisations concerned.</p> |

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| <p>Taxation</p> | <p>-tax rates applied to artists (income tax rates and the VAT rate);</p> <p>-the problem of dual taxation imposed by the country of origin and the host country on migrant artists and cultural workers;</p> <p>-the existence of specific taxes peculiar to certain Member States;</p> <p>-the deductibility of professional costs incurred by artists outside their country of origin;</p> <p>-differences between the exemption systems used in the Member States.</p> | <p>-possibility of smoothing out the taxable income of artists and cultural workers;</p> <p>-disparities in tax treatment of subsidies;</p> <p>-differences in tax treatment of subsidies;</p> <p>-lack of information on the different tax legislation in force in the EU.</p> |
| <p>Funding arrangements</p> | <p>-the inadequate nature of certain mechanisms for granting subsidies and aid;</p> <p>-the high cost to artists of moving around within the European Union;</p> <p>-the insufficiency or ineffectiveness of current aid schemes;</p> | <p>-the restrictive definition of the circumstances under which grants and subsidies may be paid;</p> <p>-the lack of co-ordination between national funding systems;</p> <p>-the lack of involvement of the social partners.</p> |
| <p>Intellectual property rights</p> | <p>-a relative lack of co-ordination between the systems for managing and collecting rights of interpreting artists from the different EU countries.</p> | <p>-the deprivation of certain prerogatives linked to the rights of interpreting artists.</p> |
| <p>Specific obstacles and problems</p> | | <p>-lack of information on the legislation of other countries and on the EU institutions, combined with the problem of finding someone capable of providing information;</p> <p>-the language barrier;</p> <p>-lack of facilities for artists and cultural workers from other countries;</p> <p>-the inadequacy of professional networks</p> |

I. TRAINING FOR, TAKING UP AND PURSUING ARTS PROFESSIONS

Certain practices which can hamper the mobility of artists and cultural workers in the EU have been observed in certain Member States with regard to training for, taking up and pursuing arts professions. They do not all seriously hamper the freedom of movement that is a right for artists and cultural workers. Alongside the albeit rare instances which can be considered as genuine obstacles to mobility, there are many more which reflect rather the shortcomings in certain national regulations and not so much hinder the freedom of movement of artists and cultural workers in the EU as hamper it or act as a disincentive. The hindrances and obstacles observed relate to (initial and ongoing) training for, taking up and pursuing certain arts professions.

1. Training

The shortcomings and obstacles reported by the people interviewed were seen both in the broad area of training in general and in more specifically that of initial training.

1.1 Training in general

While they could not quote genuine obstacles as such to the freedom of movement of visual and performing artists in the general area of training, the persons interviewed did point to the existence of certain shortcomings that can impede their mobility. These are as follows:

– *insufficient or no co-operation and exchanges at the Community level between training institutions in the Member States (schools and vocational training centres)*

Some EU programmes are still failing to generate genuine mobility among student artists, the problem being that they offer no aid for certain types of stays, particularly those lasting under three months.

– *the level of training is too varied between Member states*

The level of training provided in the EU is, for want of general guidelines in this field, so variable that artists from certain Member States, who may as a result be less well-equipped than their counterparts elsewhere, may only have limited work opportunities outside their own frontiers.

1.2 Initial training

None of the people interviewed mentioned the existence in this field of actual obstacles to the freedom of movement of artists and cultural workers in the EU. They did, however, report certain shortcomings that could hamper the mobility of the population concerned. These stem from the rigid compartmentalisation of teaching curricula in general and artistic establishments and are specifically the result of:

– *the marked inadequacy of teaching in the arts in general education establishments*

In several Member States general education establishments, primary and secondary, devote little time to the study of the arts such as theatre, painting or dance. This shortcoming does nothing to stimulate the curiosity of pupils and students in the artistic culture of their own country and, less still that of other countries.

– *the lack of teaching of other countries' musical repertoires in national schools of music*

The tuition provided in music schools, particularly in France, are seldom designed to teach foreign repertoires. The preference which is given to studying the music of the country, while not admittedly constituting an obstacle to the freedom of movement within the EU of artistic and cultural workers, can however slow the process down in that it does nothing to promote the knowledge of foreign musical cultures.

– *lack of teaching of foreign languages in schools of music*

The teaching of foreign languages in schools of music, particularly in France, leaves a lot to be desired. This neither prepares student artists for, nor encourages them to consider mobility and thus generates problems in this connection.

2. Access to the profession

As for access to the profession, a genuine obstacle to the mobility of artists and cultural workers in the EU is pointed out by the representatives of several Member States. It concerns:

- the fact that for professional purposes certain Member States do not recognise qualifications issued in others

Qualifications issued by training schools and institutions in certain EU Member States are not always recognised elsewhere. As a result the holders of such qualifications cannot use them to take up the profession that they would normally be entitled to (e.g. teachers in music schools or in dramatic art schools, teachers' qualifications issued by private dramatic art schools, choir members, dance teachers, training given by certain national continuing vocational training establishments).

Although by no means automatic in the arts, recognition of a foreign qualification often triggers an examination to evaluate candidates' skills and to assess the equivalence of their qualifications with those of the host country. This, however, remains an area in which the control procedures applied sometimes lack transparency.

3. Pursuit of arts professions

Visual and performing artists sometimes come up against serious problems when pursuing their profession outside their frontiers. These problems are constraints which sometimes stem from the obligations and restrictions to which certain foreign legislation submit workers of the arts sector, and also from the specific context — the result of the practices of certain national institutions — in which artists seeking to work in other countries find themselves. Such constraints admittedly do not constitute a genuine obstacle to the freedom of movement of artists and cultural workers in the EU but nonetheless have a substantial effect in that they make it more difficult to pursue arts professions outside one's own country.

The problems encountered may in fact be the result of artists being subordinated to specific obligations, such as:

- the obligation to use the services of a specific professional for the pursuit of arts professions

For the artist or cultural worker this implies having to use the services of a local or other agent to be able to pursue his profession. This would apply, for example, in the case of a foreign actor wanting to feature in an advert.

– the obligation to open a bank account in the host country

This constraint is all the more a disincentive to go to another country for professional reasons as it has the unfortunate consequence of increasing the time it takes for the artist to receive the money he or she has earned.

– the establishment of quotas for national artists in international co-productions and foreign productions

Trade unions in some Member States tend to impose on foreign producers working in their countries a fixed percentage of national artists and technicians that must be recruited.

Lastly, the hindrances stem also from the comparatively unfavourable cultural context in which they move:

– problems in promoting and disseminating artists' work outside their country of origin

The interviews conducted reveal in this connection major deficiencies in the promotion, and consequently the dissemination, of artists' work in their country of origin and even more so in other Member States of the EU. The efforts made to familiarise national populations with foreign artistic productions remain insufficient. This is reflected in certain practices. For instance:

– the choice of music broadcast by radio is not very diversified and does little to encourage the dissemination of music or cultures of other EU countries;

– the degree of interdependence that exists in the specific area of music between the entertainment industry and the recording industry: promoting a musical show is more often than not linked to the promotion of a record. This is why it is seldom possible in practice to promote a concert by a foreign artist in an EU country in which his/her latest record has not yet been distributed. The branches of a given recording group seldom co-operate with one another in the Europe-wide development of an artist. This produces some degree of compartmentalisation which has a direct effect on live performances and on the mobility of the European artists involved;

– the limited circulation of national repertoires: this problem, already noted as regards the training given to music students, stems from the inadequacy of exchanges of musical repertoires and affects the pursuit of artistic work.

- the lack of organisation of European-level festivals : there is no European theatre festival for instance;
- lack of structures and facilities for hosting foreign performances;
- the absence of European groups of private show producers;
- the non-existence of artists employment agencies in certain Member States: the fact that there is no such agency substantially reduces the opportunities for artists to go to another EU country and for foreign artists to come;
- the insufficient publicity for artistic events, even national ones: for want of genuine and effective promotion, information on performances or exhibitions by national artists or, even more so, Community artists fail to reach the public in certain Member States. As a result, organisers refuse to take risks and opt to reserve exhibition halls for the better-known artists.

II. EMPLOYMENT AND SOCIAL PROTECTION STATUS

The failure to define a specific status for artists and the lack of co-ordination at Community level as regards the choice of linking the artist with the existing status of employed worker or self-employed worker weaken the level of social protection such people should be able to expect. Their mobility within the EU is seriously affected by this. It is a problem which the people interviewed complain of unanimously and increases the socio-economic vulnerability of artists and other cultural workers and discourages them from working outside their own countries.

It takes two forms: firstly, increased obligations and a loss of or fall in the artist's social rights, because he switches from one status to another, or because he is a non-resident in the host country; secondly, through the problems he encounters either on account of his status (more often than not a paid employee) in gaining recognition by the social organisations in his country of origin for periods of work in another country.

1. Increased obligations and fewer social rights for artists or cultural workers working outside their countries of origin

1.1 More obligations and fewer social rights resulting from a switch of status

Artists and cultural workers who switch from the status of employee to that of self-employed or vice versa, and/or who are non-residents in the host country, face a greater burden of obligations and enjoy fewer if any of the social rights to which they are normally entitled.

1.1.a) An increased burden on artists or cultural workers resulting from a switch of status

When an artist or cultural worker pursuing his activity in another country changes status he becomes liable to additional obligations. The effects are felt by anyone who habitually has the status of self-employed worker in his country of origin and pursues his activity in another EU Member State which then considers him as an employed worker, as he may have to comply, on behalf of his employer in the other country, with the formalities concerning payment of social security contributions.

1.1.b) The loss or reduction of artists' or cultural workers' social rights resulting from a switch of status

When artists or cultural workers who are considered in their country of origin as employed workers pursue their artistic activities in a country in which they are given the status of self-employed workers they may have to forfeit some or all of the social rights to which they are traditionally entitled.

Accordingly they may suffer:

– loss of entitlement to unemployment benefit

Artists considered as self-employed do not generally have any protection against unemployment (unless they voluntarily pay additional contributions to a private insurance) unlike artists who are paid employees. This means that persons who traditionally have the status of being employed in their country of origin and work in another country as self-employed are not entitled to unemployment insurance during the period worked in the other country.

Furthermore, work periods in another country in which artists are considered as self-employed are not always taken into consideration when calculating unemployment entitlement in the country of origin. Artists often encounter difficulties with the social security authorities of the host country when seeking to obtain a certificate attesting to such

periods. They thus have to wait several months before obtaining form E301 from the authorities.

– *absence of insurance for work-related accidents*

Self-employed workers in principle have no protection against work-related accidents (or occupational diseases), unlike employed workers.

Artists who are paid employees in their country of origin and pursue their activities in a country where they are considered as self-employed have no cover against work-related accidents and are thus exposed to the risk of having to shoulder the consequences if one occurs. They are of course free to take out private insurance but this means additional outlay from their own pockets.

– *loss of entitlement to paid leave*

Self-employed workers are not generally entitled to paid leave. Artists who are usually considered as employed in their country of origin and work in another EU country thus lose their entitlement to paid leave.

The decrease in social protection affecting artists or cultural workers who usually enjoy the status of being employed in their country of origin and pursue their activities in a country which recognises them as self-employed means that in practice they often have to find ways of appearing as if they are employed workers. Sometimes this involves making notional use of the services of a local agent or employment bureau to play the role of "bogus" employer.

To protect themselves against the loss of any social rights they are normally entitled to, artists or cultural workers have the option of paying voluntary insurance contributions. This solution means a substantial additional outlay they may not all be able to afford.

1.2 The loss or decrease in artists or cultural workers' social rights resulting from not being resident in the host country

The laws in certain EU Member States subordinate recognition of unemployment and pension benefits to being resident in the country rather than making it a function of the number of years of work. Accordingly artists from one Member State going to such Member States for professional reasons cannot, unless they become resident there, claim

cover against unemployment and entitlement to pension insurance for the period of work concerned.

Faced with the prospect of being penalised in this way, all the more heavily as the period worked is longer, artists are disinclined to opt for mobility and work in the country in question, or else are forced to become resident there.

2. The problems faced by artists or cultural workers when seeking to claim in their country of origin the social rights acquired in another Member State

– when calculating pension payments, problems of tracking artists' careers when they have worked in another country

Periods of work completed make it possible *inter alia* to determine how much retirement pension a person is entitled to. However, those periods worked in another country by artists are not always taken into consideration in the country of origin for the calculation of pensions. This failure to take into account periods of work in another country is a disincentive to artists from working outside their own borders. It is extremely damaging for anyone who has worked for long periods in another country.

Be that as it may, periods worked by artists in another country are generally taken into account when calculating retirement pensions. It is nonetheless necessary to substantiate these periods. In connection to this, artists encounter many practical problems: the time it takes pension departments in the host country to issue the form attesting to periods of work carried out in their country; the inability to trace the employer concerned during those periods; identifying the right department; non-payment by the employer of his share of the contributions.

Artists are sometimes even forced to relinquish part of their rights (particularly in respect of very short periods of work in another country).

– problems involving payment of entitlements (pension, social security, unemployment) due to the lack of co-ordination between the national organisations concerned

There are differences between national regulations on retirement age and the conditions governing payment of pension and this creates problems. Payment due in respect of contributions paid by artists in the EU country in which they have at one time worked is sometimes unjustly delayed and penalises the beneficiaries. The amount of retirement

pension granted to artists or cultural workers is affected by this as their rights are not paid globally in one go but as individual payments as a function of national legislation and local bureaucratic practices.

Delays in pension payments to visual or performing artists also result from the slowness of certain national departments.

The same lack of co-ordination is seen in the management of social security benefits.

III. TAXATION

The persons interviewed were fairly unanimous in their criticism of the extreme diversity in tax legislation in force throughout Europe and which can restrict the mobility of performing artists and their productions in the European Union. It is a fact that certain national provisions can create obstacles or at least be a disincentive to the circulation of artists and cultural workers in the EU.

These affect:

– *tax rates applied to artists*

Many Member States complain about the differences in tax rates applied to artists and cultural workers in the EU. The complaint relates to both income tax and VAT.

- Income tax rates

On income tax rates, certain legislation are criticised for imposing inordinately high rates which thus become dissuasive (over 30%).

There are even instances where the rate becomes openly discriminatory. In one Member State taxation law imposes upon Community artists who come for a short period of work (under six months) a rate which is higher than that applicable to national artists. This rate undergoes a substantial 5% increase from 20 to 25%.

There is another example of this type of practice in a Member State where only foreign artists and cultural workers are subjected to a specific tax at a dissuasive rate of 25%. But this should not be dwelt on inasmuch as it is currently the subject of a procedure before the Court of Justice of the European Communities.

Another example which is perhaps less discriminatory but just as dissuasive occurs in Italy where income generated by British tours organised in that country are taxed at the Italian

rate of 30% compared with 23% in the UK. The gains prevented for the British artists is all the more damaging as this tax has a very broad basis (the Italian promoter often offers a package including the artists' fees, their daily allowances, their hotel and travel costs, and the Italian tax is levied on all these costs and not simply the artists' fees). It nevertheless has to be pointed out, to the credit of certain Member States that apply reverse discrimination, that Community artists sometimes benefit from a lower rate of taxation compared with that to which national artists are liable. This is particularly the case of Greece for artists invited by a public authority, and also of Finland.

- The VAT rate

Similarly VAT rates applied in the EU vary considerably from one country to another.

- *the problem of dual taxation imposed by the country of origin and the host country on migrant artists and cultural workers*

The income of artists or cultural workers performing outside their own frontiers is sometimes the subject of dual taxation. The tax authorities in the host country, on the grounds that the income is generated there, levy a tax which is not taken into account by the tax authorities of the country of origin which themselves levy a tax on the same income on the grounds that the beneficiary is a resident in that country. The problem occurs often when the tax legislation of the host country provides for deduction at source of the tax in question a deduction which is not considered by the tax authorities of the country of which he is a national to discharge the subject concerned. It also stems from the fact that the tax authorities of the host country do not always agree to issue the foreign artist a certificate attesting that he has paid the tax, which thus prevents reimbursement by the tax authorities of the country of origin.

Many of the people interviewed suffer acutely from this problem and see it as a serious hindrance to the freedom of movement for artists and entertainment workers in the EU.

- *the existence of specific taxes peculiar to certain Member States*

The tax legislation of certain EU countries has introduced specific taxes not levied by neighbouring legislation (example: "tax on foreign arts").

Countries also differ in the way they apply VAT to certain items of expenditure. Production costs (generated by any tour organised in another country) are an example: some countries apply the tax, while others do not.

– *the deductibility of professional costs incurred by artists outside their country of origin*

The way deductible costs are determined conditions how the basis for taxation is calculated and varies from one law to another. Some Member States use a very restrictive definition, which is a source of complaint by certain EC artists. This restrictive definition of deductible costs considerably broadens the basis for taxation to which artists and cultural workers are liable.

Similarly, some national fiscal law rules out any possibility of deduction of professional expenses incurred by a national artist in another EU Member State. Incidentally, the artists who suffer from this hindrance are the nationals of the country responsible (reverse discrimination).

There is no shortage of examples: The professional expenses of lighting engineers, technical expenditure, expenditure on costumes; expenditure on hotel accommodation and travelling, may be deducted or not depending on the Member States.

A difference may also arise, not in the calculation of deductible expenditure, but in the definition of the circumstances where such a deduction would apply. In one Member State, plastic artists are considered as self-employed and can deduct all their professional expenses with no ceiling, even if they pursue an economic activity other than their art. This is possible in another Member State only if the plastic art is pursued as the artist's sole source of income. In a third Member State the possibility of deducting certain professional expenditure depends on the size of the company, a condition which is inappropriate to the performing arts world.

– *differences between the exemption systems used in the Member States*

The tax laws in the Member States apply a system of exemption that is often peculiar to them and which may indirectly dissuade their national artists from moving around the EU. Similarly, British orchestras are exempt of taxes in their country, but if they perform abroad, e.g. in Italy, their income is liable to the national tax at the rate of 30%. Unless they are taxed in their country of origin, they can obtain no reimbursement upon return. The additional burden on them may end up dissuading them from organising performances

in other EU countries; in any event, it prompts them to ask for an increase in their own fee in order to offset the loss incurred.

In one case, VAT exemption benefits only artists and cultural workers who are natural persons, and excludes companies and other groups of artists having a legal status. In another, on the other hand, it benefits only entrepreneurs.

The VAT exemption applied to performances organised in another country has the unfortunate result of preventing national artists who have exported their performance outside their frontiers from obtaining from the fiscal authorities in their country of origin the reimbursement of the VAT which they have had to pay in the host country in accordance with the local fiscal regulations.

– *possibility of smoothing out the taxable income of artists and cultural workers*

There are major disparities between national tax legislation in Europe with regard to the possibility for artists and cultural workers whose activity is often sporadic and not really conducive to regular income, to smooth out over a number of years the taxable remuneration they receive. This possibility of “smoothing out” enables them to be taxed on the basis of the average income received over a period of three to five years rather than on that of the income received only in the year prior to the tax return. This is an option granted by certain countries, but refused by others.

– *disparities in the tax treatment of income from copyright*

The legal nature of copyright income varies from country to country and has an effect on the tax system that applies. Such income may be considered by some Member States as professional income and thus triggers the payment of income tax and social contributions, while income derived from the use of the artist’s work is the subject of a specific tax arrangement in other Member States characterised by a lower applicable rate.

– *differences in tax treatment of subsidies*

The principle of taxing subsidies received by artists and cultural workers is not followed in all the EU Member States. While they are liable to VAT in some countries, government subsidies exempt from tax in another country, the only exception being when they are granted in connection with a specific performance by the artist receiving the subsidies.

- lack of information on the different tax legislation in force in the EU

The persons interviewed were virtually unanimous in complaining of the difficulties encountered when seeking to obtain information on the various tax provisions applicable in the EU countries and identifying the parties supposed to provide such information. This is a factor that can inhibit the organisation of tours in Europe.

IV. FUNDING ARRANGEMENTS

Organising an arts exhibition abroad entails expenditure which is often high and which the artist cannot shoulder alone. This financial constraint inhibits mobility in the EU all the more as the system whereby subsidies and grants are paid, be they public or private, and which would make it possible to overcome the problems, remains largely inadequate or inefficient. The shortcomings identified in this area include:

- the restrictive definition of the circumstances under which grants and subsidies may be paid

The legislation in certain member countries makes the granting of public subsidies and aid to visual and performing artists conditional upon such stringent constraints that either they are seldom granted, thus severely jeopardising the opportunities for moving around the European Union, or are ultimately reserved for nationals or residents.

For instance, a government grants subsidies only to companies of artists and not to individual artists (who are thus obliged to set up a company). In another example, payment of subsidies is conditional not upon nationality requirements but on the purpose of the artistic project in question: this project must have a relationship with national art or the Member State in general, thus de facto excluding foreign artists from the circle of potential beneficiaries.

In two specific cases, subsidies can be granted only to resident artists and cultural workers.

- the inadequate nature of certain mechanisms for granting subsidies and aid

Organising performances and exhibitions in another country requires lengthy and painstaking preparation. Given the time this preparation takes, certain aid schemes are

completely inadequate. Granting of subsidies for artists is often decided only once a year. In other countries, the decision is taken only two or three months, or even a few weeks before the start of the tour.

Financial support to organise tours in Europe thus lacks effectiveness.

– *the lack of co-ordination between national funding systems*

The creation of European partnerships between the various funding organisations in the Member States could facilitate the mobility of the recipient artists in the EU. However, it is made extremely difficult by the wide-ranging diversity between the national funding systems (state, regional or association-based systems) and the lack of co-operation between some of them.

– *the high cost to artists of moving around within the European Union*

The travelling costs involved dissuades many visual and performing artists from moving outside their own countries. It also forces programme organisers to forego going to another country to look at local artistic productions for the purposes of dissemination.

In this connection, the creation of a European fund to provide aid for moving around the EU could help to overcome this problem and favour the circulation of EU artists.

– *the insufficiency or ineffectiveness of current aid schemes*

This complaint concerns both the national and Community schemes. Many professionals feel that the low level of financial support provided to artists and cultural workers makes it impossible in practice to promote and disseminate their works and reduces their opportunities to work in other countries, while also affecting their mobility within the EU.

– *the lack of involvement of the social partners*

Many of the funding systems operate without the professionals from the world of arts and entertainment being involved. The fact that the people who should be representing and defending their interests are not involved in the decision making within this framework helps to strengthen the impression of artists and cultural workers that these systems are opaque and far removed from them. Bringing joint representation into the organisations responsible for distributing aid to performing artists would ensure that these systems operate in a transparent, simple and effective manner, which is what is wanted, by promoting a better flow of information.

V. INTELLECTUAL PROPERTY RIGHTS

Protecting intellectual property rights is a considerable challenge when it comes to mobility of visual and performing artists. If it is done properly, it can favour the circulation of compositions and interpretations and thus encourage authors and artists to promote themselves outside their own countries. This is currently the case for authors. On the other hand, shortcomings which work to the detriment of efficient protection of the rights of interpreting artists have been noted. These shortcomings include specifically:

- *a relative lack of co-ordination between the systems for managing and collecting the rights of interpreting artists from the different EU countries*

Lack of co-ordination between the companies which collect the rights payable to interpreting artists for dissemination of their performance in a country other than the country of which they are nationals sometimes complicates the recovery of the money due. This problem is the result both of the existence in certain Member States of the proliferation of management companies competing with one another (Belgium, Denmark, France, Greece, Italy, the Netherlands, Portugal) and of the underlying difficulty in concluding and applying agreements of reciprocity between the companies in different EU Member States. On this latter point, disparities in the conditions applicable to the redistribution of revenue from interpreting artists' rights in the different EU Member States can ultimately deprive artists or cultural workers of all or part of their rights. Actors featuring in films shown in one Member State, for example, are obliged to share their rights with the producer of the film if, that is, the film is successful.

This lack of co-ordination between the companies which manage and collect royalties in Europe makes it extremely tricky to know exactly how many times an artist's interpretations are broadcast in another country and how much is payable. An artist who feels insufficiently protected may be reticent to perform in another country and to disseminate his/her productions outside the country of origin.

Moreover, some national management companies are extremely slow in redistributing royalties.

The problem nevertheless needs to be put into perspective. There are many agreements which bind companies managing interpreting artists' rights at the Community level, so there is fairly satisfactory co-operation when it comes to checking broadcasts and to redistributing money payable. There is also good co-operation between Spanish, British and Dutch companies in managing the rights of interpreting artists.

– *The deprivation of certain prerogatives linked to the rights of interpreting artists*

Interpreting artists' rights are insufficiently protected in certain EU countries where some categories are deprived of some of the prerogatives to which they would normally be entitled by virtue of intellectual property rights. This is the case of both foreign and national actors to whom one national law affords no rights in the event of repeat televised broadcasts of works in which they appear. A similar problem exists in another Member State as regards repeat broadcasts of films: no income is envisaged in respect of repeats and the actor is entitled merely to a "fair remuneration" decided in advance once and for all irrespective of the number of times his works are shown.

VI. SPECIFIC OBSTACLES AND PROBLEMS

Alongside obstacles stemming from differences between national legislation, there are other obstacles and problems that are more specific. These generate *de facto* rather than *de jure* an equivalent risk of hampering the mobility of artists and cultural workers in the EU. They originate in:

– *Lack of information on the legislation of other countries and on the EU institutions, combined with the problem of finding someone capable of providing information*

The problems encountered in locating information on national provisions in force (particularly fiscal and social) and in contacting the right talking partners are unanimously deplored by the persons interviewed.

Similarly, information on the operation of the EU institutions and the pursuit of artistic activity in other EU countries (aid schemes, accommodation, etc) is deemed to be insufficient.

– *The language barrier*

The different languages used in the EU countries and the poor availability of translations of the main documents needed can make it difficult to move around and complicate working relations for artists (understanding the information provided on national systems, negotiating employment contracts, etc). In addition, they are not conducive to the dissemination of certain arts (writing, theatre) and sometimes even generate a real obstacle.

– *Lack of facilities for artists and cultural workers from other countries*

EU Member States provide no facilities for accommodating and receiving large numbers of visual and performing artists from other countries. Several of those interviewed stressed the need to create versatile facilities where artists and cultural workers from EC countries could reside and pursue their activities. These facilities should include recording studios, dance halls, theatres, computer equipment, etc.

Although in somewhat short supply, such facilities do exist in Europe. The « Pépinières européennes pour jeunes artistes », created in the early 1990s with the support of the European Commission, are an example. Young artists of the Community are offered facilities based in several European towns, each of them specialised in a distinct artistic discipline. The artists they host are provided with accommodation, and human and material resources to follow through their artistic project. The idea is one which could be used again to create new interdisciplinary facilities open to all artists, regardless of their age and artistic level.

– *The inadequacy of the professional networks*

Groups of professionals in the performing arts world make it possible to ensure better representation, information and assistance for artists and cultural workers. While some initiatives have been taken in this direction by certain groups such as the FIA with the introduction of a "dance passport" which allows all the members of the trade unions grouped within the federation access within the EU to assistance from any other affiliated trade union, things are still at an early stage and further development is needed. Indeed, the fact that similar initiatives are actually being undertaken by other trade union federations (the UNI-MEI) for other categories of artists (visual artists), shows the existence of a genuine and deep-rooted need in this area.

At the close of this study, the aim of which is to identify and briefly list the obstacles and other hindrances to mobility in the free movement of cultural workers and their productions within the European Union, a number of points emerge:

- When compared, the data collected shows that instead of the anticipated hindrances, what is observed are merely shortcomings or deficiencies which do not make professional mobility within the European area impossible but only more difficult or less attractive.

- Secondly a general observation: the on-the-spot interviews give the overwhelming impression that the public in the Member States shows little interest or curiosity, or is simply indifferent, to the cultures of other EU countries. This inward-looking attitude has a direct impact on the mobility of artists, cultural workers and their productions in the EU. This is the reality that has to be faced and to recognise this situation would be a first step towards a commitment at policy level to seriously consider a more outward-looking approach to foreign artistic cultures.

- Lastly, expectations and demands: we can but note that the unanimous criticism levelled at certain shortcomings by various professionals and experts interviewed inherently contain the beginnings of a solution to the problems described. This report without going beyond the objective assigned to it echoes this.

Three demands naturally emerge from the interviews:

* a radical effort to pave the way for co-ordination of the social status of cultural workers in Europe;

* the establishment of a centre to provide information for professionals, via the Internet, on local legal and professional frameworks, local addresses, facilities, any existing subsidy schemes, etc.;

* the setting up of a fund to provide automatic and proportionate aid for the travelling undertaken by artists and programme organisers.

Besides these requests, be they clearly articulated or simply implied during the interviews, mention should be made of a certain number of “good practices”, which could offer

pointers for future solutions, and which have been either implemented or simply put forward by different EU Member States in an effort to facilitate and encourage free movement of cultural works and their products within the Community. The widespread introduction of these practices at the European level could help neutralise certain obstacles and other hindrances to mobility noted in the present study, and thus promote the free movement of the people concerned around the EU. Here are a few examples:

* the establishment of a “one-stop shop” to deal with all the formalities for employing artists and cultural workers, national and non-nationals alike. A mechanism of this kind was introduced in France in 1999 for occasional entertainment organisers. It enables the employer to see to all the formalities involved in the recruitment of employees in one go and in one place (preliminary declaration of employment, payment of social security contributions, paid leave, unemployment benefit, supplementary pension, professional training, occupational medicine). For employers and employees alike, this substantially reduces the red tape which often discourages professionals from moving around the Community. A “one-stop shop” would simplify procedures and remove some of the constraints which currently hamper the movement of artists and other cultural workers across the Member States. All the more reason for a widespread introduction of the system. Some of the French interviewees would also welcome a new “one-stop shop” in order to speed up the organisation of tours abroad. The Belgian government is planning to set up a “one-stop shop” for performance organisers.

In the UK the local tax administration has a specific department to deal with fiscal policy as applied to foreign companies.

*Introducing a “European dance passport” would cement association agreements, within a European level federation, between a certain number of national trade unions of artists and cultural workers from the Union in a specific artistic sector. The trade unions concerned would undertake to represent and defend in their respective countries the interests of all affiliated artists and cultural workers, regardless of their nationality.

The system could be also used for other categories of artists.

*Application of a lower income tax rate for foreign artists and cultural workers who present their art in Member States other than their home country. The fiscal legislation of certain European Union countries (Greece and Finland) applies a lower income tax rate to

artists and cultural workers from other Community countries. A fiscal advantage of this kind is a definite incentive and encourages mobility.

*'Smoothing out' the income tax rate: given the specific nature of artistic activities and, in particular, the fluctuations in income levels, the fiscal legislation in some Member States gives artists and cultural workers the option of staggering their taxable income over a few years, so that they would consequently be taxed on the yearly average only. This option would allow artists and cultural workers to avoid a tax burden which does not reflect their actual circumstances at the time of payment.

*Fostering exchange and dissemination of European musical repertoires between Member States: two programmes between France and Germany are examples. One of these led to the creation of a Franco-German academy, which brings together young composers and performers of both nationalities for tuition. The other programme ensures SACEM support for jazz festivals organised in France that welcome German artists.

Such programs should be developed since they considerably encourage the movement of products, and therefore their authors or performers, within the Community.

*The development of European networks of national organisations with regard to artists/performers' rights: networks of this kind, which several Member States (e.g. Finland, Ireland and Greece) have already experimented with, help to strengthen the representation and defence of the interests of artists and cultural workers moving around the European Union. Knowing that their royalties will be paid is an incentive for artists and cultural workers to accept work in other countries. They are therefore worth encouraging.

*The creation of an international contemporary dance school, open to all members of the Community and awarding a degree recognised in all the Member States of the European Union: set up in 1995 on the initiative of the famous Belgian dancer Anne Teresa De Keersmaecker, in close collaboration with the Opéra de la Monnaie, the P.A.R.T.S. dance school (*Performing Arts Research and Training Studios*) in Brussels welcomes about forty students in dance and choreography from all Member States of the EU for a taught programme of four years recognised universally and given by international teachers. This initiative, with the support of the Culture 2000 Programme, helps to reduce the existing disparities between the different levels of teaching programs in Europe and which

constitute the major hindrance to the free movement of artists and cultural workers within the European Community. Initiatives of this kind make a big contribution to the mobility of artists, be they students or teachers, in the Community and should be more widely developed, in the same way as networks of national artistic schools in the European Union.

The forthcoming enlargement of the European Union to the countries of Central and Eastern Europe makes it necessary to examine these projects and in any event prompts reflection on how to ward off the adverse consequences of the social dumping currently witnessed and involving the nationals of some of these countries. A problem unanimously condemned by the persons interviewed.