The International Federation of Actors (FIA) represents more than one hundred performers' trade unions, guilds and associations on all continents, working in film, television, radio, theatre and live performance.

The European group of FIA (EuroFIA) gathers performers' trade unions in 25 EU countries, in the European Economic Area and in Switzerland and represents hundreds of thousands of professional performers working in the fields mentioned above.

We welcome the initiative of the European Commission to set off a debate on the modernisation of labour law. We believe that this is a necessary discussion in the framework of the Lisbon Strategy's objective of achieving sustainable growth with more and better jobs.

**Preliminary remarks**

We wish to take this opportunity to highlight a number of key features concerning the employment status and the contractual conditions of the professionals that we represent. The entertainment sector\(^1\) is one of the most vibrant areas of activity in the European Union, with a very significant turnover and a global contribution to the European GDP bigger than the ICT sector\(^2\). Paradoxically, entertainment workers operate in a wide legal vacuum, while their employment environment is characterised by increasing precariousness. We are convinced that if culture is to continue to channel and promote economic development, the contribution of performers and artists in general must be fully recognised and their atypical positioning within the labour market be taken into account within the current consultation.

Only a small number of performers (mainly actors in public theatres, ballet dancers, opera singers) have a permanent, full-time contract. These are the “insiders” the Green Paper refers to. We believe that permanent contracts are all but a threat to flexibility and that they should be strongly upheld, especially when a cultural institution has a permanent and continuous activity. This is all the more essential as even

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\(^1\) Encompassing both live performance (theatre, opera, variety, etc) as well as audiovisual and cinema productions

\(^2\) The Economy of Culture in Europe - KEA Study, 2006
these “standard” workers have been facing increasing pressure towards increasingly flexible working time, wages and other contractual arrangements over the last decade. However, most entertainment workers - and performers in particular - operate in an atypical employment environment. They usually sign short-term contracts with multiple employers and routinely have to face unemployment in between jobs. All too often, workers under these kinds of contracts are considered to be self-employed /independent workers, although they are clearly subject to a subordinate employment relationship. Consequently, they are denied employment rights and basic social protection.

In the majority of the new member States, as well as in some of the old, the concept of “worker” as defined by labour legislation exclusively encompasses “employees” working under a permanent employment contract. They are the only ones benefitting from the full range of employment rights, while most others are refused any meaningful labour protection. In many countries these workers have been fighting for years for basic conditions that would ensure their survival on the labour market and in their profession.

Most of the “self-employment” in our sector is not genuine. A significant number of performers do not have an employment contract and yet cannot be regarded as being “self-employed” either, as they are in a clear subordinate relationship with their “clients”. In practice, the distinction between employee and self-employed status is often very artificial and subject to abuse, as the latter exonerates employers from paying social contributions and complying with other obligations.

Moreover, in a sector characterised by a plethora of short-term contracts with multiple employers, “self-employed” workers do not even fall under the category of self-employed but economically dependent workers, mentioned in the Green Paper.

We therefore call on the European Commission to take due account of the specificities of the entertainment sector, both in the context of this consultation and in the wider debate on flexicurity. Our contribution will focus on questions 1, 6, 7, 8, 12 and 13. We also emphasise that the issues covered by questions 7 and 8 should be at the core of any future labour reform and are of fundamental importance in the framework of this consultation.

**Q1**
*What would you consider to be the priorities for a meaningful labour law reform agenda?*

**Balance between flexibility and security**
Any future reform of European labour law should establish the right balance between flexibility and security in the labour market, if Europe is to achieve sustainable economic growth with more and better jobs. However, it must be understood that key growth areas of the economy - such as the creative industry - are driven by individual workers (in our case creators, artists and performers), who operate in an exceedingly flexible employment environment, with no real security through the provision of basic employment rights.

We understand that the entertainment industry has to preserve a certain degree of flexibility with respect to the mobility of its workforce and the short-term nature of engagements (e.g. films, theatre productions, commercials). Many performers value the opportunity to work for different employers on projects that are temporary by their very nature. However, we believe that decent employment rights for all workers, along
with concrete investment in training, is a superior approach to labour law policy, which will encourage the development of a skilled and motivated workforce and lead to productivity gains.

Labour law is not “old-fashioned”, nor is it an obstacle to economic growth - as the European Commission suggests. The “Danish model” - which the EC shows sympathy to and which conciliates a high degree of worker mobility within and between jobs with high unemployment contributions – is not as such transposable in other countries. This model – as ideal as it seems – was backed by a strong consensus between the social partners, which lacks not only in most of new member States but also in some of the old ones. Moreover, it involves a very high public financial commitment and is, for this reason, hardly imaginable anywhere else.

We call on the European Commission to ensure that collective bargaining, the relevance of collective agreements between social partners establishing minimum consensual terms and conditions for workers regardless of their employment status, is not affected by a flawed interpretation of competition law. In several European countries, where performers are regarded as “self-employed”, competition authorities are increasingly questioning their right to collectively negotiate minimum fees for their work, thus threatening their ability to secure a decent payment and to make a living of their profession.

The collective bargaining dimension
Labour law has developed in a rich variety of forms, with countries where collective bargaining is prominent and others where labour legislation is paramount, or where mixed systems are in place. Across sectors, experience shows that strong collective bargaining keeps working standards in constant development and revision, and therefore flexible. However, in countries where collective bargaining is not common practice or, for certain workers, not even recognized, the safety role of legislation is much more essential. In order to modernize labour law, all these elements should be considered and particular attention should be paid to the overall regulatory framework in the 27 member States.

The collective bargaining factor is missing from the Green Paper. Whereas it is marginally mentioned, this is mostly as a potential instrument to provide flexibility. In our view, by restricting the scope of this document to individual contractual arrangements, key questions related to atypical workers (the "outsiders" in the language of the Green Paper) are left out and that, consequently, the role of collective bargaining to reduce the gap between “insiders” and “outsiders” is ignored. We therefore trust that the European Commission will take due account of this dimension within the wider debate on flexicurity.

An inclusive definition of worker
Legal uncertainty on employment status - which we will address under question 7/8 - is the most important issue requiring labour law reform. Without this, thousands of professionals whom the EC intends, and certainly ought, to include within the framework of European labour law will in practice remain excluded.

Striking the right balance between flexibility and security in the entertainment sector is impossible without first addressing the status of workers that operate in it. The current consultation should lead to a rapid and competitive evolution of the labour market, while providing for fair and decent working conditions and improved labour standards for all workers in the EU.

The priority for the EC in addressing labour law reform should be to define a more inclusive and consistent definition of “worker”, wide enough to encompass – as far as the entertainment sector is concerned - all
performers who are not genuinely self-employed. This would balance the current inequality concerning employment benefits and reduce the legal uncertainty as to the employment status.

We stress that the 1980 UNESCO Recommendation on the Status of the Artist called for the recognition of artists as a professional group with a full range of employment rights and for a clear acknowledgement of their contribution to society and to modern economies.

A different status is often granted to performers working under the same contractual relationship in different EU member States. Concepts like “freelancer”, “self-employed”, “independent” performer seem to echo diverse realities from a country to another, despite the fact that, in practice, the employment patterns of performers do not differ, wherever they are. As we underlined in our preliminary remarks, these statuses are often artificially imposed on performers and abused to reduce labour costs.

A study carried out by the European Arts and Entertainment Alliance (gathering the European affiliates of the International Federation of Actors, the International Federation of Musicians and Union Network International, Media and Entertainment) showed that very little common ground exists between the EU member States as to the definition of performers’ working relationship.

For instance, in Scandinavian countries the concept of “freelancer” also covers performers working on short-term contracts, who fully benefit from workers’ rights, including the right to organize. The situation is however different in most of the new EU member States - but also in many of the old ones - where atypical performers are generally defined as “freelancers” and denied access to workers’ rights. In these countries, they are even often treated as “service providers”, although they are in a clear situation of subordination.

Q6

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?

Training is a key issue for performers. It is not only necessary to ensure the quality of their work, but also to accompany the various transitions between engagements and to ensure their adaptability to the new technologies exploited by the industry. Actors, dancers, singers, variety artists, etc, constantly need training opportunities in order to keep up with or improve their skills, to allow for a smooth transition between jobs or to cope with major conversions when their career is prematurely interrupted, either due to injuries or accidents, or to the specific nature of their profession (e.g. this is the case for dancers, who have a very short professional lifespan).

The entertainment sector is a very dynamic one and performers’ transitions from one engagement to the other, or from one artistic field to another, happen quite often and naturally. Therefore, constant development and maintenance of skills is a priority for them, irrespective of their real status.

While training is a matter of subsidiarity, with EU member States playing a primary role in designing their educational and vocational training systems, we believe it is also a matter of European dimension. Only a few EU member States have acknowledged the importance of training in the entertainment sector and
concretely addressed this issue. Systems like those existing in France\(^3\) or in the UK\(^4\), based on training levies and *mutualisation*, should be encouraged at European level, as a valuable best practice to ensure minimum training for performers. They are clear evidence of a workable arrangement between employers’ and workers’ organisations and certainly appear to be a useful model in sectors with a fragmented company structure and a significant atypical workforce.

FIA believes that access to training and life-long training for all workers, irrespective of their status, is essential and should be made possible by statutory instruments in all EU member States, while complemented by adequate provisions in collective agreements. Access to training and opportunities for upward mobility on the labour market are areas where collective bargaining can prove very effective, as social partners are in fact ideally placed to agree on the specific needs of each professional sector.

The examples mentioned above offer a realistic solution to this problem. FIA encourages the extension of systems based on *mutualisation* to support the training of workers whose contractual arrangements make them unlikely to benefit from training from a single employer directly. The development of such voluntary schemes, managed by social partners and open to all workers (including performers) regardless of their status, will help improve mobility and adaptation to change.

Training greatly improves professional skills and naturally encourages competitiveness in our sector. Considering the EU Lisbon strategy focus on high-quality jobs, improving the professional skills of workers should be considered a means of improving such quality. The goal set by the Lisbon agenda – “creating more and better jobs” – will not be attained without proper training systems, supported and encouraged by all EU member States.

**Q7**

*Is greater clarity needed in Member States’ legal definitions of employment and self employment to facilitate bona fide transitions from employment to self-employment and vice versa?*

This question is essential to the future labour reform and must lead to innovative and concrete solutions. The ambiguous boundary between the status of an employee and a self-employed worker (especially in the entertainment sector) weakens employment security and the competitiveness of any given sector. Member States and the European Union must address this issue in the framework of the Green Paper consultation and the wider debate on flexicurity, if the Lisbon’s Strategy objectives are to be fully achieved.

We recall that our profession is characterised by a constantly increasing number of atypical work arrangements (short-term, casual, temporary work). It is very often that performers are pushed to work under this type of contracts as self-employed, while the relationship remains one of real subordination. This is currently happening in most of the new member States but also part of the old member States and this situation calls for legal clarity and enforcement of law.

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\(^3\) A public permanent fund to which both employers and workers contribute and to which all workers in the sector are eligible.

\(^4\) A system based on training levies on employers, which recognizes that individual employers cannot provide in-house training for freelancers who are moving from company to company; instead, employers contribute to a common fund which is used to pay for freelance training by specialised bodies (e.g. “Skillset” for the audiovisual sector and “Creative and Cultural Skills” for the live performance sector). Trade unions are closely associated to the management of these systems.
In the absence of a legal framework, a growing number of performers in Europe work as self-employed, in conditions which do not correspond to what the Green Paper describes as "a decision, freely taken, to work as self-employed despite a lesser level of protection, in exchange for a more direct control over the conditions of employment and remuneration".

As a matter of fact, freelance/self-employed performers in most of EU countries fall within a so-called grey-zone. These workers are not truly self-employed entrepreneurs creating their own work. They are dependent upon contracting companies and employers. On one hand, workers rights are denied to them as they work in atypical contractual arrangements (short-term, temporary, casual work), which do not allow them to qualify for these rights under national labour legislation; on the other hand, they are not real self-employed, as they remain in a subordinated relationship.

We acknowledge that benefits derived from certain national fiscal systems might encourage workers in the cultural sector to choose a self-employed status rather than having a presumption of employment contract applied to them, since they are in a position to benefit from real compensations from such qualification.

However, it should be kept in mind that such people are workers in the full sense of the term and are eligible for collective representation, collective agreements and all worker rights recognized by the International Labour Office and the European Court of Justice. These workers should not be purely and simply subjected to competition law, since their independence is merely of a cosmetic nature.

Furthermore, in our sector, freelance workers do not even fall within the Commission’s definition of ‘economically dependent workers’, as they are more often employed by multiple employers (and are not dependent on one single employer) in any one year. This is certainly the case in the audiovisual services sector.

Working on different productions with a large number of employers is by far not a sign of financial independence and negotiating strength on behalf of the worker. The need to work for numerous employers in various roles is in reality one of economic necessity dictated by job insecurity. Apart from a small number of “star” performers who are in a position to dictate their own terms, most of these freelance workers are dependent on the prevailing terms and conditions of the specific labour market, and will work on standard collective agreements, often with minimum rates of pay. Despite this, in many countries, freelancer performers are denied fundamental workers rights, such as the right to organise and collectively negotiate. We recommend that any proposals designed to extend workers' protection to economically dependent workers must ensure that freelancers, dependent on multiple clients, are encompassed in their scope.

Summing up the points above, FIA contends that:

National definitions of “worker” should be more inclusive and cover all those working for someone else, including all casual, freelance workers, as well as the economically dependent self-employed. While some employment rights would still need to be subject to a qualifying period, this presumption of coverage must be the starting point for a clear and unambiguous employment rights framework. We call for a reform that would strengthen worker protection for all atypical workers and would ensure the recognition of core labour rights regardless of their contract, including the rights to organise, negotiate collective agreements and strike.
Instead of “clarifying” the status of employed or self-employed, we contend that the best way to ensure security on a highly fragmented and competitive market is to allow all workers, independent of the form of contract - as long as they are not genuinely self-employed service providers - to be entitled to a full range of employment rights. We therefore reject the creation of a third (intermediate) status, between workers and self-employed service providers. As we argue further under question 8, creating a lower level of rights and employment protection for workers falling between the established concepts of subordinate employment and independent self-employment is only liable to cause greater uncertainty and confusion.

**Q8**

*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?*

The issues under question 7 and 8 are closely related. We insist on the importance and urgency of addressing the massive proliferation of atypical forms of work in the entertainment sector and the precarity it engenders for cultural workers. However, we believe the term of “floor of rights” as conceived in Q8 is ambiguous and would promote minimum standards (which for many workers would actually be maximum standards), as well as undermine employment rights already achieved in certain member States.

Therefore, FIA believes that all people working should be entitled to the full range of employment rights, above all the right to organize, whether they are employed on a fixed-term, short-term, temporary or casual contract or other form of contractual arrangement. This would prevent social dumping and would allow the development of a highly qualified workforce.

We insist that creating a lower level of rights and employment protection for workers falling between the established concepts of subordinate employment and independent self-employment is only liable to cause greater uncertainty, more precariousness and confusion.

**Q12**

*How can the employment rights of workers operating in a transnational context, including in 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?*

This question is of great relevance for a sector marked by dynamic cross-border activity and significant geographical mobility of workers. FIA is strongly attached to the free movement of performers and other cultural workers, provided the aim is not to avoid statutory provisions set up to protect workers, or to jeopardize collective agreements that were the fruit of many years of social dialogue. The risk we see nowadays is that current differences in national definitions and categories of workers/self-employed are calling into question systems which have been established to extend solidarity and protect all workers regardless of their status.

Therefore, we believe that the employment rights of the country where work is carried out should be applied to all workers within its territory, whether on permanent or temporary basis. Moreover, we believe that
workers exercising a cross-border activity should be able to benefit from more favourable working conditions if these are in force in the country of destination, as well as from more efficient social security coordination infrastructures. Such practices would foster mobility based on search for talent and skills rather than on profit and pressure on remunerations.

We believe the concept of "worker" should, in accordance with the practice of the ECJ, have a meaning in Community law that is interpreted uniformly and extensively in the implementing legislation of all member States. Freedom of movement for workers is a basic freedom enshrined in the Treaty, therefore it is vital that Community legislation is applied in a coherent way in all member States. It should not be possible for a member State to avoid its obligations under the treaty or secondary legislation by applying a restricted definition of "worker" or any other terms that define the areas in which Community labour law applies.

The Commission should be actively encouraging more convergent and broad definitions of 'worker' where national definitions are narrow and exclude certain categories of workers (e.g. freelancer/self-employed performers). However, this should not prevent member States from adopting more extensive national definitions.

In relation to the mobility of performers, FIA has repeatedly asked for better coordination of national tax and social security regulations at EU level. Following on the above, we deem that the application of a more convergent and extensive definition of worker while implementing EU legislation at national level is one valuable step towards achieving more coherence and better coordination of national regulations, in an increasingly cross-border activity.

**Q13**

*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?*

Undeclared/dissimulated work has a damaging impact on EU economy and needs to be actively prevented, particularly in an enlarged internal market defined by increased mobility of workers and national legislative systems providing different and unequal levels of social and employment protection.

The entertainment sector is particularly exposed to this phenomenon because of the mobility of workers in this area and the growing number of cross-border productions or cultural events organised.

Consequently, enhanced cooperation is needed between relevant national authorities in the control and enforcement of labour standards, in order to fight worker exploitation and to combat illegal practices which result in labour market distortions and a weakening of collective agreements. Furthermore, labour inspectorates need to be strengthened and given more means to act efficiently.

Finally, although we believe this is the primary responsibility of public authorities in all member States, we consider that social partners should be fully associated to a policy of efficient control. In some member states (e.g the Nordic countries), the supervision of working conditions is mainly regulated in collective agreements under civil law. Compliance with these regulations is managed by the social partners. This supervision is effective and most legal disputes and conflicts of interests are resolved directly between the social partners, which is beneficial for both the workers and the employers concerned, as well for society at large.