



The Ultimate Cookbook

FOR CULTURAL MANAGERS

SOCIAL SECURITY
IN AN INTERNATIONAL CONTEXT

2021

(an update of the 2016 edition)

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This publication is part of the EFA RISE 2 project implemented with the support of the Creative Europe Programme of the European Union. This publication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

ISBN

9789464335606



Co-funded by the
Creative Europe Programme
of the European Union

© 1st edition: March 2016 - Brussels

© 2nd edition: March 2021 - Brussels

EFA RISE 2

The EFA RISE 2 project runs from 2017-2021 and aims to build an engaged, cross-generational, multidisciplinary and cross-sectorial community through ongoing activities such as the Festival Knowledge Centre, the Festival Places Portraits videos, the EFA Festival in Focus interviews, the Culture Commissioner Round Table and the annual Arts Festivals Summit. Events specifically targeted at young professionals include the *Ateliers* for Young Festival Managers and Production Managers and workshops with Pearle* on European legislation. To encourage cooperation in the community EFA will work with the Future Heritage Ambassadors, the In Situ Insight delegations to festivals and the Arts Festivals Council. The focus will go from the human capital at the centre of festivals to their connection with audiences and places, and will culminate with the connection between festivals and artists to build dialogue, empowerment and empathy. By acting on the quality of long term engagement EFA will have a long term impact on society.

EFA / PEARLE* partnership

In the frame of EFA RISE (2014-2017) and EFA RISE 2 (2017-2021), EFA teamed up with its Synergy Partner Pearle*-Live Performance Europe to improve general knowledge of the legal and managerial aspects of cross-border cultural cooperation.

The partnership on capacity building in the context of internationalisation, cross-border cooperation and mobility encompasses workshops, booklets and four video announcements.

Visit: <https://www.efa-aef.eu/en/initiatives/efa-rise-2/>
or <https://www.pearle.eu/activity/efa-rise-efa-rise-2-apr-2014-mar-2021>

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Let's
cheer for
a simpler
legislation for
live performance

PROLOGUE

The European Festivals Association (EFA) and Pearle*-Live Performance Europe have teamed up to improve knowledge on legal and managerial aspects on cross-border cooperation within the EFA RISE project, funded by the Creative Europe Programme from the European Union from 2014 until 2017. The cooperation continued in EFA RISE 2 from 2017 to 2021.

Between April 2014 and March 2021 several workshops, under the experienced guidance of legal and academic experts, were organised on a wide range of issues which either have a cross-border dimension or are of common interest to many artists and cultural managers across Europe. Participants were invited to bring their questions along, and both theoretical approaches and practical cases with suggestions for solutions are assembled now in this booklet.

Cross-border working, touring and international collaboration is in the DNA of the live performance sector. With the cookbook, we provide you with the necessary ingredients and a number of recipes to "cook this social security dish". As for all dishes one can add some spices, flavours or other ingredients depending on one's taste and needs.

We thank Bruno De Pauw, Advisor General of the Department for International Relations at the Belgium National Social Security Office (NSSO), who patiently explained social security for artists, touring companies, festivals and other players at several workshops and was a great help in writing this booklet. He gave advice on how to deal with complicated matters, whilst acknowledging that European rules may be challenging for mobile artists, touring companies and organisers. The 2021 edition has been updated with his kind support.

INTRODUCTION

Activities of artists are rarely limited to their own country. Nowadays artists (and other cultural professionals) are very mobile and easily accept a job offer or an activity abroad.

Let's think *for example* of:

- *the dancer on tour for several weeks in different EU countries;*
- *the actor engaged by a theatre company in one country and invited as a guest dramaturg in another country;*
- *the musician playing in several orchestras and music ensembles in different countries, rehearsing in yet another country;*
- *the painter having an exhibition in different countries, ...*

All these situations show a vibrant and highly mobile sector that is not defined by borders. Yet there are some practical matters related to working in different countries that need to be taken care of.

In this booklet we will help you to understand the consequences on social security in an international context and explain what you must do to comply with the European rules.



What is Social Security?

Social security is a system of government programs intended to promote the welfare of the population. By paying contributions for your **professional activities** you build up a safety insurance should you fall ill, become unemployed or eventually retire. You also gain access to other rights such as family allowances or allowances in case of accidents. Professional activities are executed as either an **employed or self-employed** person.



Do I have to pay social security contributions as an employed or as a self-employed person?

The difference between an employed and a self-employed person is a tricky thing, especially for artists. Every Member State has its own rules and regulations. In general, it can be stated that when you have a labour contract, you are usually considered as an employee. If you don't have a labour contract and perform independent services for third parties, you are usually considered to be a self-employed person. In some cases you can even be a civil servant, for instance when you take on a teaching assignment. Self-employed persons have to pay contributions on their professional income themselves. The responsibility for the payment of contributions for employees and civil servants lies with the employer (who also has to withhold the employee's share directly from its gross salary).



But I'm a freelancer!

Indeed, as an artist or cultural professional you can be in parallel an employee, self-employed and sometimes even a civil servant depending on your activities. For example: a teaching job at the Royal Conservatory in Belgium (civil servant), member of an orchestra in the Netherlands (employee), teaching music privately to children in Luxembourg (a self-employed activity).



This is what you should remember! Always start by...

... checking whether your activity is considered to be **self-employed, employed or civil service** (your employer, union, helpdesks for artists & workers or the social security institutions can advise you).



What happens when I work abroad?

When it comes to working abroad there are two points in relation to social security to keep in mind: the **European coordination rules** and the **national legislation of its Member States**.

Each country has its own system for social protection and social security entitlements. Some of those systems have existed for several decades (the first regulations providing assistance to workers date back 150 years). The EU social security regulation didn't want to interfere with the national legislation, nor to go for one unified system. As a result, **every Member State keeps its own social security system.**

The European legislation on social security comes on top of this national legislation, not in order to replace it, but to coordinate the rules of the different national social security schemes. This is done in a way that seeks to guarantee social protection in one country for individuals travelling or working abroad, and to eliminate inconveniences for EU citizens.

The European Union therefore protects **the right of free movement and mobility** within its territory, from one Member State to another Member State. It is one of the fundamental rights of the EU that one is free to go to another country and work there. The EU sees it as its obligation to reduce hindrances and to eliminate obstacles. The European legislation is designed to facilitate such rules and regulations in favour of Europe's inhabitants, to protect the wellbeing of its citizens and to create an internal market for citizens and services.



What then are the basic principles of the regulations laid down by the European Union?

1. The regulations provide a set of rules to determine **which Member State will be exclusively responsible for your social security;**
2. You are **immediately covered** and build up rights (e.g. for health) in your new Member State without being hindered by waiting periods;
3. **Benefits can be exported** to other Member States;
4. **Discrimination** between own nationals and the nationals of other Member States is **prohibited**;
5. The **national social security institutions must cooperate** when applying EU law.



Where are these principles applied?

The regulations are applicable to all of the 27 EU Member States, the EFTA countries (“European Free Trade Association”: Norway, Iceland and Lichtenstein) and Switzerland.



Who is covered by these principles?

The regulations are applicable to **all persons working cross-border in the EU, even third country nationals provided they have a legal residence** in one of the Member States.



Exceptions

There are some very **important exceptions** that you have to keep in mind though:

- In Denmark the rules are only applicable to EU and Swiss nationalities;
- In the EFTA countries the legislation is only applicable to EU and EFTA nationalities;
- In Switzerland the regulation is only applicable to EU and Swiss nationalities.



A special remark on EU citizens temporarily working outside the EU

Member States also conclude social security agreements with countries outside the EU. The principles laid down in those agreements are often similar to the Regulations as concerns the country competent for social security. Information can be obtained with the national authorities of each Member State.



Remark about the UK

The Trade and Cooperation Agreement between EU and UK provides for a wide coordination of social security, but certain benefits are more limited than under current EU law. The rules on applicable legislation (like posting) are similar to the ones in the European regulations (see further in this booklet).



This is what you should remember!

1. Every Member State has its own social security system;
2. The European Union coordinates the different systems according to a set of principles and rules;
3. The European Union determines which Member State is responsible for the social security, but the application in practice (contributions and the extent of the coverage & benefits) depends solely on the national scheme.

PRINCIPLES

The next part may seem somewhat complicated but it will help you to understand the way in which the system works

Unity of Legislation principle

One and only one national legislation applies at a given moment

The main principle is that somebody working abroad will be subject to only one social security system. Europe's viewpoint is that entitlement to social security protection is unified in one Member State only for each person in the scope of the regulation. This way double coverage or payment of social security or no coverage/payment at all in two or more Member States are avoided. Whatever the situation, the rules set out in the regulations will always appoint one and only one Member State responsible for a person's social security coverage.

Country of Employment principle

Entitlement to social security benefits goes together with obligations in the form of paying contributions to the statutory social security system that is related to the job a person is holding. The protection level depends largely on the income earned from this job. Because the payment and level of contributions are job-related, as a general rule it is the social security system of the country of employment that is adhered to. This ensures the equality of treatment at the workplace.

This means that a musician living in Munich, Germany, but playing exclusively in concert halls in Salzburg, Austria, will have to pay social security contributions in Austria. She/he will also be entitled to social security benefits in Austria.



Exceptions

In very specific cases the regulation foresees exceptions to the country of employment rule:

1. Specific rules for civil servants, sailors, ...;
2. Posting;
3. Simultaneous activities in different Member States (or working in two or more Member States);
4. Other exceptions.

We will explain two of these exceptions which are of particular interest to mobile artists and cultural professionals: posting and working in two or more Member States.

Here
is where you
need to step
back, take a deep
breath and
dive into the next
part.

POSTING

Temporarily working in another Member State

Whenever you have a professional assignment (as an artist or other cultural professional) in another Member State, you would normally, according to the general principle of the country of employment, be subject to the social security system of the Member State where you are then working. This means that, no matter how short or long the assignment, you would have to register with the local social security institutions (for health care, family benefits,...) and pay social security contributions according to the legislation of the State where you temporarily work.

But this could cause a huge administrative burden. It can be very time-consuming, difficult to put into practice and even cause financial worries. What would happen, for example, if you had to fall back on family allowances or sickness insurance if it was different from that of the country you are used to? What would be the agreed work status? For example, supposing you are registered as self-employed in your own country of residence but that status is not accepted by the other country where you perform? Or vice versa? A lot of time would be needed to comply with the correct social security rules and procedures in the country where you are posted. Sometimes in a language you do not understand.



To avoid this situation...

... and in order not to raise obstacles to workers moving within the European Union, an **exception to the country-of-employment rule is foreseen called “posting”**. This means that if a person works in another EU Member State for a well defined limited period of time, he remains under the social security system of the country from which he is sent abroad (the “home country”).



What does Posting really mean?

Posting is possible for employees and self-employed workers, provided a number of strict conditions are fulfilled. Not every temporary mission abroad qualifies as a “posting”! The concept of posting is defined differently for employees and self-employed workers.

for employees

posting means:

- That if a worker is sent abroad by his employer;
- To perform a well-defined task;
- For a limited time;
- While he remains under the authority of his employer.



then the social security coverage continues in the sending Member State (in practice, the country of his habitual place of work)

for self employed

person posting means:

- That if he works abroad;
- To perform a well defined task;
- For a limited period;
- While he maintains in his original State (the sending Member State), the necessary means to carry on his self-employed activity upon his return.



then the social security coverage continues in the sending Member State

As we already explained, different Member States have different rules about who is considered an employee or self-employed. It's very important to remember though, that when you are posted to another Member State, you will keep the status you had in the Member State that you were sent from. After all, the social security scheme of the temporary State of work does not apply, including the rules that define the difference between salaried and self-employed work.

For example

A Belgian opera singer living in Brussels is paying contributions in Belgium as a self-employed person. He has received an invitation to perform at an opera house in France. In France he would be considered an employee of the opera house under French legislation. Yet because he posted himself from Belgium and Belgian social security will remain applicable during his concerts in France, he will also keep his status as self-employed person as if the activities would have taken place in Belgium.



What are the conditions for employees?

When you, as an artist or a cultural professional, are sent abroad by your employer for a limited time, are you considered to be a ‘posted worker’? Will you remain covered in your habitual social security scheme?



Understanding what it takes to remain covered under the social security scheme of your country

To obtain the **status of posted worker** and to remain under the social security system in the Member State where you were sent from, **you must fulfil all of the following conditions**. Failing to comply with one or several of these conditions will mean that you will be covered in the State where the activities are performed.

- Exercise the activities abroad under the exclusive authority of your employer in the sending Member State (in other words, maintain a direct relationship between yourself and your employer), thus there is a **direct relationship** between you and your employer. Do not sign any (additional) labour contract with a company in the temporary State of work, as this irrevocably excludes the posting provisions;
- Work in the other Member State for a maximum duration of **24 months**;
- Be affiliated with the social security system of the sending Member State for **at least 30 days** immediately prior to the posting;
- Not be sent to replace another posted worker in the receiving (or hosting) Member State.



Comment

The third condition, prior affiliation of minimum 30 days with the social security system of the sending Member State, is often a problem. For example a French dancer is engaged by a Spanish dance company for a specific project. The dancer comes to Spain during 10 days for rehearsals and then goes on tour with the dance company to France. The prior affiliation condition is not fulfilled and the employer has to comply with the social security legislation of the country where the activities are performed, in this case France.



Direct relationship between the employer in the sending State and the posted worker:

What does it mean?

How to provide proof of the employment relationship?

A number of principles determine whether a direct relationship exists between the sending employer and the posted worker:

- The sending employer must be responsible for **recruitment**;
- The posting must happen under the **labour contract** between sending employer and posted worker. There can be no new and/or local labour contract with another company during the posting period. If the assignment abroad takes more than 30 days, an annex (“secondment or assignment letter”) to the original contract must be drafted containing a number of essential elements relating to work abroad;
- The power to terminate the contract of employment (**dismissal**) must remain exclusively with the sending employer;
- The sending employer must keep the power to determine the “**nature**” of the **work** performed by the posted worker;
- The power to impose disciplinary action on the employee remains with the sending employer;
- The **liability with regard to remuneration** of the posted worker rests with the sending employer (Since August 2020, this remuneration should be equal to the remuneration applicable in the sector or in general in the host country when lower than in the sending country). It is however possible for the employer to make an agreement with the receiving company or institution on the manner by which the actual payments are made to the employee.

Some examples to clarify these notions:

For example

A musician employed by an Italian orchestra is sent to Switzerland as part of an exchange project with a Swiss orchestra. The Swiss orchestra demands from the musician that he signs an additional labour contract for the duration of the activities in Switzerland. In this case the musician cannot be considered as a posted worker, since the additional labour contract implies a direct relationship with the Swiss company.

Swiss legislation will fully apply and the concrete consequences will be determined according to its provisions: will the Swiss company be considered as the sole employer or will the Italian company also be liable? Which company has to make the payments etc. The musician too will have to undertake the necessary steps to enjoy his rights in the Swiss scheme and register with the competent funds and institutions."

A Polish dance company has signed a contract with a German dance company in order to make use of the services of a choreographer employed by the German dance company. This choreographer is sent to Poland to recreate a choreography previously performed by the German company. In order to avoid the difficulties due to the fluctuating currency exchange rates, the Polish company directly pays the salary of the choreographer on behalf of the German employer and afterwards invoices the sum to the German employer. In this case the German company is still liable for the remuneration of the choreographer and there is no problem with the posting condition concerning the remuneration.

A Czech choir has signed a contract (co-production) with a Czech music ensemble. The Czech music ensemble signed a contract with a German organiser to perform at two concerts.

Although the Czech choir is not directly contracted by the German organiser, the remuneration of the Czech singers should correspond with the German applicable collective agreement. Provided the Czech singers meet the above mentioned posting conditions, Czech social security coverage applies during the concerts in Germany.



In practice...

Proof of the employment relationship can be done on the basis of documents, such as the employee's initial contract signed by both parties, salary slips, a job description or instructions issued by the employer about the work to be done.



A coverage of at least 30 days immediately prior to the posting: what does this mean?

A posting can only take place provided that you have been covered by the social security system of the sending Member State for **at least 30 days prior to your assignment abroad**.

It is, however not uncommon for an artist to be recruited by a company in a Member State with the purpose of giving a performance in another Member State, before the performance premiered in the sending Member State.

It must be stated that the 30 days condition entails not only coverage by working and paying contributions. It suffices to benefit from **at least one branch of the social security system** of the sending State for this condition to be met.

For example

An actor residing in Spain is currently receiving Spanish unemployment benefits since his last production 2 months ago. Now he is hired by a Spanish theatre company and immediately sent to a theatre festival in France. Because he was affiliated to the Spanish social security system through his unemployment benefits, he meets the 30 days condition and can immediately be posted by the Spanish theatre company.

A student at a conservatory in Belgium is hired by an orchestra immediately after finishing his studies. The orchestra goes on tour to Austria. Because the student, as a non-active person, was affiliated via his parents with the social security system of his Member State of residence, Belgium, he fulfils the 30 days condition.

Secondly, shorter periods of affiliation can be accepted, but they require a case by case evaluation. Some Member States have developed a specific policy for performing artists. Be sure to inquire with the competent institution in your Member State.



What are the conditions for **self-employed**?

As an artist or a cultural professional who is self-employed, you can also be posted to another Member State. This means that you remain affiliated with the social security system of the sending Member State for the duration of your activity in the receiving Member State.

As for employees, there are several conditions which have to be met before you can be posted:

- You must have pursued your **self-employed activity for some time** in the sending Member State before being posted;
- The temporary activity in the receiving Member State **must be similar** to the activity pursued in the sending Member State;
- The anticipated duration of that work can not exceed 24 months;
- You must have been affiliated with the social security system of the sending Member State **for at least two months**;
- You must continue to fulfil the necessary requirements for your normal activities in the sending Member State in order to be able to continue those upon his return.

The regulations require that you “must have already pursued your activity for some time” before the date of posting. In this regard a **period of two months** can be considered satisfactory, with shorter periods requiring a case by case evaluation.

Now
we come
to the heart
of the
administrative
handling in posting:
the main
and indispensable
A1 form



What is an A1 form?

The A1 document is a portable document that certifies that you remain under the social security coverage of a sending Member State up to a specific date while performing activities in another Member State.



Where can I obtain an A1 form?

The employer who wants to post a worker to another Member State or the self-employed person who wants to post him/herself, must contact the **competent institution (on social security) in the sending Member State**.

This institution will evaluate whether all conditions for the posting are fulfilled.

If this is the case, the institution will deliver the A1 form to the concerned parties and notify the competent institution of the Member State where the posting is taking place (the State where the activities are pursued).



Good to know!

The form can be obtained for as much as an entire year provided one knows the schedule of activities abroad. This working pattern is not called “posting” but “multistate activities” and other rules apply, see further point 3.



What happens if I can't provide the A1 form?

When you fulfil all the conditions for a posting while on assignment abroad, you will remain under the social security coverage of the sending Member State, regardless whether you have an A1 form or not (it means that in that situation you cannot choose to register with the social security system of the receiving State). The European Court of Justice was very clear on this: only the objective working conditions determine the competent State, not the A1 form itself.

However, if you can't provide the A1 form as a posted worker, the receiving Member State where you are temporarily performing doesn't have any proof that you meet the conditions for a posting. In that case, the authorities of the receiving Member State can decide that you should be covered by the social security system of the receiving State and that it will be up to you to contest this. This means that you would have to pay contributions there and fulfil all the administrative obligations that come with it. It is possible to obtain an A1 form retroactively, but as you can imagine, it will cost you a lot of time and money to set the record straight!

As it may take sometimes a long time to obtain an A1 form in certain Member States, the minimum is that one can prove to have submitted the demand to the competent authority on social security before the tour.



Be warned

When you are touring in Member States like France or Italy, you will also be asked by each of the local organisers to provide your A1 form! They will even prevent you from performing or withhold the fee if you don't show the A1 form beforehand.



Tip

Play safe and always ask your social security administration for the A1 before you leave on tour. Even if you haven't received it in time before the tour, make sure to take proof of your demand (return receipt of the application for the A1) with you.

Thus the A1-form is an important proof of the fact that the social security rights and obligations are covered in the original country. Only when it is officially withdrawn by the social security administration, does it cease to have the power of proof.



Who applies for the A1 form?

The **employer** will normally apply for the A1 form for the employees that go on tour.

The **self-employed** worker shall apply for the A1 form with the respective social security administration that deals with self-employed persons. In principle it is also possible for individual persons who normally work on the basis of consecutive fixed-term labour contracts in different countries to obtain the A1 form directly with the competent institutions themselves.



How long does it take to obtain the A1 form?

Depending on the country the A1 form may be delivered in less than a day (for example in Belgium there's an easy and accessible on-line tool for employers and self-employed persons), but it may also take several days, in some countries it may even take weeks or months for the social security offices to deliver the A1.



Remember!

Contact the competent institution in your Member State before you are posted.



Find out:

- What their procedures are;
- What information and/or documents they require to make a swift decision;
- How long it takes on average for them to deliver an A1 form.

This will allow you to better prepare your postings and avoid situations that will cost a lot of time, money and effort to resolve.

Branch, employers or sector federations can be of help to you in providing the contacts to the social security administrations.

Example of an A1 form

The image shows three examples of EU A1 forms, each titled 'Certificate concerning the social security legislation which applies to the holder'. The forms are for different categories of workers: a person working in another EU state, a self-employed person in a different EU state, and a self-employed person in a different EU state. Each form contains sections for personal details, contact information, and specific details about the holder's situation and the applicable legislation. The forms are numbered 01, 02, and 03 respectively.



Comment concerning the trade and cooperation agreement between UK and EU

The agreement contains a large section on social security. In this context EU Member States could opt in for the system on posting. All EU Member States have done so, which means that for touring between UK and EU Member States the A1 form continues to be valid. As a result double payment of social security is avoided.

WORKING IN ≠ MEMBER STATES

simultaneous or alternating activities

European legislation contains specific arrangements for those citizens who work in more than one country. It concerns one of the exceptions to the State-of-work rule in the European social security coordination regulations, that we discuss in this booklet and which is important for mobile artists and cultural professionals.

Take a situation where a musician or artist works with a music ensemble or production company in one Member State, but also regularly performs with another band or company in different Member States successively for production periods of a couple of weeks each.

Imagine a situation where an artist has a regular job in one Member State (like a permanent job in a theatre or orchestra, or in teaching) with occasionally an extra contract in another Member State for performances during a holiday period or weekend.

Imagine that this artist also goes on tour with the music ensemble or production company, being hired for a number of performances in different countries for the period for which he is hired.

The rules implemented by the Regulation are designed to ensure that even in these cases the **social security legislation of only one Member State** is applicable at a given time.



What are simultaneous or alternating activities in different Member States?

Activities that are performed **simultaneously** in different Member States are carried out simultaneously under the same or different employment contracts. The second or additional activity can take place during paid leave, the weekend or even on the same day.

For example

A music teacher who has a teaching position at a conservatory in one Member State and an employment contract with an orchestra in another Member State will fall under the special rules for working in two or more Member States.

Activities that are performed **in alternation** are activities which are not carried out simultaneously over the territory of several Member States, but consist of **successive work assignments** carried out in different Member States, one after another. Or activities that are carried out in the territory of several Member States in application of one single contract (a tour comprising performances in multiple countries).

For example

An actor who regularly works with several theatre companies in one Member State, but every summer participates in theatre festivals in a different Member State, is considered to be working in alternation in two or more Member States. It is not relevant how often this alternation takes place but some regularity in the activity is required and these activities must be scheduled and contracted beforehand, in other words must be “normally” carried out in more than one Member State.



Am I in one of these situations?

In order to assess whether you fall under one of these situations it is, first of all, important to establish whether periods of work in several Member States will follow each other with a certain regularity in the course of the following 12 months.

This means that the **predictability** of your activities for the following calendar year **is key** in determining which social security legislation applies to you. The competent authorities in the Member States will especially look at your actual and future employment contract(s) to make their decision because they should contain relevant information regarding the nature, duration and location of your activities.

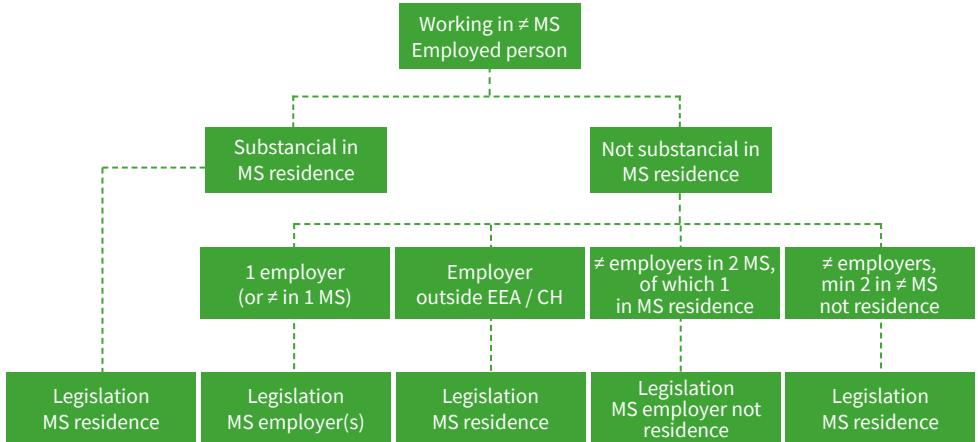
Given an artist's irregular career pattern, you can imagine that it is often not easy. In such cases it may also help to look back over the previous year (or years) to see what kind of pattern of work contracts emerges.

Always be sure to keep your contracts up to date with the latest information regarding your employment situation!



Working as an employee in two or more Member States

The following chart, created by the National Social Security Office in Belgium, explains the rules that will determine which Member State will be responsible for your social security when you work in two or more Member States (MS):



When working in two or more Member States, you will first have to see whether you work substantially in your Member State of residence. If that is the case, the social security legislation of your Member State of residence will be applicable to you, regardless the number of employers you have and where they are established.



But what does it mean to work substantially in your Member State of residence?

A strong indicator is the fact that you spend **at least 25 % of your working time and/or earn 25 % of your total remuneration as an employee in that State.**

Other criteria regarding your activities can also be taken into consideration by the competent authorities.

For example

A Dutch theatre light designer works at a theatre in Brussels, Belgium. He works 3 days a week in Brussels, but can also work 2 days a week from his home in Rotterdam. This means that he pursues 40 % of his activity in his Member State of residence, the Netherlands, and that the Dutch social security legislation will be applicable to him for the whole of his professional activities. As a consequence the Belgian theatre has to pay the social security due to the competent authority in the Netherlands.

If you do not work substantially in your Member State of residence (i.e. less than 25%), several scenarios are possible, as you can see in the chart. The following questions have to be asked:

1. Does your employer(s) have its registered office or place of business in one Member State?

You will be subject to the social security legislation of Member State where your employer(s) have its registered office or place of business.

2. Is your employer established outside of the European Economic Area or Switzerland?

You will be subject to the legislation of your Member State of residence.

3. Do you have employers in two Member States, one of which is established in your Member State of residence?

You will be subject to the legislation of the Member State where your other employer is established (NOT to the legislation of your Member State of residence)

4. Do you have employers in at least two different Member States, none of which established in your Member State of residence?

You will be subject to the legislation of your Member State of residence.

This might seem complicated, but if you evaluate your situation and follow the chart, you'll quickly be able to determine which rule applies to you. The following examples will also help illustrate the different possible scenarios:

For example

1. An actor lives in Germany and has an employment contract with a theatre in Austria. He spends 20 % of his working time touring in Germany, but for 80 % of his time he tours in Austria and various other Member States.

→ He doesn't work substantially in his Member State of residence, Germany, and his employer is established in Austria. Therefore the Austrian social security regulation will apply to him.

2. An actor lives in Ireland and works for an American theatre company. He tours several Member States of the EU for an entire year. He only spends two months of that tour in Ireland.

→ He doesn't work substantially in Ireland ($\pm 17\%$). His American employer is established outside the EU/EEA+CH. Therefore he will be subject to the social security legislation of his Member State of residence, Ireland and his American employer will have to pay social security contributions in Ireland.

3. An actress has a contract for 20% of her time with a theatre company in Spain. She also lives there. For 80 % she works as a dramaturg for a theatre company in France.

→ She doesn't work substantially in her Member State of residence, Spain. She has one employer in her Member State of residence, Spain and one in another Member State, France. Therefore the social security legislation of the other Member State, France, will apply to her.

4. An actress lives in Sweden and has a contract of 20% with a theatre company in Finland. She also has an additional engagement in Denmark with a Danish theatre company for 80 % of her working time.

→ She doesn't work substantially in her Member State of residence, Sweden. She has two employers, established outside of that State. Therefore the social security legislation of her Member State of residence, Sweden, will apply to the whole of her professional activities and both of her employers will have to comply with the Swedish social security legislation.

It may not be easy to define the percentage of work undertaken in a current year. However when looking at a pattern of previous years this may help to indicate the amount of work undertaken in the residence country and that in other Member States.



Self-employed activities in two or more Member States

If you work substantially in your Member State of residence, the social security legislation of that Member State will apply to you.



But what does substantially mean?

For self-employed persons you need to take account of your **turnover**, your **working time**, the **number of services rendered** and/or your **income** from your professional activities in your Member State of residence.

If **any of these criteria** has a share of at least 25 %, this is a strong indicator that you pursue a substantial part of your activities in your Member State of residence. Other criteria regarding your activities can also be taken into consideration by the competent authorities.

For example

A self-employed, freelance singer works in France, where he also lives. At the same time he is regularly invited as a guest singer for several ensembles abroad, for which he rehearses, tours and performs abroad. Over a period of twelve months he spends 40 % of his average working time in France.

→ Because he spends a substantial part of his professional self-employed activities in his Member State of residence, France, the social security system of that State will apply to him for the whole of his activities and he will have to report his entire income to the French competent social security institution.

If you don't pursue a substantial part of your activities in your Member State of residence, then the legislation of the Member State in which the **centre of interest of your activities** is situated will apply to you.



What does the ‘centre of interest of my activities’ mean?

This concept takes into account all aspects of your occupational activities:

- Where are you officially established as a self-employed person?
- What is the usual nature and duration of your activities?
- Where do you render the most services?
- What are your intentions? Where do you want to expand and pursue your activities in the future?

Again, you need to evaluate these criteria over a period of twelve months. Past situations can also be taken into account by the competent authorities to make a full assessment of your situation.

A freelance musician lives in Switzerland and works for several ensembles in Germany and Austria. She is officially established as a self-employed person in Switzerland, but doesn't pursue any professional activity in that State. The majority of her performances are in Germany and she means to expand her activities there.

→ *She doesn't pursue a substantial part of her activities in his Member State of residence (Switzerland). Therefore the German social security legislation will apply to her, because the centre of interest of her self-employed activities is situated in that Member State.*



Combination of both: employed + self employed

If you work in two or more Member States as an employee and as a self-employed person, the social security legislation of the Member State responsible for **your activities as an employee** will apply to you.

For example

An actress has an employment contract in Sweden with a Swedish theatre company. That theatre company only rehearses and tours in Sweden. She also occasionally works as a self-employed freelancer for Danish and Finnish theatre companies.

→ *Because Sweden is the competent State for her activities as an employee, the Swedish social security legislation will apply for all her professional activities, including the ones pursued in Denmark and Finland.*



Where can I ask for an A1 form when working in two or more Member States?

In order to obtain an A1 form you need to contact the competent institution in your Member State of residence. That institution will make an overall assessment of your professional situation and determine provisionally which Member State will be responsible for your social security. Next they will notify all the Member States where you pursue professional activities of their provisional decision. Finally, the institution of the Member State responsible for your social security will issue an A1 form to you. This can be the Member State where you live or the one where your employer / one of your employers is established.



Remember!

Always contact the competent institution in your Member State of residence, when you are working in two or more Member States!



Practical implications regarding the payment of social security contributions:

When your activity is considered as substantial in the Member State of your residence, the social security contributions are due by yourself (as self-employed) or by the respective employer(s) in the scheme of your home country.

This creates complications for foreign employers as payroll offices are not accommodated to calculate nor to pay the contributions to the competent institution in your country.

The European legislation allows for you to play an active role and act as a representative of your employer toward the social security institution. The extent of this role and the liabilities transferred from your employer to you depend on your national legislation.

THE ESCAPE CLAUSE

The EU regulations foresee an “**ESCAPE CLAUSE**”.

This means that exceptions can be made to the normal rules:

- By a common and mutual agreement between the competent institutions of the Member States concerned;
- In order to prevent conflicts that could occur when applying certain rules;
- To allow for exemptions to be made for certain categories of persons or for individuals.

The **escape clause** is commonly used to extend the maximum posting period beyond two years or to correct past situations where for example contributions were paid in the wrong Member State. It can also be used to dispense someone from the normal rules, but this is usually only applied in worthy cases. The application of the escape clause can only change the competent State, not deprive you of social security coverage or exempt you/your employer from the payment of contributions.

It's very important to remember that the Escape Clause requires a common agreement between two or more Member States. Different Member States have different interpretations and policies on when to apply this escape clause.



Tip

Contact the institution in the Member State that is competent for your social security for more information.

Here are some tips for the great variety of mobile people in the artistic sector. This will make sure that you and your collaborators always have the correct social security coverage and will help you to avoid administrative problems as much as possible.



For **all persons** concerned it is vital to know:

- Usual residence (this is the centre of the personal interests of a person. Entry into national registers is not decisive but can be an important factor.);
- Nationality;
- Working in which countries, under what social status and since when;
- Where is/are the employer(s) established.

This information is essential in determining the applicable social security legislation. Always make sure to keep employment contracts up to date with the latest information!



For **festivals, theatres, venues, organisers** that invite (groups of) artists, this means:

- Making sure that artists not subject to the social security system of your Member State have an A1 form for their activities in your Member State and be able to present those to the respective inspectorates if requested;
- Helping and guiding those artists that need to affiliate themselves with the social security system in your Member State.
- Consider how to make the social contribution in the residence country of the artist when this is the case.



For **production houses, dance or music companies** going on tour, this means:

- Making sure that all your artists-employees have the necessary A1 form before the start of the performances (or at least have the evidence of the application with the competent institution);
- Making sure that all self-employed artists with whom you collaborate have the necessary A1 form before the start of the performances (or at least have the evidence of the application with the competent institution);
- Helping and guiding those artists that need to affiliate themselves with the social security system in the Member State where the tour is taking place;
- Consider how to make the social contribution in the residence country of the artist when this is the case.



For **individual artists**, this means:

As an **employee**

- Making sure you know where you are covered and where you need to fulfil your administrative obligations;
- Keeping track of your activities and working patterns and notifying the competent institution in your Member State about possible changes;
- Informing your employer about your activities and notifying your employer in a timely manner about possible changes when you are working in a cross-border situation;
- When you work with different fixed-term contracts in different countries and you know your schedule for the next months, make sure you apply for an A1 with the competent institution if this is possible in your country.

As a **self-employed** person

- Making sure you know where you are covered and where you need to fulfil your administrative obligations;
- Keeping track of your activities and working patterns and notifying the competent institution in your Member State about possible changes;
- Making sure you apply for an A1 form in a timely manner when working in a cross-border situation.



When in doubt

When you are confronted with complex situations or have difficulties determining which Member State is responsible for social security, you should never hesitate to contact the competent social security institution of your Member State. They can give advice or guide you to the competent institution that will be able to help you.



For all concerned

- Communicate with each other, be clear, comprehensive and prepare well in advance;
- Start applying for the necessary documents in a timely manner to avoid last minute panic situations;
- Do not hesitate to seek guidance from the the social security administration, or other bodies who can give you the correct advice.

SUMMARY

✓ THE BASIC PRINCIPLE

The social security legislation of only one Member State at a given moment will be applicable.

✓ COUNTRY OF EMPLOYMENT

Working in one Member State → Social security legislation of that Member State applies, regardless of residence worker / place of establishment employer(s)

✓ REMEMBER THE EXCEPTION OF POSTING

Temporarily working in another Member State → remain under coverage of the sending Member State (see Chapter 2)

✓ REMEMBER THE EXCEPTION FOR WORKING IN TWO OR MORE MEMBER STATES

Simultaneous or alternating activities in two or more Member States (see Chapter 3)

✓ REMEMBER TO CONTACT AND INFORM THE COMPETENT INSTITUTION OF A MEMBER STATE WHEN WORKING CROSS-BORDER

✓ **REMEMBER TO HAVE AVAILABLE** following documents or information :

- **For the employee:** employment contracts, pay slips, A1 form in case of posting, working time (sheets).
- **For the self-employed:** service contract describing the assignment, A1 form in case of posting, turnover, working time, number of services rendered, income in Member State of residence, place of registered office, information on habitual nature and duration of activities.
- **For the touring company:** legal identity, entreprise number, place of registered office or place of business, contract with local venue, festival or promoter on the performances or tour (including start and end date, place of performances).

✓ **REMEMBER** to apply for the A1 form at your social security administration office well enough in advance (depending of the country where you are residing)!

USEFULL ADDRESSES AND LINKS

Your Europe: social security cover abroad

https://europa.eu/youreurope/citizens/work/unemployment-and-benefits/country-coverage/index_en.htm

A-Z on social security (FAQs)

<https://ec.europa.eu/social/main.jsp?catId=1142&langId=en>

EU social security coordination – DG Employment, Social Affairs and Inclusion of the European Commission (www.ec.europa.eu/social)

A great general introduction to EU social security coordination, with links to more **specific information** (www.ec.europa.eu/social) about the social security systems of the Member States. You can also find **contact information** (www.ec.europa.eu/social) about all the competent institutions in the Member States.

The practical guide on the applicable legislation in the European Union, the European Economic Area and Switzerland

https://ec.europa.eu/social/main.jsp?advSearchKey=practical+guide&mode=advancedSubmit&catId=1307&doc_submit=&policyArea=0&policyAreaSub=0&country=0&year=0

A downloadable guide that was created by experts in the Member States under the auspices of the European Commission. Your go-to guide when you have further questions about which social security legislation applies to your situation.

General EU Helpdesks

- **Europe Direct:** 00800 6789 10 11 – general information about the EU (www.europa.eu/european-union/contact_en)
- **EU SOLVIT:** this is a helpdesk for specific EU-related problems (www.ec.europa.eu/solvit)

GLOSSARY

Member State – all the countries belonging to the EU/EEA and Switzerland

EU – All the countries that are a member of the European Union: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

EEA – European Economic Area. All the countries that are a member of the European Union + Iceland, Norway and Liechtenstein

The EU regulations – The EU regulations that are explained in this booklet are Base Regulation (EC) 883/2004 and Implementing Regulation (EC) 987/2007

Modernised social security coordination rules

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems

Posting of workers

Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (Text with EEA relevance)

ECJ Case C-178/97. of 30 March 2000. - Barry Banks and Others v Theatre royal de la Monnaie. - Reference for a preliminary ruling: Tribunal du travail de Bruxelles - Belgium. - Social security for migrant workers - Determination of the legislation applicable - Scope of the E 101 Certificate

EUROPEAN FESTIVALS ASSOCIATION

The European Festivals Association (EFA) is a community dedicated to the arts, the artists and the audiences. EFA's main role in the permanently developing world of digitisation and globalisation is to connect festival makers so to inform, inspire and enrich the festival landscape. In this perspective, EFA is a festivals' service, knowledge and training provider; the oldest cultural network of European festivals set up in 1952! It was established to bridge the distance between organisations and all kinds of stakeholders and to create connections internationally. All this in function of the enrichment of a festival's own artistic offer and its organisational opportunities.

EFA is becoming a "We" story, linking people and organisations active in the arts management field. The EFA community including at its core its members as well as The Festival Academy Alumni, EFFE Labels and more take the joint responsibility to offer arts to audiences. It is a story that is reaching beyond Europe as it strives to consolidate interaction between continents, countries and cultures so that there can be mutual inspiration, influence and confrontation.

EFA guides the discourse on the value of arts festivals. A sector that is so unique and that shares a myriad of concerns on intellectual, artistic, material and organisational level deserves a strong umbrella organisation that supports local initiatives and gives arts festivals a unified voice.

The European Festivals Association is a trusted alliance of festival makers including:

- 80 EFA members; strong and long standing festivals and national associations of festivals coming from different countries in Europe and beyond,
- An ever growing group of 2.300 festivals in 45 countries registered on the FestivalFinder.eu website, among which 823 festivals received the EFFE Label 2019-2021
- 700 alumni of The Festival Academy, EFA's global peer to peer learning and capacity sharing programmes for young festival managers,
- 40 cities contributing and participating in the Festival Cities Initiative.
- EFA joined PEARLE* in 2005.

PEARLE*

LIVE PERFORMANCE EUROPE

Pearle*-Live Performance Europe is the European federation representing through its members and associations over 10 000 theatres, theatre production companies, orchestras and music ensembles, opera houses, ballet and dance companies, festivals, concert halls, venues, service providers and other organisations within the performing arts and music sector across Europe.

Pearle*-Live Performance Europe acts as a forum for exchanging information of relevance to members, for sharing experiences in cultural management and technical skills, for supporting and assisting the formation of employers' associations, in addition to serving as the body to make representations to the European Commission and any other authorities whose deliberations may affect the work of the Performing Arts in Europe.

The Performing Arts Employers Associations League Europe, or Pearle* is an international not-for-profit organisation in compliance with Belgian law.

The aim of this non-profit making international non-governmental organisation is the establishing of a stable environment by supporting sustainability and promotion of the Performing Arts across Europe.

Its objects are as follows:

- The exchange of information, experiences and ideas of common interest to members working in the Performing Arts sector
- The obtaining of information concerning all European issues relating to members' interests
- Facilitating collective decisions in areas of common interest
- Expressing Pearle*'s views in discussions with bodies whose activities are relevant to Pearle*
- Lobbying in accordance with collective decisions reached by the members' representatives to EU and other authorities
- Carrying out all activities connected with the above mentioned activities.

A substantial number of festivals, organisers, production companies in the live music and performing arts encompass cross-border cultural cooperation.

Too often when touring companies, venues, festivals, promoters and organisers work together on an international artistic programme, issues arise related to unexpected problems which occur due to different reasons: a lack of knowledge about the situation in or from another country, differences in administrative practices, papers that are missing or have not been foreseen, etcetera. For everyone working in the managerial side in the sector, these situations are recognizable and familiar. They are based on misunderstandings or wrong assumptions, but what is more regretful and a real pity is that they may result in performances not taking place, financial losses (which could have been avoided) or missed opportunities to save costs or generate additional income.

Under the auspices of legal experts with an in-depth understanding and knowledge of the sector, a series of booklets were designed under the EFA RISE project (2014-2017) on the following topics:

- Social security (March 2016)
- Taxation (March 2016)
- Copyright (March 2016)
- Value added tax (January 2017)
- Visas (March 2018)

Under the EFA RISE 2 project, the series is further completed with updates on:

- Visas (update May 2020)
- Social Security (update March 2021)
- Copyright clearance (update March 2021)
- Taxation (update March 2021)
- VAT (update March 2021)

Referred to among ourselves, by way of an inside joke, as the ultimate cookbook for cultural managers, the booklets aim to explain, in a way which is easy to understand and to read, what one should know and remember about specific theme, in other words what the ingredients are and how to cook the recipe by providing some tips.

EFA / PEARLE*

Partnership in the context of the EFA RISE and EFA RISE 2 projects.

EFA RISE 2 is supported between 2017 and March 2021 by the Creative Europe programme of the European Union

EFA - European Festivals Association

PEARLE* - Live Performance Europe



Co-funded by the
Creative Europe Programme
of the European Union