Introduction

1. The European social partners of the sector ‘live performance’, Pearle* (Performing Arts Employers Associations League Europe) and the EAEA (the European Arts and Entertainment Alliance, formed by the International Federation of Actors FIA, the International Federation of Musicians FIM and the Union Network International-Media Arts and Entertainment) welcome the initiative of the European Commission to launch a debate on the modernisation of labour law.

2. We believe the Green Paper is a valuable opportunity for our Committee to point out specific features of the ‘live performance’ sector that we represent.

3. Following a presentation of DG Employment and Social Affairs at the Plenary meeting of the sectoral social dialogue committee ‘live performance’ on 8 December 2006, a number of questions were identified to seek for a common contribution to this Green Paper. It concerns the questions 6–7–8–12–13.

4. At the European Sectoral Social Dialogue Committee working group meeting of 5 March 2007, representatives of the social partners exchanged views in relation to the above mentioned questions, following which an answer has been developed on points jointly agreed upon.

Training and Employment transitions: Question 6: What role might law and/or collective agreements negotiated between the social partners play in promoting access to training and transitions between different contractual forms for upward mobility over the course of a fully active working life?

5. When discussing the issue of training the social partners agreed that access to training is a principle right for all performers, as well as for technicians and other staff, no matter their employment status. The social partners identified three different levels with regard to the access to training, each involving different roles and responsibilities for the parties concerned.

6. First level “preservation of a high level of the profession”: training - is an inherent part of a performers’ work (musicians can only play if they practice the scores, actors or dancers can only perform if they rehearse their text or part.). It is also acknowledged that technicians should be trained appropriately according to their tasks and that they need to keep up with technological changes in the theatre profession. The provision of complementary training is the responsibility of the
employer, with the commitment of the person receiving the training. This could be appropriately dealt with by social partners at entreprise or sectoral level. Complementary training could be a part of a collective negotiation, to which employers and workers could both contribute and of which they could mutually benefit.

7. Second level “moving up”: within a performing arts organisation, people may wish to improve their skills and look for ways to achieve better qualifications. A shared responsibility of both the employer and the person concerned is at stake; it stems from an agreement between the two parties whereby one party is investing time and the other party is paying for the training and the working time of the person receiving training. The goal is that both the organisation and the person concerned will benefit from this for a reasonable time following the training. Subject to these conditions, social partners could share and exchange experiences on this level of training.

8. Third level “conversion or transition”: this is not the exclusive responsibility of social partners, but it is clear that the society should be involved. Following an analysis of the labour market, public authorities at national, as well as local level, with the feedback from social partners, can develop initiatives to facilitate transitions within the sector or between sectors.

| Uncertainty with regard to the law: Question 7: | Is greater clarity needed in Member States’ legal definitions of employment and self-employment to facilitate bone fide transitions from employment to self-employment and vice versa? |
| Question 8: | Is there a need for a “floor of rights” dealing with the working conditions of all workers regardless of the form of their work contract? What, in your view, would be the impact of such minimum requirements on job creation as well as on the protection of workers? |
| And Mobility of workers : Question 12: | How can employment rights of workers operating in a transnational context, including in a particular frontier workers, be assured throughout the Community? Do you see a need for more convergent definitions of ‘worker’ in EU Directives in the interests of ensuring that these workers can exercise their employment rights, regardless of the Member State where they work? Or do you believe that Member States should retain their discretion in this matter? |

9. A recently published study on “Economy of culture in Europe” by KEA European Affairs, reveals data on the employment status in the cultural sector and describes some trends in the labour market:
   - the share of independent (self-employed) workers is more than twice as high in the cultural sector as in total employment; the cultural content worker is suddenly also a (cultural) entrepreneur.
   - cultural employment by job stability: permanent versus temporary workers: 17% of workers are under temporary contracts in the cultural sector compared with 13,3% in total employment: the amount of temporary work is characteristic of the cultural workforce, but the situation is disparate amongst countries

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1 Study prepared for the European Commission, DG Culture and Education, October 2006; chapter 3, Mapping out the economy of culture in figures http://ec.europa.eu/culture/eac/sources_info/studies/economy_en.html
- cultural employment by work duration: the share of part-time workers is higher in the cultural sector than in total employment i.e. one out of four (25%), compared to 17.6% in total employment
- cultural employment by side-job: the share of workers with side-jobs is much higher in the cultural sector than in total employment; i.e. 6.6% compared with 3.7% in total employment

The study identified as a main feature that “cultural employment is of an ‘atypical’ nature being a foreshadowing of tomorrow’s job market more flexible, project led requiring mobility and high qualifications”. Being set as an exemplary sector for others, it is noted that flexible labour law should go together with job protection legislation.

10. Social partners discussed the different employment statuses in the sector; in particular with regard to self-employed persons, often referred to in the sector as freelancer, casual or independent worker. Member States have dissimilar definitions, based either on fiscal, social security or legal regimes: this causes increased confusion for people in the sector. Listing and explaining these various definitions (on which basis it could be learned that amongst clusters of Member States there exists common terminology) would support the better understanding of the status of a person concerned.

11. Moreover, in a highly mobile sector as the performing arts, more transparency would be helpful for persons working in another country than their resident country.

12. The European sectoral social partners underline that people (whatever employment status they have) should have the right to create and join in representative organisations, which are entitled to bargain collectively on matters related to the relevant sector.

13. We believe the European Commission should encourage Member States to look at the definitions in their law considering the development of the labour markets.

**Enforcement issues and undeclared work**: Question 13: Do you think it is necessary to reinforce administrative cooperation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?

14. As a principle the European sectoral social partners ‘live performance’ denounce undeclared work. A high percentage of performing arts organisation is (to a higher or lower extent) publicly funded. In this context performing arts organisations are often subject of inspection or audits. Consequently, undeclared work is not an issue in the sector. Moreover it would be ethically wrong for a sector that receives public support.

15. It is noted, however, that forms of undeclared work exist in other areas of live performance and social partners denounce those practices which also lead to unfair competition.

16. Performing arts organisations are prepared to give prove of working conditions according the legislative framework and other regulations and to collaborate with the relevant authorities to provide information on its organisation when this is requested.