



IAA Europe contribution to the
European Commission Consultation on
Draft Guidelines on collective bargaining of solo self-
employed persons
23 February 2022

Collective Bargaining Is Urgently Needed in the Arts Sector

International Association of Art (IAA) Europe welcomes the draft guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons.

IAA Europe is a network of about 40 national member organizations within Europe, representing professional visual artists. In Europe, there is a strong culture of freelancing and working on a solo self-employed basis in the arts and culture sector, specifically also in the visual arts sector.

We strongly support the aim of the draft to ensure that competition law does not stand in the way of collective agreements to improve the working conditions of solo self-employed persons. It is important to clarify and develop the legislation regarding the right for collective bargaining for all solo self-employed, whether working in traditional off-line environment or on digital/online platforms. The lack of collective bargaining contributes to poor job quality, low income and limited social protection.

The solo self-employed lack of the individual bargaining power to negotiate their terms and conditions, specifically also in the arts and culture sector in Europe, and thus their economic position is considerably weak. Solo self-employed artists have an imbalanced negotiating position vis-à-vis their contractual counterpart, leading to underpricing and to having little say over their working conditions. This applies both for those working through digital platforms and to those whose work is physically distributed.

We consider collective bargaining an appropriate, important and most efficient tool to improve their situation.

The market mechanism drives the consumer prices down in the arts too, but often to such extremes that it leaves most artists without a decent pay. The current situation in Europe is that the whole population has access to more art - visual art, films, music, literature, performing arts, etc. - than ever before and people are also consuming more art than ever before. This is an abundance that even the richest monarchs of previous times could only dream about. And yet, it is now getting more and more difficult for the artists to get significant income from the content they create and which people consume. One of the main reasons for this paradox is that artists have such a weak negotiation position when the rates of pay are negotiated and standards created.

A single artist can rarely actually negotiate with a big museum or other, similar institution, or with an international corporation. The majority of artists can only meekly accept the terms offered. The economic trend of sliding towards ever smaller payments to artists is blatantly visible in music and literature, but it is also affecting the visual arts. Especially in the digital domain visual artworks are now increasingly shared either without the artists' permission or the artists receiving less and less compensation.¹

If artists could use collective bargaining efficiently, they would much more be able to improve their working conditions and have real power in the negotiations where the "fair and appropriate payments" are defined and agreed upon.

We welcome that the draft guidelines recognize the principle set in the Copyright Directive that authors and performers shall be entitled to receive appropriate and proportionate remuneration when they license or transfer their exclusive rights for the exploitation of their works and any other subject matter protected by copyright and related rights. We support the clarification that the Commission will not intervene against collective agreements concluded by solo self-employed authors or performers with their counterparts in pursuance to the Directive.

¹ See also chapter 2 "Fair Pay, Collective Bargaining..." in the Voices of Culture report on "Status and Working Conditions for Artists..", June 2021, structured dialogue between the European Commission and the cultural sector, <https://voicesofculture.eu/wp-content/uploads/2021/07/VoC-Brainstorming-Report-Working-Conditions-2.pdf>



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It is of importance to stress here nevertheless, that the directive and its principles described above do not necessarily effectively strengthen the negotiating position of visual artists, as on the one hand, some national copyright laws in the European Union provide for the extinction of the exclusive exhibition right of visual artists once works are initially published (so they cannot refer to the directive's principles of fair remuneration at that point anymore), or on the other hand, where the exclusive exhibition right remains with the artist, a remuneration on its basis is only rarely put into effect, despite the directive's efforts to support this goal and often also despite national laws calling for a fair remuneration of artists.

We also want to stress that the draft guidelines should be developed bearing in mind that the visual arts sector in Europe generally lacks employment structures since there is only very limited number of permanent or fixed-term jobs on the market. Artists are often forced to work in precarious circumstances and work on a contractual, freelance and intermittent basis, which result in lower income that also has the tendency to fluctuate and remain uncertain.

In many cases, visual artists fall under the group of solo self-employed persons working "side-by-side" with workers, as described in the guideline. Yet, considering the arts market structure, a quite substantial group of visual artists in the European Union will not meet this provision. Nor will their counterparty have an annual aggregate turnover exceeding EUR 2 million or a staff with headcount equal or more than 10 persons. Yet the number of cultural professionals and artists is growing, just as the economic importance of the cultural sector for the European Union, while working conditions in the sector become more and more unstable.² The visual arts sector lacks clear definition of fair and appropriate payment standards for the artists' work. And the sector doesn't even have — in most countries — any kind of negotiation practice or framework through which artists could have real impact on how much they are paid for their artworks, working hours and services.

To fix this problem the guidelines on collective bargaining of self-employed should clearly state that the recognized and representative organizations for cultural professionals have the right to bargain collectively on behalf of all their self-employed members.

The International Association of Art (IAA) Europe is a network of about 40 national member organizations within Europe (National Committees), representing professional visual artists.

IAA Europe is one of the five cultural regions (Africa, Arab States, Asia and the Pacific, Latin America and the Caribbean, Europe) of the [International Association of Art \(IAA/AIAP\)](#), the largest international non-governmental association of visual artists, with more than 100 member organizations worldwide. The IAA supports international cooperation and artistic exchange, free from any aesthetic, political or other bias and aims to improve the economic and social position of artists on national and international level.

The Executive Committee of IAA Europe consists of **Andrea Křístek Kozárová** (President) - NC of Slovakia - [Slovenská Výtvarná Únia](#) / **Anders Werdelin** (Treasurer) - NC of Denmark – [Billedkunstneres Forbund \(BKF\)](#) / **Teemu Mäki** - NC of Finland - [Suomen Taiteilijaseura](#) / **Maria Moroz** - NC of Poland - [Związek Polskich Artystów Plastyków](#) / **Pontus Raud** - NC of Sweden – [Konstnärernas Riksorganisation KRO](#) / **Marcel Noack** - NC of Germany – [Internationale Gesellschaft der Bildenden Künste \(IGBK\)](#) / **Hilde Tørdal (Vice President)** - NC of Norway - [Norske Billedkunstnere](#) / **Egle Ganda Bogdaniene** - NC of Lithuania - [Lietuvos Dailininky Sajunga](#)

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² See also the study "Creating Growth: Measuring Cultural and Creative Markets in the EU", by Studio EY France, commissioned by GESAC in 2014, <https://kreativneindustrije.me/wp-content/uploads/2019/07/07-Measuring-cultural-and-creative-markets-in-the-EU.pdf>