COMMISSION OF THE EUROPEAN COMMUNITIES

STUDIES

The mobility of cultural workers within the Community

CULTURAL MATTERS SERIES – 1976 – 1

After examining the Community measures taken in respect of the free movement of wage and salary earners and the right of establishment of certain categories of self-employed persons, the author notes that these measures have had scarcely any effect in the cultural field. He then lists the shortcomings in the Community rules as regards the economic, social and psychological conditions peculiar to cultural workers. Lastly, he suggests amendments and additions which should be made to these rules to take account of this situation.

The study relies extensively on examples provided by the situation in which a particularly large category of cultural workers, namely actors and performers, find themselves. Incidentally, since sport is now an important feature of socio-cultural life, the problems involved in the mobility of professional sportsmen and sportswomen are also discussed.

One of the points made in the study is that steps to increase exchanges, which are one of the factors making for cultural development, both at European and national levels, must be accompanied inter alia by a more effective system of unemployment benefits, without which cultural workers are deprived of any real chance of achieving mobility.

If no suitable social policy is forthcoming, cultural workers will continue to oppose the idea of mobility, which they regard as an inconvenience they are destined always to suffer (keener competition on the national labour market) and never as an advantage leading to a job – or a better job – outside their country of origin.

The mobility of cultural workers within the Community

Study carried out for
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ANNEXES :

GENERAL INTRODUCTION

1. In order to analyze the position of the cultural worker in relation to freedom of movement of persons within the Community with due precision, it will be necessary first to give an outline of the system of freedom of movement and indicate the rights and advantages which the system confers on all workers who are nationals of Member States.

2. Cultural workers form part of the working population, and must therefore benefit, equally and on the same footing as all other categories of workers, from Community provisions regarding freedom of movement.

LEGAL ACTS ESTABLISHING FREE MOVEMENT OF WORKERS

Definition of the term "free movement"

3. Mobility exists when an employee, self-employed person or a provider of services exercises his occupation in a Community country other than his country of origin under the same conditions as nationals.

The mobility of workers as provided for by the Treaty of Rome has been achieved by various methods, depending on the categories of people concerned : liberalization of the movement of employees is governed by Articles 48 to 51, that of self-employed persons by Articles 52 to 58 and that of providers of services by Articles 59 to 66.

4. The legal term "free movement" is ambiguous because the situation varies according to the categories to which it is applied. For employees it signifies free access to a job, for a self-employed person "the right of establishment" and for the provider of services the right to pursue activities connected with the provision of services within another Member State under the same conditions as nationals of that Member State.

The term "mobility of workers", which is wider, covers these various forms of free movement.

Its social aim is to permit enlargement of the labour market in Member States by providing opportunities for work to all job seekers in the European Community. By assisting the mobility of labour, free movement helps economically towards a better distribution of manpower within the Community.

Within the meaning of the Treaty, free movement does not embrace any idea of generalization or coercion, or even of persistent inducement. Mobility enriches the life of the worker and is productive for the Community only if it is matched by personal aspirations and is freely desired and chosen by each person, free from any economic, social or political pressure.

One should note that sometimes the expression "freedom of circulation" is used mistakenly. Goods circulate, not human beings. People choose where they want to work and try, from this base to cover as much ground as possible. But it is to be hoped that this opening of new horizons will help towards mutual understanding and the construction of the new Europe.

SELF - EMPLOYED WORKERS AND PROVIDERS OF SERVICES

The instruments : Articles 54 and 63 of the Treaty

5. The Treaty, in Articles 54 and 63, prescribes the drawing up of a general programme for the abolition of restrictions on freedom of establishment and freedom to provide services; this programme was adopted on 18 December 1971. It was intended progressively to liberalize the various activities followed by self-employed workers or providers of services, by means of separate directives for each activity, laying down the necessary conditions for pursuit of the activities concerned before the end of the transitional period, i.e. by the end of 1970 at the latest.

Their interpretation

6. When the transitional period came to an end a large number of activities, among which were the cultural and recreational occupations (for example, musicians, sportsmen) still did not benefit from the right of free movement. Several directives submitted by the Commission to the Council of Ministers before the end of 1970 had still not been adopted, whilst others had not been submitted.

7. At this point it was assumed that Article 52 of the Treaty, which stipulates that "restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State should be abolished by progressive stages in the course of the transitional period" and that "freedom of establishment shall include the right to take up and pursue activities as self-employed persons ...under the conditions laid down for its own nationals by the law of the country where such establishment is effected", would not have any direct effects benefiting nationals of Member States after the transitional period expired. It was thought that this Article would not be sufficient by itself, but would have to be supported by other provisions, both Community and national. The Article, it seemed, merely established a principle, the means of application of which were to be fixed under subsequent Articles, particularly Article 54, which provides for the introduction of Community measures (general programme for the abolition of restrictions, directives necessary for the execution of that programme).

Decisions by the Court of Justice

8. The Court of Justice, in several of its recent judgements (Case 33/74 : Van Binsbergen v Bestuur van de Bedrijfsvereniging van de Metaalnijverheid of 3 December 1974 - Case 2/74 : Reyners v Belgian Government, 21 June 1974 - Case 41/74 : Van Duyn v the Home Office, 4 December 1974 - Case 36/74 : Walrave-Koch v Association Union Cycliste Internationale, Koninklijke Nederlandse Wielrenners Unie and Federación Española Ciclisme, 12 December 1974), has nevertheless given an interpretation, ruling that Articles 48, 52 and 59 provide :

- that freedom of movement for workers has effect as from the end of the transitional period (end of 1970), entailing the abolition of any discrimination based on nationality between workers of the Member States,

- that these provisions impose upon Member States a specific obligation which does not require any intervention by any act, whether of the Community institutions or of the Member States, and which does not allow the Member States any discretionary choice in its execution,

- that, with regard more especially to freedom of establishment (REYNERS Judgement - Law, 26), the Treaty, in laying down that freedom of establishment and freedom to provide services shall be obtained by the end of the transitional period, imposes an obligation to attain a precise result. Fulfilment of the obligation must be

facilitated, but not conditioned, by the implementation of a programme of progressive measures, and, in fact, after the expiry of the transitional period, the directives provided for by the Chapter on the right of establishment will have become superfluous with regard to implementing the rule on nationality, since this is henceforth sanctioned by the Treaty with direct effect. (Law, 30).

9. These judgements confirm that after the end of the transitional period no further derogation is allowed from the rule of non-discrimination in the matter of the free movement of workers, except for limitations justified on grounds of public policy, public security or public health. The Treaty provisions on this matter have applied in entirety and to their full extent since that time, and they will henceforth have direct effect in the legal systems of Member States and will confer individual rights which the national courts are bound to uphold. Any transitional arrangements which include exceptions to the Treaty rules are thus now incompatible with the Treaty.

10. Following the adoption of this position by the Court, the Commission withdrew its proposals to the Council for directives for the abolition of nationality-based restrictions on establishment and the provision of services.

11. It is not necessary to emphasize the importance of these judgements of the Court for freedom of movement of people in general.

These judgements also mean that many differences formerly existing between the position of employed workers, on the one hand, and that of self-employed persons and providers of services, on the other, have been smoothed out, as will be seen repeatedly in the remainder of this report.

They have put an end to discrimination based on nationality, which still existed as regards the establishment of self-employed persons and the activities of providers of services. The nationality of the host country can thus no longer be made a condition of acceptance.

Problem of mutual recognition of diplomas

12. The abolition of all discrimination based on nationality does not automatically ensure freedom of movement. National laws require citizens to hold national diplomas or certificates if they are to carry on certain activities. There is no question of discrimination if this same obligation is imposed upon a worker of another Member

State engaging in the same activities; nevertheless, he is in practice debarred from engaging in his occupation, even if he holds a similar diploma or certificate issued by his own country for the same occupation.

13. In order to eliminate this obstacle to free movement, Article 57 provides for the mutual recognition of diplomas by Member States, imposing certain criteria :

- the diplomas must be those required by law as conditions of entry to an occupation;

- mutual recognition does not relate only to the academic training level, but to the guarantees which the specific conditions of training, taken overall, must offer for the exercise of an occupation. For example, this may simply involve a diploma; it may alternatively involve a certificate attesting successful completion of a training course, or a State examination in addition to the university or school examination.

14. In the Treaty this question of mutual recognition of diplomas was included in the Chapter on the right of establishment of self-employed persons. But it is evident that this mutual recognition is intended to benefit employed persons as well. This point of view is unanimously accepted at the present time.

Although Article 57 of the Treaty refers to the mutual recognition of diplomas for entry to self-employed activities, with no mention of employed persons, this does not mean that the latter will not have the benefit of these provisions. If the mutual recognition of diplomas is aimed, under the terms of the Article, mainly at self-employed activities, this is due to the structure of the Treaty and to the fact that this provision has been introduced in the Chapter on the right of establishment. This Chapter deals only with self-employed persons and forms one of the two aspects of freedom of movement, the other being freedom of movement for employed persons.

Although mutual recognition is not mentioned in the Chapter on employed persons - probably because the authors of the Treaty wished to avoid duplication with the provisions dealing with the right of establishment - this does not mean that this recognition is to be reserved only for the self-employed.

15. The ways and means of implementing the mutual recognition of diplomas vary according to the disciplines concerned. Conditions within a given discipline may be comparable between Member States and, if this is so, mutual recognition will not pose any problems. In other disciplines, the conditions of training may vary very widely. In the latter case there are two possible solutions :

- not to attempt to modify the different conceptions but to provide for the introduction of additional examinations, or else

- to try to arrive, by progressive stages, at a common arrangement for the whole Community and therefore to establish a minimum training programme which Member States will undertake to observe.

16. The differences in some disciplines can be so large and complex that it may be necessary to forgo for the time being issuing directives for mutual recognition of diplomas, and in the meantime to apply interim measures.

These measures will generally consist in making existing diplomas equivalent, temporarily and for the purposes of immediate achievement of the right of establishment, to the additional requirement of a certificate attesting practice of the occupation for a certain number of years.

17. Mutual recognition of diplomas is still one of the biggest obstacles to the liberalization of the movement of workers. Since several cultural occupations are affected by these liberalization measures, here too the cultural worker is at a disadvantage compared with the mass of Community workers.

COMMUNITY RULES ON FREEDOM OF MOVEMENT FOR EMPLOYED PERSONS

Freedom of movement of employed persons

18. The free movement of employed persons has been gradually acchieved by means of three successive regulations and directives (1). The latest Regulation (EEC/1612/68)

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(1) Regulation N° 15 of 16 September 1961 : on the first steps for attainment of freedom of movement for workers within the Community;

Regulation N° 38/64 of 1 May 1964 : on freedom of movement for workers within the Community;

Regulation EEC/1612/68 of 25 October 1968 : on freedom of movement for workers within the Community;

and the three Directives pertaining to these Regulations.

and the Directive (68/360/EEC) provided complete freedom of movement for all employed persons no matter what their trade, occupation or category (1).

Without going into the details of previous regulations it will be remembered that they provided successively for a common clearing system for job vacancies and application, the introduction of free movement - although subject to certain conditions (with restrictions increasingly becoming the exception, however) - and finally, freedom of movement in the European sense, made effective by Regulation EEC/1612/68 (2).

19. Without repeating the historical details of the progressive establishment of free movement, or what this means legally and in practice, it seems desirable to list the principal rights conferred upon Community workers and their families and to compare the systems now applied to these workers when they seek a job in another Member State with those in force before the end of 1968, i.e., before the last Regulation on free circulation came into effect.

20. This account refers chiefly to the rules applicable to employed persons, since they form, among persons who enjoy free movement, the largest group numerically, and are generally speaking the weakest group from the social standpoint. Moreover, the judgements of the Court of Justice, which have abolished discrimination based on nationality, have to a large extent made the situation of self-employed persons and those of employed persons similar with regard to the freedom to move in order to take a job.

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(1) In addition to these legal instruments, Regulation EEC/1251/70 of 29 June 1970, concerning the right of workers to remain within the territory of a Member State after being in employment there, must be mentioned. This Regulation gives the worker and his family the right, subject to certain conditions relating to the duration of his employment and his stay within the country, to remain permanently within the territory of this Member State, after finally retiring from work with a view to receiving the retirement pension, or because of permanent incapacity to work either owing to an accident at work or to occupational disease.

(2) Some points in this Regulation have still to be amplified or improved, such as the specific question of right of association; some arrangements concerning the clearance of vacancies within the Community; introduction of the codified system of vacancy clearance known as SEDOC (European Clearing System for Job Vacant and Wanted); mutual recognition of diplomas, certificates and other national evidence of formal qualifications for jobs done exclusively by employed persons (e.g. in the Merchant Navy) and therefore not covered by Article 57 of the Treaty; the establishment of regulations aimed at providing legal security for Community workers moving within the Community, particularly by fixing - in the matter of legal disputes - the law applicable to labour relations, i.e. that of the country in which the migrant does his work (place of work) or that in which the contract of employment was concluded.

Rights granted to employed persons

21. The fundamental principle behind the Community rules is that any employed person who is a national of a Member State has the right to engage in any occupation in another Member State under the same conditions as the nationals of that Member State. The priority given to nationals on the national market has thus been abolished in relation to workers who are nationals of another Member State.

22. In order to seek work and engage in an occupation, these workers may move about within the Community with their identity card or valid passport, the work permit having been abolished. They can take a job without the intervention or authorization of the manpower services. They can stay in the territory of a Member State for at least three months after entry there, in order to seek work freely. Only if they have not found a job by the time this period expires or if, during this period, they have to receive public assistance (social aid) from this State, can they be asked to leave the territory by the authorities of the State.

23. Equality in taking up employment and carrying on the occupation is accompanied by the absence of discrimination between employed persons who are nationals and those who are from other Member States in many spheres, such as :

a) The right to equal pay in all its forms.

b) Full application of the labour legislation of the employing country (e.g. in the matter of discharge or dismissal), full benefit from collective agreements.

c) The right to be joined by family members and dependants.

d) The right to general education, apprenticeship and vocational training, for themselves and their children.

e) The right of recourse to placement services and the obligation of those services to assist them.

f) The right of access to accommodation and property.

g) The right to benefit from the same fiscal system and the same social advantages.

h) The right to membership of trade unions and professional associations, the right to vote and the right of eligibility for bodies representing personnel within the enterprise.

i) The right to social security and preservation of rights to benefits, even in the event of departure from the country of employment.

j) The right to continuing residence in the territory of a Member State when they finally cease to have a job there, both for themselves and their families (retirement pension or pension for permanent disablement).

k) The right to transfer earnings and savings to the family remaining in the country of origin.

l) Enjoyment of the same priority of employment as the national worker, if the latter has this right in relation to the non-national worker.

However, one formality remains to be fulfilled; but it falls within the general sphere of non-nationals in the country, not of employment. The worker concerned must hold a residence permit valid for at least 5 years and automatically renewable.

24. It must also be emphasized - and this is important, in view of the present unfavourable economic situation, which particularly influences the stability of employment of the migrant worker :

- that when the migrant worker is temporarily off work owing to illness or an accident at work, or is in a situation of involuntary unemployment, duly confirmed by the competent employment office, he keeps his right to remain in the host country for the duration of his residence permit (5 years);

- that the migrant worker is entitled to extension of his residence permit (5 years) when it expires. However, if at the time of the first extension the worker has been involuntarily unemployed for more than 12 consecutive months, the Member State can limit its validity, but not to less than 12 months.

25. The only exception to this almost total freedom of entry and exit consists in the application of measures by Member States which are justified for reasons of public policy, public security or public health. However, such measures cannot be applied for economic ends; they must be based exclusively upon personal behaviour, and the mere existence of penal sentences cannot justify them (1).

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(1) Directive 64/221/EEC on the co-ordination of special measures for non-nationals concerning movement and residence which are justified for reasons of public policy, public security or public health.

26. To facilitate the clearing of vacancies within the Community, machinery has been established for bringing offers of employment into contact with applications for employment, enabling direct communication to take place between the manpower services of the different Member States. These services are thus kept regularly informed about available jobs in the other Community countries.

Community priority

27. Community priority for workers from one Member State working in another Member State is not explicitly formulated as a right, but is, rather, implicitly acknowledged in the chapter of Regulation 1612/68 which describes the clearing of vacancies within the Community.

This provides that the competent authorities of each Member State shall send monthly to the corresponding authorities of the other Member States and to the European Co-ordination Office established within the Commission, a return showing job vacancies that have not been filled or are not likely to be filled by the national labour market.

Any vacancy communicated to the employment services of a Member State which cannot be filled from the national labour market and which can be cleared within the Community is notified to the competent services of the Member State that has reported available labour in the same occupation. These services will send precise, appropriate applications to the services of the first-mentioned Member State.

"For a period of 18 days from the receipt of the communication of the vacancy to the services of the second Member State, such applications shall be submitted to employers with the same priority as that granted to national workers over nationals of non-Member States. During the above-mentioned period, vacancies shall be notified to non-Member States only if the Member State having such vacancies considers that for occupations corresponding to such vacancies there are insufficient workers available who are nationals of the Member States."

It should be noted that since this Community machinery for vacancy clearance was established, i.e. since 1968, the profession of performing artist - for which the unemployment figure has been much higher than the average for the industrial worker - has never been reported or recorded in the returns of applicants for employment.

28. In addition to this system of intra-Community vacancy clearance, the Commission has another means of analysing the result of the activities of Member States.

The Commission draws up twice yearly a report, based upon the information supplied by the Member States and upon its own information, which enables a common analysis to be made of the result of the activities of Community vacancy clearance, of the number of placements of nationals of non-Member States, of the foreseeable trend of the labour market and of manpower movements within the Community.

In addition, the Member States examine with the Commission every possibility of filling the available jobs with priority for nationals of Member States, with a view to achieving equilibrium between job vacancies and applications within the Community.

However, bringing applicants into contact with employers by means of the transmission of monthly returns (*) has not yet been effective in operation. Since the scheme was first put into operation at the end of 1968, and up to 1974, the Community had a period of overheating of the job market. Almost all Community migrants (95%) moved on their own resources (spontaneous migration), without recourse to official bodies (protected migration).

29. However, the twice-yearly analysis by the Commission has enabled the movements of Community and non-Community manpower to be known, and in this way the Commission has been kept informed in a general way about the existing situation.

Comparison between the former situation and the present situation

30. Before the Community provisions for access to employment came into force, entry to and residence in the Western countries depended upon administrative measures intended to reserve the job market primarily for nationals alone. This aim was acchieved by the application of a system of authorization of entry and residence in the country. The system generally still applies in the European non-Community countries and in the Member States for the nationals of non-Member States.

(*) The codified system of vacancy clearance, S.E.D.O.C., will be put into operation in the near future and will improve the clearance system at present in use.

31. Before Regulation 1612/68 came into force, the exercise of an occupation was conditional upon the satisfaction of a number of criteria which often varied from one country to another, such as :

- The obligation to hold valid permits for work and residence. The government's discriminatory power to grant and refuse permits.

- Determination of the geographical and occupational validity of these authorizations, and also of the conditions of their renewal and withdrawal (instability of employment).

- Residence authorization normally associated with the work permit and capable of being made subject to special restrictions independent of the exercise of paid employment.

- Entry to the country and access to employment often dependent upon the age of the worker (between 18 and 35 years only).

- Family prohibited from accompanying the worker. In some countries only unmarried persons were accepted, or else express authorization by the government of the country of employment was granted only after a period of gainful occupation of one or two years.

- Restrictions imposed upon the transfer of earnings and savings.

- No extension of the work permit and residence permit in the event of unemployment or illness, and thus, in practice, the obligation to leave the country.

- No entitlement to equality of treatment with regard to living and working conditions in general. Thus, compulsory tie between the worker and the first employer or even succeeding employers - obligation to remain in the service of the first employer for from 2 to 5 years.

- Entry conditional upon a medical examination, often with very strict standards (conditions sometimes relating to applicants' height, freedom from deformities of the leg, etc...).

- Discretionary power of the authorities regarding removal and expulsion from the territory, often with no possibility of appeal against such a decision.

- No entitlement to equality of treatment regarding social security benefits or other living conditions in general : loss of entitlement to social security benefits after leaving the country of immigration; obligation on the migrant worker to make compulsory contributions, without gaining entitlement to the corresponding benefits (retirement pension, unemployment benefits, etc...); restriction of family allowances to children actually resident in the host country; no entitlement to apprenticeship courses or vocational training.

- Several Member States did not allow migrant workers equality of treatment regarding the enjoyment of rights of association.

- The migrant worker was very often poorly housed or obliged to stay in accomodation provided by the employer or the authorities.

32. Generally speaking, the Community worker can be said to have shared, before the adoption of the latest regulation, nearly all the obligations of the community in which he lived and worked; but usually he did not enjoy - or in any case, not equally - the rights and advantages of nationals. This situation still applies generally to non-Community workers.

33. The conclusion is obvious. The position of the migrant worker was, above all, unstable, the only consideration governing his continued residence and employment being his economic usefulness to the country of immigration.

Now, since the Community system came into operation, the situation of the migrant worker from a Member State has improved considerably, to the point of equality of treatment with the national worker.

NOTE

34. To complete the picture, it should be said that, with the exception of spontaneous, individual immigration, Western Europe had - and still has - a system of immigration based upon bilateral agreements with countries of emigration,an analysis of which would go beyond the scope of this report. The provisions of these agreements were often more favourable on several points than those applied to individual migrant workers who emigrated on their own resources, especially with regard to the economic position and housing of the migrant worker (for example : guaranteed 2- or 3-year period of employment with the same employer, accomodation

guaranteed, greater stability with regard to his position in relation to social security).

A N N E X

SPECIAL POSITION OF THE REPUBLIC OF IRELAND AND NORTHERN IRELAND

35. It should be noted that freedom of movement for employed persons is not yet in full operation throughout the whole of the European Community.

At the time when Ireland and the United Kingdom joined the Common Market (end of 1972), the Contracting Parties agreed that Ireland and the United Kingdom would continue, until 31 December 1977, to operate the national arrangements whereby nationals of other Member States wishing to immigrate into the Republic of Ireland or Northern Ireland with a view to exercising paid employment there first had to obtain permission to do so (1). This means that,with regard to the immigration of employed persons from other Member States into the Irish Republic and Northern Ireland, the system of national priority remains in force,and that non-national workers, whether of the Community or not, remain subject to the work-permit system.

Moreover, Ireland has reserved the right, for a maximum period of 5 years from the date of application of the regulation on social security (Regulation EEC/1408/71 of 14 June 1971), to restrict the enjoyment of certain public-assistance and unemployment benefits and of certain benefits under non-contributory schemes to residents in the territory of Ireland (2).

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(1) See O.J. N° L. 73 of 27 March 1972, page 143.

(2) See O.J. N° L. 73 of 27 March 1972, page 143.

CHAPTER I

THE CULTURAL WORKER

What is meant by "cultural worker"?

36. Cultural workers are all persons who live from culture and by whom culture lives.

They are cultural auxiliary workers (studio technicians in cinema, television and radio, restorers of monuments, works of art, etc.), intermediaries (museum curators, librarians, promoters of socio-cultural activities, etc.), distributors (antique dealers, picture dealers, booksellers, record dealers, publishers, etc.), performing artists (actors, singers, musicians, dancers, etc.) and creative artists (journalists, writers, composers, craftsmen, painters, sculptors, film directors,etc.).

37. Parallel to the classical and traditional conception of culture, a new cultural dimension is now appearing at European level which is more flexible, more open, and more diversified ; in a word, more democratic.

This culture is not limited, as in the past, merely to the aesthetic forms (literature, music, plastic arts) or to respect for the cultural heritage, but concerns the present, with a modern conception of a culture which is evolving.

It is not aimed exclusively at what is called the élite but at all socio-professional categories and all age groups.

The position of the cultural worker

38. From the standpoint of their status, cultural workers are a very mixed group; they include employed persons in the private sector, public servants and self-employed persons.

From the legal standpoint, the obstacles to the mobility of cultural workers originate in the requirement for a diploma, certificate or other evidence of formal qualifications issued by the authorities of the country in which the worker wishes to carry on his occupation, or in the requirement that the occupation in question has been practised for a length of time specified by the authorities.

39. The report will be limited to two points of particular interest : it will only deal with the cultural worker and it will refer to the mobility of cultural workers with reference to Articles 48 to 66 of the Treaty of Rome.

It should be noted first of all that Article 48 excludes persons employed in public service from freedom of movement. This provision has never been interpreted precisely.

The Treaty applies a different concept to freedom of establishment (Article 55): it states that Community provisions do not apply to activities which in a State are connected, even occasionally, with the exercise of public authority.

40. It might be useful, in defining the cultural worker, to study the place he occupies among the working population.

Annexes I and II to this Chapter give particulars of labour trends in the principal economic sectors (agriculture, industry, services) and the number of persons employed in various branches of activity in the countries of the Community.

It may be noted :

- that, through the influence of "horizontal" mobility, the continuing movement of workers which has accelerated since the last two world wars from the primary sector (agriculture and mining) to manufacturing industry, and from the latter (though on a smaller scale) to the services sector, has had the result that in several countries approximately 50% of the working population is at present employed in the services sector. It is mainly in this sector that the cultural worker is to be found;

- that "vertical" mobility, i.e. the gradual movement of the manual worker towards white-collar occupations, is a more recent phenomenon than "horizontal" mobility. It has grown in recent years, and within this category an expansion of the movement towards academic occupations has been observed. The cultural worker is likewise represented here.

Reasons behind the report

41. It might be asked why it should be necessary to analyse the position of the cultural worker in regard to his mobility within the Community, particularly in view of the fact that he enjoys the same right of movement to take a job and perform it as any other category of Community worker.

There are various reasons.

Firstly, it is the cultural worker who, relatively speaking, benefits the least from the rights and advantages conferred upon workers in general. The successive Regulations (Regulation N° 15 and supplementary Regulation N° 18 and then Regulation EEC/38/64 in its Annex 2) maintained an exceptional situation for performing artists and musicians, such that the Community system introduced by these Regulations did not fully apply to them during the period of their validity as it did to other employed persons (see the Chapter : "Performing artists"). The latest Regulation on the free movement of workers (EEC/1612/68) put an end to this exception but introduced another one for certain occupations in the film industry (see Chapter III : The worker in the film industry).

Finally, account must be taken (no matter what economic and social problems still require attention) of the importance of the cultural factor in the changing era in which we live. The interpenetration of European cultures is a fundamental factor in the unification of Europe. A unified Europe cannot be created only at the economic, social and political level; it must also be built at the cultural level.

This report has attempted to define the situation of cultural workers in relation to freedom of movement and the numerous social, legal and administrative difficulties which they come up against.

Other workers may possibly encounter similar or different problems which are inherent to their professions. In this case a study on the same lines as this report would be useful in suggesting solutions.

42. The report covers only the few categories mentioned above, either because the other categories did not call for special comment, or because the position of the people in these categories seemed satisfactory, or again because the author was not aware of the existence of any discrimination against them. Account must be taken of the fact that the field of study is vast, not only as regards a great number of activities involved, but also in that it covers the territories of nine countries, each with its own problems and difficulties.

Finally, obstacles sometimes exist which prevent the exercise of an occupation in another Member State without constituting forms of discrimination within the meaning of the Treaty; an example is the language barriers closely associated with the professions of certain cultural workers : actors, writers, journalists, etc...

ANNEX I

TABLE I

EMPLOYMENT TRENDS IN THE PRINCIPAL SECTORS
OF ECONOMIC ACTIVITY IN THE COMMUNITY COUNTRIES

Country	Year (1)	Type of Data (2)	Type of classification by industry (3)	SECTORS OF ACTIVITY		
				Agric.	Manufac. Ind.	Services
Germany (Fed. Rep.)	1960	OE	A	14.0	48.8	37.3
	1970	OE	A	9.0	50.3	40.7
Belgium (6)	1960	OE	A	8.7	46.8	44.6
	1970	OE	A	4.8	44.7	50.4
Denmark	1960	C	A	18.5	37.4	44.2
	1970	MS	B	11.4	38.5	50.1
France	1960	OE	A	22.4	37.8	39.8
	1970	OE	A	14.0	38.9	47.1
Ireland	1960	OE	A	37.3	23.7	39.0
	1970	OE	A	27.6	30.1	42.3
Luxembourg	1960	OE	A	16.4	44.1	39.6
	1970	OE	A	10.8	46.7	42.5
Netherlands (7)	1960	OE	A	11.5	42.3	46.2
	1970	OE	A	7.2	41.0	51.8
United Kingdom	1960	OE	A	4.2	48.8	41.1
	1970	OE	A	2.9	46.6	50.6
Italy	1960	MS	A	32.8	36.9	30.2
	1970	MS	A	19.6	43.7	36.7

Source : 2nd European Regional Conference, Geneva, January 1974, Employment in Europe, some problems of growing importance, Report II, Geneva, I.L.O., 1973 p. 139.

(1) aa = annual average, or estimate at end of 1st quarter.

(2) OE = official estimates; MS = manpower sample survey; C = census.

(3) A = standard international classification by industry, of all branches of activity

B = C.I.R.I., 1958 edition.

(6) Including apprentices.

(7) Men-years.

TABLE II

EMPLOYMENT TRENDS IN VARIOUS BRANCHES OF ACTIVITY IN SOME COMMUNITY COUNTRIES

(thousands)

COUNTRY	Year	All branches of activity		Trade		Banking, Insurance Property		SERVICES	
		Number employed	% change	Number employed	% change	Number employed	% change	Number employed	% change
GERMANY (Fed. Rep.)	1967+	25,461		3,887[2]		1,014[5]		3,966[3]	
	1972+	25,934	+1.9	3,862[2]	- 0.6	1,159[5]	+14.3	4,355[3]	+ 9.8
BELGIUM	1967	3,616,2		611.9				884.6	
	1971	3,786,2	+4.7	685.0	+11.9		+11.9	967.3	+ 9.3
FRANCE	1967	19,782		3,012				4,268	
	1972	20,750	+4.9	3,447	+14.4		+14.4	4,986	+16.8
IRELAND	1967	1,052		148[2]		20[5]		205[3]	
	1972	1,040	-1.1	148[2]	0	25[5]	+25.0	221[3]	+ 7.8
NETHERLANDS	1969	4,493		940[2]		113[5]		1,039[3]	
	1972	4,550	+1.3	947[2]	+ 0.7	133[5]	+17.7	1,163[3]	+11.9

Source : I.L.O. - Year Book of Labour Statistics, 1973, op.cit. Except where otherwise indicated, "Services" embraces government service, services provided to the public and to business enterprises, recreational services and personnel services + temporary.

(2) Including hotels and restaurants.

(3) Covers services to the public, social services and personal services.

(5) Including services to business concerns.

(6) Nationalized sector only.

TABLE III

Foreign workers employed in the Member States, by nationality.

COMMUNITY

Country of Employment / Country of origin	BELGIUM[1] Annual average 1974 [2]	DENMARK[1] 1.1.1974	FRANCE[1] 31.12.1974 [2]	GERMANY[1] end Sept 1974 [2]	IRELAND[1] 1974	ITALY[1] Annual average 1971	LUXEMBOURG[1] Annual average 1974	NETHERLANDS[1] 15.12.1974	UNITED KINGDOM[1] 1971
Belgium		155	25,000	10,000a	6	539	7,200	23,410 (a)	7,500r
Denmark	400)		1,000	4,000a	25	248 (a)	..	180	2,000a
France	15,000) [a]	526		50,000a	179	4,145	7,100	1,700	16,500r
Germany	4,500)	4,080	25,000		270	7,190	3,800	12,756b,c	71,000r
Ireland	200)	150	1,000	1,000a		300	..	180	452,000r
Italy	90,000)	477	230,000	370,000	258		10,400	9,000 (b)	72,000r
Luxembourg	1,400)	1	2,000	2,000a	-	32		60	500
Netherlands	13,500) [a]	593	5,000	70,000a	98	1,146	600		10,500r
United Kingdom	5,000)	2,515	11,000	20,000a	..	4,500	200	3,800	
Total E.C.	130,000	8,497	300,000	527,000a	836	18,100 (a)	29,300	51,086 (b)	630,000r
Spain	34,000)	934 (a)	265,000	165,000	109	2,006	1,900	11,341	37,000r
Greece	6,000)	3,453 (b)	5,000	225,000	5	768	..	947	50,000)
Portugal	4,000) a	934 (a)	475,000	85,000	13	631	11,800	2,689	10,000)
Turkey	10,000)	5,730	25,000	590,000	10	317	..	21,925	3,000)
Yugoslavia	3,000)	4,520	50,000	470,000	7	4,103	600	8,611	4,000a
Algeria	3,000)	..	440,000	2,000	..	..	..	..	600)
Morocco	30,000)	1,645 (c)	130,000	16,000	..	..	..	9,429	2,000)
Tunisia	2,000) a	..	70,000	12,000	..	..	..	889	200)
Other non-Member countries	8,000	11,148	145,000	258,000	(830)	18,205	1,700	11,071	928,205b
Total non-Member countries	100,000	28,364	1,605,000	1,823,000a	974	26,030	16,000	66,902d	1,035,005r
Grand total	230,000 (2)	36,86	1,905,000	2,350,000 (2)	1,810 (2)	44,130	45,300	117,988	1,665,005 (1)

Grand total by nationality						
Country of origin (nationality)	1959 a) b)	1969 a) b)	% change 1959/1969	1974 b)	% change 1969/1974	
Belgium	35,000	54,000	+ 54 %	73,600	+ 22 %	e
Denmark	..	..	..	8,000	± 0 %	d
France	31,300	47,700	+ 52 %	96,000	+	c
Germany	40,100	40,100	± 0 %	125,000	+ 25 %	c
Ireland	..	..	..	455,000	± 0 %	d
Italy	400,400	593,000	+ 48 %	782,000	+ 20 %	c
Luxembourg	4,300	3,000	- 30 %	6,000	+ 60 %	c
Netherlands	55,800	66,100	+ 18 %	102,000	+ 7 %	c
United Kingdom	..	..	..	47,000	+ 27 %	a
Total E.C.	567,000	804,000	+ 43 %	1,695,000	+ 31 %	c
Spain	79,600	413,000	+ 418 %	517,000	+ 16 %	c
Greece	7,600	165,000	+2,000 %	290,000	+ 39 %	c,h
Portugal	10,200	200,000	+1,900 %	590,000	+188 %	c,f
Turkey	1,100	198,000	+19,000 %	656,000	+227 %	c,h
Yugoslavia	7,800	182,000	+2,175 %	545,000	+195 %	c,h
Algeria	190,300	244,800	+ 29 %	446,000	+ 82 %	g
Morocco	22,000	83,000	+ 277 %	190,000	+129 %	g
Tunisia	8,000	34,000	+ 325 %	85,000	+150 %	g
Other non-Member countries	173,800	366,000	+ 110 %	1,375,000	+ 19 %	c
Total non-Member countries	615,500	1,886,000	+ 206 %	4,694,000	+ 92 %	c
Grand total	1,183,000	2,690,000	+ 128 %	6,389,000	+ 74 %	

Notes : see next page.

(Table III - continued (2))

COMMUNITY

Notes : r = corrected figure

Belgium : (1) Excluding frontier workers;

(2) including unemployed; approximate figure by Ministry of Employment and Labour;

(a) estimates by the European Co-ordination Office.

Denmark : (1) Excluding frontier workers and workers from Scandinavian countries;

(a) Spaniards and Portugese;

(b) including other European countries;

(c) Africans (all).

France : (1) Excluding frontier workers;

(2) estimates by the Ministry for Social Affairs.

Germany : (1) Including frontier workers;

(2) extrapolation from earlier data;

(a) estimates by the European Co-ordination Office.

Ireland : (1) Excluding nationals of the United Kingdom;

(2) number of work permits issued in 1974.

Italy : (1) Excluding frontier workers;

(2) estimates by the European Co-ordination Office.

Luxembourg : (1) Including frontier workers.

Netherlands : (1) Including Belgian and German frontier workers;

(a) frontier workers as at 1/12/1973;

(b) estimates of situation at end of 1972 by European Co-ordination Office;

(c) including 756 German frontier workers at 1.12.1973;

(d) number of valid work permits for workers employed less than 5 years.

(Table III - continued (3))

United Kingdom :

(1) Estimates of the foreign working population by the Department of Employment, in connexion with the 1971 census;

(a) estimates by the European Co-ordination Office;

(b) including 631,000 workers born in Commonwealth countries.

Community :

(a) Excluding workers employed in the three new Member States;

(b) partly estimates by the services of the Commission;

(c) the number of non-national workers employed in the three new Member States before 1/1/1973 has not been allowed for in calculating the changes;

(d) Danish and Irish nationals already employed before accession;

(e) calculated on the numbers at the end of 1972;

(f) the explanation for this large increase probably lies primarily in the fact that, in previous censuses, some Portugese workers employed in France were omitted (illegal immigration);

(g) especially in France;

(h) especially in Germany.

CHAPTER II

PERFORMING ARTISTS

Introduction

43. This chapter covers all interpretative and performing artists : actors, singers, dancers, musicians, variety artists, etc. These workers are all intermediaries in the dissemination of cultural matter.

The difficulties encountered by the musician in connexion with free movement are typical of the other artistic professions in several respects; this report will therefore be confined broadly to describing the position of the musician. However, certain differences between the various categories of artists in the Community dealt with in the following paragraphs must be taken into account.

44. Music has to do with a very wide sphere, ranging from "classical" or "serious" music to "light" or "popular" music. In the old order of society there was, in addition to the scholarly, written, composed music, which had evolved in the churches and courts and then in certain bourgeois circles, "another music" which was played by the rural people and humbler townsfolk and which followed its own models. These two worlds did not overlap, so to speak.

In the 19th century, a break had become apparent, between an art form considered to be noble or uplifting (symphonies, chamber music, choral music) and a music that was intended simply for entertainment.

45. There exists nowadays, besides symphonic orchestral music, chamber music, and so on, jazz, song music and pop music which have a vast following and have often created their own institutions, using different techniques and often different instruments.

46. However, the great variety of interpretation of artistic culture leads to the following reflexion : despite the great precision in the wording of this chapter,

the text cannot always avoid being somewhat ambiguous : even in discussing only the occupation of musician, one finds that it does not extend over a single occupation, but in fact over various differing occupations, with no common denominator.

47. The criterion of this interpretation - "interpreting or performing music" - applies to many people engaged in the same kind of occupation; but every performing activity taken separately shows differences such that a certain number of problems do not arise in the same terms for the different groups. The jazz or pop musician will sometimes encounter different difficulties - in access employment, for example, or in working conditions - from those encountered by an orchestral musician or a chamber music instrumentalist.

48. If this argument applies to the profession of musician, it does so even more if the scope of the study is extended to embrace all interpretative artists. Obviously, in taking the profession of musician as an example, an analysis of the work done by each group individually would reveal other problems which can be described only in general terms.

49. This means in practice that the conclusions drawn in this chapter are not always fully applicable to all interpreters of the art of music, and still less to those who practise another calling in the artistic field.

50. In confining oneself to the occupations covered by the description "interpreters of music", for example, one can discern a difference of situation which can impose certain disadvantages upon one category of interpreters; this is true, for example, of the orchestral musician who is employed under a governmental or semi-official contract of employment, or whose work is guaranteed by grants from the government or other public bodies : his position is made official and is therefore more stable and less subject to the influence of the conditions governing the employment market. The same applies to the position of teacher of music at the schools or academies of music or even in general education, as well as to a number of orchestral musicians on the radio and television. We shall come back to this point later.

51. However, it seems possible, considering what has been said above, to achieve an overall study of the position of performing artists, despite this diversity in the profession. Certain identical factors in each category have resulted in the deterioration of the legal, social and administrative position of the majority of musicians and artists.

POSITION OF PERFORMING ARTISTS AND MUSICIANS DURING THE TRANSITIONAL PERIOD

First phase - Regulations EEC/15-18 of 1962

52. In the General Introduction to this report, it was established that the provisions on freedom of movement of employed persons apply to all workers, without exception for any group, category or occupation.

However, it must be pointed out that during the transitional period the initial measures to achieve free movement within the Community (Regulation N° 15 of 1962 and Regulation EEC/38/64) contained an exception relating to performing artists and musicians. Regulation N° 15 (Art. 46, para. 2) stipulated that "the Commission should adopt detailed rules for the application of the regulations in question to artistic workers and musicians".

53. During 1962, the Commission carried out this mandate by drawing up Regulation N° 18 (1). The exception provided for derived from the reservations expressed by certain representatives of Member States, during negotiations preceding the adoption of Regulation N° 15 on freedom of movement for workers, concerning the automatic granting of work permits to performing artists and musicians.

54. Regulation N° 15 gave permission in particular for any national of a Member State to take a paid job in the territory of another Member State if no suitable national applicant could be found within three weeks at the most from the date of registration of the vacancy. Notwithstanding this principle, however, workers to whom registered job vacancies in the territory of another Member State applied would automatically receive authority to take the vacant job when the vacancies were of a special character based upon professional factors concerning specialization (2).

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(1) Regulation concerning the detailed rules for the application of Regulation N° 15 to performing artists and musicians. O.J. N° 23 of 2/3/1962, p. 722 - the only regulation in connexion with the free movement of workers that was drawn up by the Commission and not by the Council.

(2) The term "specialization" designates a high qualification or a qualification for a trade or job which requires special technical knowledge.

However, owing to the very nature of the professional activity of performing artists and musicians - which is unique and specialized - this category of workers was to receive work permits automatically under this provision, without prior reference to the national employment market. Complete liberalization of this profession would have resulted, from the very first phase in the free movement of workers. However, the situation in the sector in question calls for the maintenance of certain safeguards during this phase of liberalization.

55. To avoid this difficulty, the Commission adopted for those workers a provision which limited the application of the notion of specialization by tying it to the amount of the fees that impresarios contracted to pay to performing artists and musicians; the latter were not considered as specialists if the monthly wage entered on the work contract was less than the equivalent of 400 u.a., or in the case of part time work, when the daily wage was less than the equivalent of 25 u.a. Below this amount the employment services would not consider the artist to be specialized; as a result, some offers of employment are still subject to restrictions and come under the rules giving priority to nationals (*).

Second phase - Regulation EEC/38/64

56. On 1 May 1964, Regulations N° 15 and 18 were replaced by Regulation 38/64. The latter regulation marked a new conception of freedom of movement. Any national of a Member State had the right to hold a paid job in the territory of another Member State for which the vacancy had been notified. This provision does abolish priority for the national labour market.

However, Article 2 of this regulation made it possible for any Member State to suspend the application of this rule on account of a surplus of labour in a particular region or occupation, thus reintroducing national priority in that region or occupation. The Member State concerned was obliged to inform the Commission of this step, giving the reasons. In any case, the vacant job had to be given, after notification, to any Community applicant from another Member State if no suitable national applicant from the regular labour market of the Member State concerned had been found within two weeks.

(*) The unit of account (u.a.) is an accounting unit laid down in the European Monetary Agreement, the weight of which is 8.88867088 grammes of fine gold, equivalent at the time to about 50 Belgian francs. In fixing the amounts of the fees the Commission referred to the salary ceilings in force at that time for social security in most of the Member States. These ceilings varied between 160 and 200 u.a.

57. However, this clause could not apply to workers belonging, for example, to groups of specialized personnel; but for workers engaged in the professions of actor or musician, the clause introducing national priority could apply only if their pay was less than 400 u.a. Specialization could not be disputed for performing artists and musicians whose monthly pay was at least equal to this sum of 400 u.a. or, if these workers did not work full-time, whose pay was at least 25 u.a. per day worked.

Thus, national priority could be reintroduced only for performing artists and musicians earning less than the above-mentioned amounts. Retention of the amount of 400 u.a., fixed as early as the first phase, signified in fact a relaxation of the application of freedom of movement to performing artists and musicians arising, in the meantime, from the substantial rise in remuneration (through the effects of inflation, among other factors).

58. Apart from the above-mentioned reasons for the application of this exception, the representatives of certain BENELUX countries and also the European trade unions representing performing artists and musicians (1) invoked, at the time when the second regulation, N° 38/64, was being prepared, the general problem of the disparity of conditions of employment for workers in these occupations in the six Member States (pay conditions, taxation, social security affiliation, etc...), which in their opinion would result in it often being to the advantage of employers, for stricly commercial ends, to employ non-national workers. They pointed out that this state of affairs had the dual drawback of harming national workers, particularly in regard to access to employment, and, on the other hand, of interfering with national cultural originality. They also thought that the Commission should have harmonized the conditions of employment and remuneration before contemplating giving freedom of movement to these workers.

59. These remarks can be answered by saying that the Treaty does not envisage - at all events, not directly - the achievement of social harmonization. Article 117 of the Treaty states that "Member States agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained; they believe that such a development will ensue not only from the functioning of the common market, which

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(1) The theatrical trade-union organizations within the INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (proceedings of the European conference held in Brussels on 12 March 1965).

will favour the harmonization of social systems (*), but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation or administrative action".

60. Whatever the case may be, the harmonization desired by the trade union representatives could have been achieved only by applying a policy which would have been very protected, and this would have hampered the achievement of freedom of movement, which was to be established before the end of the transitional period, at the end of 1970. This harmonization would involve making changes in the legislative structures of Member States, which have been established and have evolved over the years, each according to its particular policy and needs. There are differences between them, and they even sometimes contradict one another.

61. Moreover, one is justified in wondering whether the mobility of cultural workers is not too frequently viewed as if each worker had always to suffer from its disadvantage - increased competition on the national labour market - and never have the benefit of its advantage of providing a job or a better job outside the country of origin.

62. The Commission had in any case proposed to introduce a provisional exemption for performing artists and musicians during the transitional period, in order to overcome certain difficulties peculiar to these workers and to encourage their gradual adaptation to the new situation. It should be noted that not all the Member States associated themselves with the viewpoint expressed by the Netherlands and Belgium and by the representatives of the I.C.F.T.U. The majority of the countries declared their surprise at the position adopted by the delegates of the Netherlands and Belgium and by the trade union representatives towards the category of workers in question, whose situation did not in their view necessitate treatment different from that of other workers.

(*) During recent years, doubts have begun to be entertained about the automatic effect of the economic functioning of the common market, which is supposed to lead inevitably, through its own inherent dynamic force, to the integration of the national systems. In any case, during the Paris Conference of Heads of State or of Government in 1972, the latter decided to carry out the vigorous action in the social sphere, with a view to attaining the social goals of the European Union by successive stages. The implementation of this decision is incorporated in the Social Action Programme of 21 January 1974.

Final phase - Regulation EEC/1612/68

63. Not until the adoption of regulation EEC/1612/68 of October 1968 was this exception to the full application of freedom of movement to performing artists and musicians - an exception which was continued practically throughout the period of transition - ultimately abolished.

POSITION OF PERFORMING ARTISTS AND MUSICIANS AFTER THE TRANSITIONAL PERIOD

64. From the time of this intervention in 1965 until the beginning of June 1975, the Commission did not receive any complaint or comment on any adverse effect of the application of freedom of movement upon the situation of performing artists and musicians.

Not until a recent conference of the INTERNATIONAL FEDERATION OF MUSICIANS (I.F.M.) held on 3, 4 and 5 June 1975 in Brussels, at which the Commission was represented, did the trade unions address themselves to the Commission, mentioning the disturbing deterioration of the profession and expressing the wish that the Commission take the necessary steps to bring an end to this situation by simply abolishing the Community system of free movement or, at the very least, by making its application to these workers more flexible.

Report by the I.F.M. : reasons for the decline of the profession

65. An analysis of the reasons put forward by the Federation, putting them under different heads, yields the following :

Social reasons

a) High unemployment amongst musicians (1) and other interpretative and performing artists, which the Federation attributes largely to the effects of free movement (competition from non-national musicians).

(1) The I.F.M. estimates it at 25% currently in the Netherlands.

The Federation maintains :

- that owing to Community freedom of movement, the governments can no longer keep a check on the situation created by migration in recent years on their employment market.

- that there is no close cooperation between administrations, which would enable effective operation of free movement to be ensured as provided for in Article 49 of the Treaty. The situation on the national labour market is thus chaotic, especially for interpretative and performing artists.

b) The profession is encountering strong technological competition, especially owing to the virtually unlimited re-use of performances by interpretative and performing artists. The cinema, radio, television, records, tape-recordings, the video-cassette and the video-disc reach simultaneously a host of viewers or listeners who could otherwise have been reached only by a great many shows or concerts which could have provided the performers with secure employment for a long time. This technological progress is endangering the employment of national workers (1) in such a way that - and this is probably unique among all of the occupations - this employment is jeopardized, not by direct competition from immigrants, but by the introduction of different forms of re-use.

c) The risks inherent in the profession, such as : greater exposure of health than for other workers and ageing which makes the profession more vulnerable, and hence premature ending of careers.

d) Interpretative artists are very often not covered by social security schemes, because of the special nature of the profession. The work is often intermittent and irregular (week-end, holiday or night work). Moreover, the frequent changes of employer make the collection of employers' contributions difficult.

The Federation also states that since 1974, when the economic crisis began to be felt, the nationality of non-national musicians and performing artists introduced into the Community has simply changed, and employers have taken advantage of this to recruit cheap labour from Eastern Europe and the Philippines.

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(1) In Germany, the number of musicians is said to have fallen in the proportion of 4 to 1, or by 75%,between 1930 and 1965. According to the latest German figures, this figure fell by about 40% between 1950 and 1970, from 48,500 to 29,500 (KUNSTLERBERICHT of the German Government, dated 10/1/75-see statistics on p.59).

Administrative reasons

66. The administrative measures in general, and more especially those that are necessary for effective operation of the offsetting of unemployment benefits between Member States, are slow and inadequate. The I.F.M. cites, for example, the case of an Italian musician who became unemployed in a Member State and was obliged to wait a year for his benefit to be paid, owing to the slowness of administrative action between the Member State and his country of origin.

Legal reasons

67.a) Another reason which, in the opinion of the I.F.M., makes the application of free movement unjust and even pernicious for performing artists and musicians is that the activities of these workers are cultural rather than economic. The Treaty of Rome is an economic instrument (see Articles 2 and 3 of the Treaty), of which the free movement of people is an important part. It can thus cover only economic activities and therefore its task cannot extend to cultural activities. The Federation states that for this reason, freedom of movement - introduced for an economic purpose and not with the intention of developing culture in Europe - has brought only disadvantages to musicians and other interpretative and performing artists.

b) Finally, the I.F.M. is opposed to the activities of hundreds of private placement agencies operating for profit, which despite I.L.O. Convention N° 96 on fee-charging employment offices, continue to exist and to multiply. This constitutes flagrant violation of the Convention. Many of these agencies neglect the interests of workers to their own profit (not providing them with social insurance, for example).

The I.F.M.'s conclusions

68. In view of all these considerations, the Federation thinks that the professional life of thousands of musicians is threatened, and many of them have been obliged to abandon the profession. This is all the more true because the nature of these cultural activities makes them more vulnerable from the competitive standpoint than other activities. The basic system - i.e. in this case the machinery of the labour market (unrestricted adjustment between the supply of and demand for jobs) - which normally regulates economic activity, should not be applied to them automatically. Account must also be taken of the fact that culture is not an

indispensable element of life and that, in the event of an unfavourable economic situation, it is the first to suffer the adverse effects. Since the economic and social advantages are far from certain, this profession is losing its attraction to the point where the Federation is very seriously wondering whether, in about twenty years' time, there will be any professional musicians left in the Community countries.

Analysis of the I.F.M. report

69. The remarks made by the I.F.M. are so serious that they bring out the almost desperate position of the workers in this profession, attributing it mainly - or at all events largely - to the effects of the Community system of free movement of people (1). The Federation has reached a point in its statements where it is calling for the abolition, or at the very least the relaxation, of the rule of freedom of movement (2).

70. In adopting a position in regard to the remarks by the Federation, it is important to present as accurate a picture as possible of the situation.

Firstly, favourable developments in the performing artist's profession will be described, both with regard to the artist's person and his protection. Secondly, the difficulties encountered will be dealt with : social, administrative and legal. Finally, an attempt will be made to put forward some concrete measures to combat the decline of the profession.

Favourable factors

Positive developments for certain categories of artists

71. The introduction to this chapter has already shown that the musician's position varies greatly. Some groups of musicians and artists have not suffered - or very little - from the decline of the profession and can be more or less excluded from the I.F.M. statements.

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(1) See the text of Resolutions I and II of the I.F.M., made at the close of the conference on 3, 4 and 5 June 1975 in Brussels, annexed to the present chapter.

(2) Resolution II states more particularly :"in view of the fact that the application of freedom of movement for workers, as defined in Articles 48 and 49 of the Treaty of Rome, has had very unfortunate consequences in several countries for the musical profession as a whole, because of the risks that arise therefrom for the existence of a genuine national cinematographic culture, (this resolution) forcibly confirms that it is pernicious and iniquitous to wish to apply to the cultural sphere provisions which in every detail are exclusively economic".

72. These are orchestral musicians, members of choruses, church musicians, radio and TV musicians and music teachers who have long-term contracts or are subject to staff agreements so that they have stable employment and benefit from social security.

73. In recalling the situation of musicians in the past, one finds that conditions of employment have in general improved since 1930. Previously, there was no job stability, except for a few academy music teachers and military musicians. However, on this point the situation of the musician at that time was not very different from that of other workers in general. Stability of employment was not a matter of general concern in that period.

74. Theatre orchestras and choruses employed only seasonal workers, while the symphony orchestras - of which there were very few - hired their players for each performance. Without a sufficient number of schools of music or other job opportunities, musicians were obliged to earn a living - often a scant one - by giving private lessons.

On one and the same day a musician would often pass from the theatre or symphony concert orchestra to conducting an amateur orchestra or giving private lessons.

75. Later, a number of musicians were incorporated into vast institutions such as radio and television networks. Symphony orchestras multiplied and general education and specialized education (schools and academies of music) employed a certain number of musicians as teachers. In Germany, for example, a survey in 1969 showed that the number of teachers in schools of music had quadrupled between 1961 and 1968 (see the review DEUTSCHE MUSIKRAT, N° 13 for 1969). This review also points out that, despite this increase, the shortage had not yet been made good by 1969. Again in Germany,it was shown that for general education the number of young diploma-holders presenting themselves for this teaching was insufficient for the requirements. Even allowing for an annual increase of 35% (from 190 to 260), it would not cover the demand for about ten years. There was an identical shortage for the conductors of choirs or of various instrumental groups. Moreover, account had to be taken of the ageing of orchestral musicians and of teachers, necessitating gradual replacement.

Security of employment and rates of pay were improved - for these performers, at all events.

Positive developments resulting from the adoption of certain international legal measures

76. Since musicians are concerned about the future of their profession, attention

must be drawn to certain efforts that have been made since the 1950s to eliminate to some extent the difficulties that result from technological progress. Recordings of their performances were re-used - often without their consent - and retransmitted to the public in the theatre, in dance halls, in restaurants or broadcast by radio. They were deprived in this way of the moral right to decide whether or not a particular performance could represent their art - which thus harmed their prospects of concluding contracts with companies for recording their performances for a fee.

In fact, records replaced musicians at a terrifying rate, causing unemployment and underemployment in the profession. Already, in the inter-war period, the United Kingdom had adopted a law which provided for the protection of performers : the British Dramatic and Musical Performers Act of 1925. This law protected actors, musicians and variety artists against any recording of their performances without their consent, but made no provision with regard to secondary use. In other countries, such cases were submitted to common-law courts with a view to establishing the rights of performers.

Finally, recognizing the problems for which the unions of performing artists and musicians have made themselves spokesmen, the International Labour Organization combined its efforts with those of other international organizations (UNESCO and the United International Bureaux for the Protection of Intellectual Property), establishing an international convention, the Rome Convention of 1961 (*).

One of the objects of the agreement was to protect performers by granting them the right to restrict the use of their recordings and to be compensated for this as fairly as possible.

77. This Convention has in fact helped to protect the independent existence of performing artists and musicians and to guarantee ownership of their performances. However, because these workers are generally in an economically weak position in society, they are more ready - or even obliged - when their performances are recorded, re-broadcast or filmed, to assign their rights to their employers or those who record their performances, often for really derisory sums.

(*) International Convention on the Protection of Interpretative and Performing Artists, Record Producers and Radio Broadcasting Organizations. The Convention was signed in October 1961 and came into force on 18 May 1964, after ratification by six countries - the minimum number required for its entry into force.

It must be repeated that this protection, which is regulated in various ways in the different Community countries, does not compensate sufficiently for the loss of earnings that performers have suffered in respect of their non-performances.

Moreover, several Community countries have not ratified this Convention : Belgium, France, Ireland, the Netherlands - which means, of course, that the system of compensation thus provided for cannot effectively guarantee the success of the aims.

78. Before this Rome Convention of 1961, there was already an agreement, concluded in 1954 between the International Federation of the Phonographic Industry and the I.F.M., which provided for the participation of members of the latter organization in the profits from the playing of records on the radio, for as long as the musicians would not themselves have the benefit of any right protecting their recorded performances. Later on, agreements were signed, particularly in 1957, by the three international federations of performing artists (actors, variety artists and musicians) and by the European Broadcasting Union. They provided mainly that the performing artist who took part in certain radio and television broadcasts should receive additional fees when their performances were broadcast internationally and that the use of artistic programmes should be subjected to certain limits.

79. Another agreement was concluded between the International Federation of the Phonographic Industry and the I.F.M. which stipulated that musical performances recorded for a specific purpose (making of records, cinema or television films, radio programmes, etc...) could not be used for other purposes without the authority of the musicians concerned or their trade union organizations.

80. Despite the situation of these groups, which has been described as "privileged", very many people among them have been affected during the last 10 years by a great decline.

The symphony and radio orchestras are gradually disappearing or are faced with an uncertain future; the financial burdens that have to be borne in order to give workers in this category decent remuneration are getting heavier and heavier.

Opera, which used to attract so many music lovers, both young and old, is suffering a similar crisis. Following a very old tradition, our towns and cities were proud of their opera companies : Paris, Bordeaux, Lille, London, Amsterdam, Brussels, Liège and so many others, were famed far beyond the boundaries of this

continent. After the second world war, an attempt to revive this art - which provided a good number of jobs for cultural workers (singers, musicians, choruses, dancers, producers, stage technicians, etc...) - was abandoned, since the workers no longer found a livelihood in it owing to the numerous difficulties mentioned in this chapter.

The list could be made even longer; the "café-chantant" and music-hall are going out of existence and their disappearance can only be due to the decline of the "cultural profession", which can no longer make a living from them.

At the same time, the circus is experiencing financial difficulties which are having serious effects on the social situation of its workers. This phenomenon is still more paradoxical since the public is once again feeling a need - often unconscious - for contact, which can only be satisfied by attending live shows (and not televised even if in colour) and is coming back to the big tops. Other people think this is a fashion set by intellectuals. It is in fact a general need (and an imperative one) to go back to one's roots. Consciously or not, the public - which has been cut off for too long from this sensation of completeness which only authenticity can provide - finds it in the acts in the ring.

It is therefore a good time for the governments to provide aid in the form of tax relief, a helping hand which would be better than a gift, since it means the assurance of financial relief obtained normally and not in the more or less arbitrary and always chancy form of subsidies. Once their financial problems were solved in this way, managers would be in a better position to consider the lot of their workers and in certain cases to improve their programmes.

The circus is recovering from a long illness. For ten years or so, in several countries, the situation was desperate. And then the forces of revival got the upper hand. We must now hasten its convalescence and recognize it as a full-time partner in a sometimes rather affected world of culture. The circus is in a better position but is still not out of danger. It could go down again - and if that happened any action would certainly be too late.

What is more, to help the circus only when it is too late would be to ignore the national and trans-national character of this form of expression and also the rare opportunity which it provides of uniting the great public - young and old - which remains deeply attached to its traditional tastes, with the new public, which is naturally more demanding and feels itself increasingly drawn to this essentially

visual art where any form of trickery is impossible. This new public doubts neither the cultural value of the circus nor the cultural status it should have in the Community.

81. Whilst allowing that progress has been made, especially by the signing of the Rome Convention of 1961 and that, for certain limited categories of performing artists bound by long-term employment contracts, the situation has been improved and stabilized (thus following - though at a slower pace - economic improvement for workers in general), the profession is nevertheless still beset by great difficulties, with the majority of artists still in an extremely distressing situation which endangers the very existence of the profession. This majority are not among the favoured people mentioned earlier; they still do not enjoy the improvements made in employment stability for workers in general. The position of the performing artist - except, of course, for the few privileged groups mentioned above - has remained practically unchanged since the 1930s.

Analysis of the problems

Social problems

These difficulties are due to :

82. the instability of employment and high unemployment.

It is true that cultural workers are certainly not the only ones to be suffering unemployment; but they feel it more than the others. Even throughout the period of full employment which the Community experienced from its beginnings in 1958 until the end of 1973, many cultural workers were unemployed. Although the present economic crisis has aggravated the unemployment of these workers, it did not create it. This unemployment is, in fact, as much structural as cyclical, if not more so. The case of performing artists is striking in this respect, their unemployment being due particularly to the consequences of technological progress.

It must be stated that the cinema, the radio, the record and other means of re-using the performances of artists are at the root of the instability of employment. Generally speaking, the loss of earnings is far from offset by the additional remuneration which, in principle, re-use yields.

83. If one compares the influence of technological and structural development upon the situation of performing artists and musicians with that of workers in general, and especially industrial workers, one finds that the situation of the former is proportionately more seriously affected than that of the latter. For the former, the effects with regard to job stability are bad; they can be, and often are, modified by the intervention of workers' organizations and public authorities, which usually concentrates on limiting redundancies to a minimum and seeking opportunities for retraining. With the weakest position economically, the performing artist, however, cannot protect himself, especially as the position is generally an individual one.

Moreover, although, on the one hand, the introduction of electronic data processing in offices is reducing the number of jobs for workers in general - particularly the subordinate, routine jobs - it is also, on the other hand, resulting in the creation of new types of office jobs, for example for machine operators, programmers, systems analysts, data processing clerks and others, connected with the preparation and checking of data (1).

84. In contrast with this improvement in the position of the worker in general, technological progress (2) signifies for most performing artists a gradual disappearance of stability of employment, so that the fear expressed by the I.F.M. appears to be not unfounded. Is the existence of this profession sufficiently secure for the future? (The figures in the review "KUNSTLERBERICHT" - footnote 2 on p.31 and table on p. 50 - confirm this fear).

85. The inadequacy of application of the social security system.

This report confirms that, owing to the intermittent and irregular nature of his work, the performing artist is very often not covered by social insurance, and the collection of employers' contributions is made difficult by the frequent change of employer. Moreover, it often happens that a musician is obliged through financial necessity to engage in two or more professional activities at the same time. If he

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(1) Cf. I.L.O. report : "Recent events and advances affecting salaried personnel and wage-earners involved in mental work", of the Advisory Commission on salaried personnel and wage-earners involved in mental work, seventh session, January 1974.

(2) On the basis of Resolution n° 65 relating to the effects of technological progress, the I.L.O. is making a study in order to find out more about the effects of the use of recorded and/or broadcast performances upon the social and economic conditions of musicians and theatre and variety artists. This study is at present in course of preparation, under the programme and budget for 1974-1985.

then comes under social security, he may be under different schemes of social legislation, being an employed person in his main activity and at the same time self-employed for one or all of his secondary activities, or vice versa.

In the absence of any precise definition, the performing artist - like the writer, for example - is thus often tossed about between several different schemes. Orchestral musicians, for instance, are treated as employed persons in their capacity as theatre artists, but contribute to a pension fund for the professions if they are at the same time self-employed teachers of music.

Another factor which poses problems for the application of the social security regulations to artists and musicians is that their legal position is not clearly defined. However, for musicians and entertainment artists, all the characteristics necessary for definition of their work as "paid employment" are not always present. If, in fact, the employer/employee relationship is lacking - as is often the case - then the worker must be considered self-employed. If his performance is a single one, without continuity, his work will be treated as performances of service.

However, the Netherlands, wishing to provide cover for these workers under the social security scheme for employed persons, have provided in their social security legislation that stipulations can be made, under an implementing order, by which the working relationship of musicians must be regarded as "paid employment". This was established by Royal Decree of 14 December 1973 (Koninklijk Besluit van 14 December 1973 - Staatsblad 627).

86. It is not surprising that in this unstable situation artists should urgently seek the benefits of social security. It may be noted that the performing artists' desire for security and the necessity to provide for their needs are generally greater than those of other workers, and the risks that some of them run are sometimes so serious that one may ask whether the special nature of these needs and of their legal position does not warrant the application of special social protection schemes.

87. Inadequate remuneration

One often hears it said that it is not in the nature of artists - who associate themselves with principles of freedom and independence - to aspire to material advantages such as stability of employment, fair pay, flexible hours of work, etc..., that they seek above all moral and intellectual satisfactions such as the artistic nature of the profession and the responsibility and diversity of the work, and that

the joy of practising an art is the prime consideration for artists and musicians, whatever their specialization.

88. It is high time to abandon this romantic illusion that the artist can live on his art alone. It is a question of social justice. Just as society is not obliged to support idlers who would wish to profess culture without providing anything in return and without proving themselves, there is no justification for society to allow itself to be offered, without fair remuneration, services which it needs just as much as any other work. Cultural work must be justly rewarded, both directly (pay) and indirectly (social security). Society must also show its full support for those among its workers who, within a sensitive sector, are temporarily without work. The Community owes it to itself to demonstrate in tangible form its view that although there is no reason why cultural workers should be "privileged", there is no reason for them to be "discriminated against" either. If it is desired to ensure cultural progress within the Community, then protecting monuments which represent ancient culture is not sufficient; there must be protection also for those men and women who, in various ways, make today's culture and are preparing the culture of tomorrow.

Administrative problems

89. As explained by the I.F.M., the administrative obstacles usually take the form of protracted and complicated formalities.

One other aspect which has not yet been mentioned lies in the fact that migrant workers encounter, among other things, considerable difficulties in complying with the administrative, fiscal and other formalities in the country where they exercise their occupation.

In the field of taxation, in particular, the consequences of an omission can sometimes be serious, without the worker always being to blame.

Legal problems : influence of Community provisions on freedom of movement

90. The author of the report does not share the view that the causes for the deterioration of the profession of performing artist and musician lie chiefly in the application of the Community provisions on freedom of movement (*). Analysis of the

(*) Cf.Annex II to this chapter:Resolutions I and II of the I.F.M., passed at the close of the conference on 3,4 and 5 June 1975 in Brussels,appended to this chapter.

reasons for the deterioration of the cultural profession shows that it is not free movement within the Community that must be blamed, but technological progress and, to a lesser extent, access to employment for the nationals of countries that are not members of the Community.

91. The Vice-President of the I.F.M. states in his report "that at present the situation on the national labour markets is chaotic, being created by free movement resulting from the fact that the governments do not control the situation on the employment market, which in turn influences the deterioration of the musician's position". Entry and residence by the nationals of third countries are, in fact, controlled by the national authorities, who are thus able to take measures that they consider necessary to bring about equilibrium between the supply of and demand for employment within their territory. Since Community workers enjoy equality of treatment with nationals as regards access to employment within the Community, this control, regularizing the employment market, no longer exists for the nationals of other Member States - at all events not by the direct intervention of the system of authorization for entry and doing work.

92. This statement calls for the following comments :

- close contacts have been established between the representatives of Member States' governments responsible for the employment markets. They meet regularly, especially within :

  the Technical Committee, instituted by Regulation EEC/1612/68 and composed of representatives of the governments of Member States, and

  the Advisory Committee, composed of representatives of the workers' trade union organizations and organizations of the employers' associations.

  These two instruments of assistance of the Commission in connexion with free movement, whose aim is Community co-ordination of the national employment and manpower policies, follow closely the trend of the economy of Member States with a view to achieving better equilibrium within the Community on the employment market.

- free movement within the Community is an indispensable factor for the realization of the Common Market, as provided for by the Treaty.

- the present position of migration within the Community is characterized by an influx of migrant workers on such a scale that it has had far-reaching effects upon the economy of Member States. Migration has speeded up in spectacular fashion during the last fifteen years, but the migratory movement which came especially from the Community countries at the beginning of the 1960s (three-quarters) has been completely reversed, with barely one-quarter of the number of migrants being nationals of Community countries since the end of the 1960s and the beginning of the 1970s. The total number of migrants, Community or otherwise, had increased considerably during this period. Their number in 1974 was estimated at more than 10 million, 6 400 000 of whom were workers, whereas in 1959 the total number of migrant workers was 1 183 000.

  The continental influx - chiefly of migrant workers from third countries - has in fact intensified the excessive concentration in the industrial areas, causing problems of overloading of the social infrastructure. (See chapter I, Table III, p. 22 and 23).

  It is interesting to note that although this situation must be regarded as one of disequilibrium, it must be attributed above all to the immigration from third countries. This is not covered by the Community provisions and thus remains subject to the sovereign discretion of each Member State. In order to avoid unfavourable consequences, the Commission had repeatedly recommended co-ordination of the immigration policies of Member States in order gradually to attain the adoption of a Community employment policy which could take account of both the national and the Community interest; it must be recognized that migration in recent years has formed an important element of the national labour market of Member States and has therefore been a criterion of Community economic life. In this connexion, in its resolution of 21/1/1974,the Council expressed, in fact, its political desire to establish appropriate co-ordination of the employment policies of Member States, based on the necessity to achieve a policy of full and better employment within the Community as a whole, including the regions, and, in addition, to co-ordinate immigration policies vis-à-vis third countries.

93. The deterioration of the profession began to develop immediately after the last war, particularly as a result of the very rapid spread of technological progress. Now free movement within the Community did not come into force until the end of 1968, and not until 1972 for the three new Member States (under the agreement concluded at the time of their accession to the Common Market, the Irish Republic and Northern Ireland still apply the work-permit system for nationals of the Community desiring to

take up employment within these countries, so that these Community areas are at present still controlled as regards both Community and non-Community immigration).

94. Generally speaking, intra-Community migration has not been sufficiently intensive since 1968 to threaten the profession. Moreover, it is evident from the debates at the I.F.M. conference on 3, 4 and 5 June 1975 in Brussels, and from the examples cited by the various delegates present, that it is not so much free movement within the Community that was the object of these declarations, but rather the introduction into some Member States of musicians from non-Member countries, particularly the Eastern countries and the Philippines.

95. In the United Kingdom, access to employment in the musical profession (and in other occupations, too - actors, dockers, printers, the Merchant Navy) is subject to conditions of membership of a British trade union (closed shop system) or of a Continental trade union approved by the British (thus excluding non-members of a trade union or workers who belong to other trade unions recognized on the Continent), thus necessitating the territorial extension of a trade union obligation to other Member States. This is all the more regrettable because the work performed is generally of short duration - at all events, for actors and musicians.

This practice presents great difficulties for the nationals of other Member States with regard to access to the profession, which are practically insurmountable for them.

In the opinion of the author of the present report, this practice could hamper free movement within the Community, bearing in mind the provisions of Article 3, para. 1, sub-para. 3, and Article 7, para. 4 of Regulation EEC/1612/68.

96. During the application of the second Regulation, N° 38/64, - valid from 1964 to 1968 - no government, apart from that of the Netherlands, submitted to the Commission any request for the re-introduction of national priority on the labour market for performing artists and musicians, although Article 2 of that regulation gave them every opportunity to take this protective measure (*).

(*) Art. 2 of Regulation 38/64 stipulated : "each Member State may, if there is surplus manpower within a particular region or occupation, suspend the application of Art. 1 (abolishing national priority) within that region or occupation".

97. The question arises whether the activities of performing artists are not primarily cultural rather than economic in character and thus not covered by the Treaty of Rome.

98. Apart from the obvious cultural aspect of this profession, however, it must be admitted that the interpretative or performing artist plays an economic role which must not be underestimated; the profession is characterized by several factors which give it this economic character. Thus, depending on the respective laws of the Member States, the interpretative or performing artist is regarded as an employed person, a self-employed person or a provider of services. Consequently, the system of free movement applicable to all workers without exception applies equally to performing artists and musicians.

While it is true that the economic situation of the musician and of the actor is unsatisfactory and that it has hitherto often been "forgotten", and assuming that they would not be regarded as workers in the sense of the Community provisions, most cultural workers would themselves have more to gain than lose from being treated largely the same as other workers; they would have nothing to gain from being treated as "exceptions".

99. Whatever the case may be, it is essential that the rules that have been established for workers as a whole should apply compulsorily to cultural workers. According to the Treaty and to derived law, there are no distinct "classes" of workers. Free movement is now an established fact which can no longer be called into question.

100. Moreover, the economic aspect of artists' and musicians' activity cannot be denied : their shows and concerts have audiences of millions. The Netherlands Bureau of Statistics (Centraal Bureau voor Statistiek), for example, has recorded for this small country, for the 1973/74 season alone, a figure of 1 098 140 visitors for 1280 concerts; nearly 82 000 young people visited 123 youth concerts.

The collaboration of musicians of all levels in the activities of radio, television, the cinema, etc., represents a not inconsiderable portion of the budget of these economic sectors.

101. While putting forward arguments which bring out the unfavourable effects of free movement, one cannot lose sight of the constructive aspects which are also inherent in free movement within the Community. It gives workers unrestricted access

to employment over the entire territory of the Common Market, widening the opportunities of employment for artists and musicians. This can be a precious asset, particularly when the general economic situation is unfavourable. Moreover, the free movement of artists and musicians helps to spread culture in Europe. It is one of the most effective means of developing cultural exchanges between the Community countries, thereby contributing towards cultural interpenetration within Europe. To assert that this freedom of movement endangers the existence of national cultures seems to be fundamentally wrong. Culture has above all a universal character; in wishing to confine it within national frontiers, one risks creating much more serious dangers for the European dimension of culture (1).

Statistics and information

102. There are in fact no statistics on performing artists and musicians which would enable the conclusions to be drawn from them that are essential for making the labour market situation clearer in regard to these workers, with the object of undertaking common action for more harmonious development and greater stability within the profession. There are no complete national statistics on the total number of artists and musicians or on the employment situation and unemployment among these workers in proportion to the total labour force. If national statistics are lacking, it is obvious that these figures are likewise lacking at Community level.

103. To the knowledge of the author of the present report, the Federal Republic of Germany is at present the only country with detailed national statistics on the artistic professions. They are contained in the document "KÜNSTLERBERICHT" (2), which appeared on 13/1/1975, issued by the Government, and drawn up at the request of the Bundestag (Parliament) which wished to have accurate information on the overall situation of the profession. This document confirms in several respects the difficult position of the representatives of art in the Federal Republic.

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(1) The author is well aware that complete segregation is not what is envisaged, but that the hope is to revert to a system of exchange of musicians on the basis of reciprocity between Member States. However, he is of the opinion that this system - which can operate between countries which are not bound by close ties - must be considered insufficient in the Common Market and contrary to the fundamental objectives of integration.

(2) "Bericht der Bundesregierung über die Wirtschaftliche und Soziale Lage der Künstlerischen Berufe" - Deutscher Bundestag 7/Wahlperiode. (Government report on the economic and social situation of the artistic professions.)

Artists 1950 - 1970 by category 1)

Category / Year	Music		Actors		Visual arts		Total	
1950	48,500		13,100		13,900 (*)		75,500	
1961	35,900		11,800		16,600 (*)		64,300	
Change	- 12,600		- 1,300		+ 2,700 (*)		- 11,200	
1961	35,900		11,800		16,600 (*)		64,300	
1970	29,521		10,723		21,344 (*)		61,588	
Change	- 6,379		- 1,077		+ 4,744		- 2,712	
	of which %		of which %		of which %		of which %	
	Employed	Self-empl.	Employed	Self-empl.	Employed	Self-empl.	Employed	Self-empl.
1950	68	32	79	21	20 (*)	80 (*)	60	40
1961	69	31	71	29	30 (*)	70 (*)	59	41
Change (%)	+ 1	- 1	- 8	+ 8	+ 10 (*)	- 10 (*)	- 1	+ 1
1961	69	31	71	29	30 (*)	70 (*)	59	41
1970	74	26	73	27	51 (*)	49 (*)	66	34
Change (%)	+ 5	- 5	+ 2	- 2	+ 21	- 21	+ 7	- 7

1) Results of censuses - 1950, 1961 and 1970.
(*)Excluding photographers.

It publishes, for example, a table showing the numbers in the artistic profession, the figures for which prove the degree of abandonment of the profession during the period 1950-70 (See p. 50).

It may again be noted that the decline in the number of cultural workers in Germany is not reflected solely in absolute figures, but also in the proportion of the working population formed by such workers. Whilst the working population as a whole underwent great expansion during the years 1950-61 (1), the percentage of cultural workers in the working population as a whole during this same period changed from 0.34% in 1950 to 0.24% in 1961. In 1970, the proportion of these workers - still in relation to all employed workers (2) - was as low as 0.23%.

The normal statistics of the Member States should provide for a sub-division in the "services" sector, showing the profession of performing artist and musician separately. This would make possible the comparison without which it is difficult to obtain at the Community level any coherent picture of the position of these workers in relation to the labour market.

104. In addition, this document contains a section which makes a comparison between the economic position of the performing artist and his rights to certain insurance benefits in the various Member States.

With regard to the economic position of these workers :

- for Belgium : income, for some of the artistic professions at least, are lower than the average income in general.

- for Denmark : the legislation governing the Assistance Fund for Artists is based upon the assumption that the average income of Artists is lower than that of the rest of the population.

- for France, Italy and the Netherlands : no information.

- for the United Kingdom : for the majority of self-employed artists, chiefly actors and musicians, the situation "is not very satisfactory".

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(1) 1950 : 22 074 000 - 1961 : 26 968 000 working population.

(2) 1970 : 26 343 000 - workers actually employed.

With regard to old-age insurance in relation to other workers :

- for Belgium : for actors, singers, choreographers, variety artists, musicians, orchestra conductors, ballet dancers and subordinate artistic assistants, the situation is considered satisfactory and comparable with that of other workers. Because of the lack of exact statistics, it is not possible to compare the positions of artists other than those mentioned above.

- for Denmark, France, Italy and the Netherlands : no information.

- for the United Kingdom : the normal benefits (old-age, sickness, unemployment, etc...) are at present, for a single person, £6.75 a week - which is equal to one-fifth of the average weekly wage of a male industrial worker. The average percentage of unemployment of performing artists belonging to a trade union is invariably around 75%, and they are therefore scarcely able to fulfil the condition of the prescribed duration of employment in order to qualify for these benefits. They are thus certainly not able to pay the premiums or other contributions to provide for their old age by means of private, non-statutory insurance.

105. The German report confirms that the percentage of unemployed in that country(*) was distinctly higher among the artistic professions :

Musicians	5.1 %
Singers, actors and dancers	11.6 %
Other performing artists	9.2 %
Sculptors, painters and engravers	4.8 %

These percentages were far higher than that of all workers actually employed, which at that time - the end of September 1973 - was only 1% when unemployment was not yet rampant.

The number of unemployed in general can now be multiplied by a factor of approximately 5, compared with 1973.

(*) The available statistical data apply only to job seekers registered with the employment offices who are seeking paid cultural work. They are based upon the results of a special survey on unemployment carried out by the "Bundesanstalt für Arbeit" (Federal Labour Office) in September 1973.

The number of unemployed in the profession of performing artist and musician can likewise be multiplied by approximately 5 - which is probably an underestimate - and this makes their position alarming.

Concrete proposals

106. Following this analysis of the position of the performing or interpretative artist, showing the weakness of his social position, it will be appropriate to look for the means to reorganize and improve the profession.

The Community was for a long time unaware of the existence of many problems peculiar to these workers. Not until 1969 did it begin to study the cultural sector more directly. The Final Declaration of the summit meeting of Heads of State and of Government affirmed that they saw in Europe "a mainspring" for the growth of culture and that it was essential to preserve this mainspring.

At the 1972 summit meeting, culture was likewise the subject of several contributions to the discussion, and several passages in the Final Declaration mention it. In addition, the Declaration on the European identity, adopted at the 1973 summit meeting, presented culture as a component element of this identity.

At the national level, certain efforts have undeniably been made to combat the difficulties of the cultural worker.

Thus, Belgium is encouraging the activities of cultural workers by granting them substantial subsidies in certain cases.

In Denmark an Artists' Fund (Kunstfonds) has been created to assist them financially.

In the United Kingdom, the Arts Council makes grants in cases of need, which constitute "an income".

In the Netherlands, a programme of encouragement by means of subsidies exists, and also a Social Fund which assists artists who do not sell their works, while for writers a literary fund has been created to improve their social position.

The author of the present report is of the opinion that the means to improve the profession should not be sought in subsidies alone, but also in conferring upon

cultural workers, in equality with all other workers, the benefits to which they are fully entitled.

107. Despite all these efforts, the position of the cultural worker is still difficult. The exodus from the profession continues and the economic and social prospects remain uncertain. It is therefore desirable to tackle with urgency - at Community level - the social problems which still constitute a barrier to full enjoyment by these workers of their rights. These problems lie within the limited scope of the present study, at the employment level, and more especially in the field of social security.

Although these social problems still necessitate great improvements, the administrative and legal problems also undeniably require special attention.

Social measures

With a view to effectively balancing supply and demand for employment for performing artists and musicians within the Community, the following conditions should be fulfilled :

108. Information :

a) On the one hand, the workers concerned must have precise information on the job opportunities available to them at Community level. This means that the employment offices of Member States must communicate their information, with the opportunities existing within the other Member States, to the cultural workers concerned. On the other hand, the specialist employment services whose task it is to balance supply and demand within the Member States must do everything to introduce these workers into this intra-Community vacancy-clearing activity, just like the other professions.

b) In order to be better informed about the situation of cultural workers in the Member States, the Commission could establish at the European level close and regular contact with the trade unions that protect the interests of artists and musicians (*).

(*) This contact could be established with the European Office of the I.C.F.T.U. in Brussels and with the competent federations which, in conformity with Resolution I of the I.F.M., published at the close of the Brussels conference on 3, 4 and 5 June 1975, envisage establishing in Brussels a joint European administrative office. This contact could assist the trade unions and professional associations in extending the training and the information of their members on European affairs.

109. Statistics :

a) The services of the European Communities should have at their disposal precise national statistics on cultural workers. Without them, no coherent action concerning employment can be envisaged at the Community level. These national statistics will have to appear in detail in the economic sector of "services", providing figures on the numbers employed and the unemployment figure for each category.

b) In June 1972, the Commission submitted to the Council of Ministers a proposal for a regulation on the compilation of uniform, comparable statistics on foreign labour. It is desirable that these statistics should also include cultural workers.

110. Vacancy-clearance within the Community :

a) Although the author has already suggested that the Community vacancy-clearance system should also apply to cultural workers, he would draw attention to the fact that this system does not function in such a way as to provide cultural workers with the guarantees that they might expect from it. Despite the high percentage of unemployed among cultural workers, they have never appeared in the lists which the employment services of the Member States send monthly to one another. (See General Introduction, p.11.)

Even after improvement, will this system produce favourable results for cultural workers? The artistic profession is characterized by various quite specific factors which make vacancy-clearance very difficult, even at national level. In order to be fruitful, it requires as much personal contact as possible between the placement agency and the parties concerned - contact which is essential for knowledge of what the one requires and what the personal abilities of the other are. The system of vacancy-clearance by means of returns cannot fulfil these requirements- not at the international level, at all events.

b) Another point which makes vacancy-clearance for employed persons ineffective for the cultural worker is that the latter does not really occupy the legal position of an employed person - which makes it difficult to apply the vacancy-clearance provisions. These difficulties have also been experienced at national level, causing some of the countries to centralize the vacancy-clearance service for these workers.

The lack of co-ordination in vacancy-clearance probably lies at the root of the continued existence of private placement agencies working for profit. The author considers that, for artistic workers, Community vacancy-clearance is worthy of study

in the light of practical experience, and he wonders whether it might not be good policy to move towards centralization of vacancy-clearance for this sector.

It would in any case be useful if each Member State maintained a national register containing all the available data for the artistic sector. This register could be consulted for vacancy-clearance purposes, both national and Community.

Social security

111. It will be seen from all that has been said above that the cultural worker is generally not very well covered by social insurance (unemployment, health insurance, old-age insurance, disablement insurance, etc...). It happens that during periods of unemployment - and even during periods of employment - the cultural worker and his family are not covered for social security benefits.

It is important, therefore, that Member States and the Community study very closely the position of these workers and take vigorous action to remedy the defects that still exist in the present structure of social security systems, in order thereby to achieve the social objectives which must enable these workers to enjoy fully all the benefits to which workers are entitled.

Thus, France - which has for fifteen years been providing social security for musicians in casual employment with an employer, by issuing stamps - is now trying to find another system that is better suited to the professional life of these workers. In fact, this system, using stamps which are in two parts, one for the employer and the other for the worker, is proving unsatisfactory because it can too frequently be abused and is risky for the worker, in that he is committed to a specific number of performances per month or quarter. It does not provide either for the lump-sum paid-holidays allowance nor for supplementary retirement insurance or unemployment insurance.

It should however be noted that in France a law is at present being prepared which will provide writers with the benefit of the general system of social security.

Statistics on accidents at work in certain sectors have been compiled by the professional organizations. This procedure could perhaps be extended to cultural workers, the vulnerability of whose profession exposes them to accidents which can cause a special kind of disablement which would not have any serious consequences for the practice of other professions.

It would thus be desirable to try to establish at Community level, in collaboration with the Member States, a modus vivendi extending social security benefits for disablement to these workers, even in these special cases.

The Social Action Programme provides for the establishment of general co-ordination at national level of the systems for self-employed and employed persons. This action should also apply to cultural workers, who encounter many difficulties in the application of different social security systems and who are liable to be "overlooked" because they constitute only a small nucleus among workers as a whole.

The possibility might be envisaged of establishing a special social security system for cultural workers which would take account of the special characteristics of this underprivileged category of workers. This special system could then be made uniform throughout the Community.

Administrative measures

112. The administrative procedures imposed upon Community migrant workers are often protracted and tedious.

The only possibility for improving this situation would be to draw the attention of Member States to the administrative delays which can have serious consequences for the stability of employment and conditions of life of the workers concerned. Moreover, the Commission should give very close attention to the rapid execution of administrative formalities and should intervene if necessary.

Chiefly in connexion with fiscal formalities, migrant workers encounter complications which could have very serious consequences in that they could suffer financial or other damage, without their being responsible. They can be ignorant of the laws of the host country if they are not familiar with the language, especially at the beginning of their stay.

It would perhaps be possible to establish close, continual collaboration between the various administrations of Member States and the competent social services within the Member States - which would lead to a solution to the situation.

Legal measures

113. I.L.O. Convention n° 96 called for the progressive abolition of fee-charging employment agencies conducted with a view to profit; two countries - the United Kingdom and Denmark - have not ratified this Convention. The Commission could approach these countries with a view to persuading them to accede to the Convention. It is also of the greatest importance that the signatory countries should fulfil their commitments in this respect.

The 1961 Rome Convention :

Although not directly connected with free movement and therefore beyond the scope of this report, it is desirable that the Commission request all Member States that have not ratified this Convention to do so without delay.

ANNEX I

ANALYSIS OF CONVENTION N° 96 OF THE INTERNATIONAL LABOUR ORGANIZATION

This Convention of 1933 (amended in 1949) provides for the progressive abolition of private, fee-charging employment offices operating for profit. The Convention is intended to put an end to the operation of these offices "which serve as intermediaries to procure a job for a worker or a worker for an employer" (Art.1a). There is a great risk of abuse in leaving the establishing of contact between job vacancies and job seekers in the hands of persons, companies, institutions, agencies or other private organizations whose activity is for direct or indirect material profit. The aim of private gain can encourage them more readily to exploit those who are economically the weakest - viz., those seeking work - by procuring for them work which in many cases does not conform to the law, particularly as regards social security, and/or for unfair remuneration. They often charge excessive fees, and it sometimes happens that they charge a fee for a service which they know in advance will be unsuccessful.

The Convention also provides for the progressive abolition of fee-charging agencies, as the respective governments establish public employment services taking over the establishment of contact between job vacancies and job seekers. The Convention was made at a time (1933) when public placement agencies were created in most European countries, for the very purpose of clearing vacancies on the employment market without remuneration.

It can be said, in fact, that many fee-charging employment agencies operating for profit are at present still continuing their business undisturbed, despite the operation of public employment services for many years. The activities of private placement agencies lie mainly in the sphere of performing artists and musicians (*).

(*) The author does not mention in this study the private employment agencies which hire out labour. Their object is the same as that of the fee-charging agencies operating for profit, i.e. bringing job seekers and job vacancies together; but they are of a different legal form, in that their intervention is indirect : they take the job seeker into their service and hire him out to a third party who is effectively the employer. These hirers-out of labour are active chiefly in the building industry, the metal industries, ship-building, office staff, etc..., but they generally do not handle many cultural workers. The intention behind the Social Action Programme is to provide for a system of control of their activities with a view to eliminating the abuses in the hire of labour.

Some people explain the continued existence of these fee-charging agencies over all these years by a deficiency in the assistance given by the public employment services for liaison between job vacancies and job seekers among artists and musicians, especially at the international level. (See Proposals, paragraph 110, pages 55-56.) Lastly, it must be emphasized that two Members States - the United Kingdom and Denmark - have not ratified I.L.O. Convention N° 96.

ANNEX II

INTERNATIONAL FEDERATION OF MUSICIANS

Conference of European Musicians' Unions
Brussels, June 3 - 5, 1975

RESOLUTION I

Representatives of 16 member unions of the International Federation of Musicians (I.F.M.) in 16 European countries of which 8 are members of the European Communities,

having met in Brussels in accordance with Decision N° 1107 of the 8th Ordinary I.F.M. Congress (London, May 1973),

recommend to the Executive Committee of the I.F.M. that :

a) a joint European administrative office should be established together with the International Federation of Actors (F.I.A.) and the International Federation of Unions of Audio-Visual Workers (F.I.S.T.A.V.) for the purpose of co-ordinating and maintaining communication between the three Federations and the European Communities;

b) consideration should be given to the possibility of collecting information to corroborate our concern about the disadvantageous effects of the free flow of labour on the professions of performers;

c) member unions should be encouraged to explore the possibility of bi- and multilateral agreements regulating the interchange of musicians;

d) standard contracts should be produced for engagements of musicians that are common to all countries of the European Communities such as broadcasting and recording.

Brussels, 5th June, 1975.

ANNEX II
(cont.)

INTERNATIONAL FEDERATION OF MUSICIANS

Conference of European Musicians' Unions
Brussels, June 3 - 5, 1975

RESOLUTION II

The representatives of trade union organizations of musicians from 17 European countries of which 8 are members of the European Communities,

having met at Brussels at a conference convened by the International Federation of Musicians (I.F.M.) from June 3 to 5, 1975, with the aid of facilities and in premises provided by the Commission of the European Communities,

having heard informative addresses by high officials of the staff of the Commission of the European Communities,

having considered information collected from surveys carried out by the I.F.M. Secretariat among member unions of I.F.M.,

having discussed urgent problems confronting musicians and other performers,

- reaffirm their belief that it is inappropriate and dangerous for rules designed exclusively for economic purposes to be applied without modifications to the field of culture and take as evidence of this the serious effects upon the music professions in several countries of the application of the freedom of movement for workers of Articles 48 and 49 of the Treaty of Rome and the danger arising therefrom to the maintenance of the national cultural content of films.

- reaffirm their support for the Declaration of the Principles of international cultural co-operation of UNESCO, whereby :

1. Each culture has a dignity and value which must be respected and preserved.

2. Every people has the right and the duty to develop its culture.

3. In their rich variety and diversity, and in the reciprocal influence they exert on one another, all cultures form part of the common heritage belonging to all mankind.

and invite the Communities to consider ways in which the Treaty of Rome might be applied to correspond with these Principles.

- Having regard to these considerations, Conference welcomes attention now being paid by the Communities to cultural matters.

- Having been made aware of the programme of work decided by the Commission of the European Communities on 24 September 1974 relating to the cultural sector, Conference notes certain loopholes and invites the Communities to consider how this programme could be expanded to contain social measures in order to take account of the need for special consideration to be given to musicians and other performers in respect of such matters as social security and preservation of employment opportunities.

- Recognizing that it should be an essential part of any cultural policy to take account of the protection of performers, Conference reaffirms the view that ratification without reservation of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention 1961) by all states is an essential element in extending the protection of performers. Conference feels that the Member States of the Communities which are not yet Contracting States of the Rome Convention should take all necessary steps to ratify, or accede to, this Convention.

- Conference calls for urgent attention to be given by the Communities to favourable treatment in the application of Value Added Tax to the performing arts in view of their social importance. Attention should also be paid by member nations in their taxation systems to the particular characteristics of the musicians' occupations such as the wide fluctuations in earnings, the high capital outlay and the high mobility necessary.

- Conference affirms the importance to musicians and other performers of I.L.O. Convention N° 96 concerning fee-charging employment agencies and calls upon the Communities to promote the adherence by Member States of the Convention.

- Conference, having regard to the special considerations referred to in the present resolution attaching themselves to musicians and other performers, calls upon the Communities to promote measures designed to prevent damage being caused to performers' incomes and employment opportunities by the free flow of labour. Having regard to the unique characteristic of musicians' labour that it can be used without the physical presence of the musician, Conference invites the Communities to investigate the problems created by the use of recordings made for the purpose of replacing musicians in public performances.

- Conference suggests that these measures would be facilitated by establishing an improved system for the collection and dissemination of information about the supply of and the demand for employment opportunities for musicians and other performers within the Communities. Consideration should be given to setting up a European Labour Office for this purpose.

- Having regard to the necessity for public subsidy and other national aids for many of the activities with which musicians and other performers are concerned and in particular for film production, Conference is concerned by the possibility that Article 92 of the Treaty of Rome may be applied so as to prevent the continuance of national film aids.

- The essential nature of these problems demands a continuing communication and liaison between the Communities and the International Federation of Musicians and its fellow federation of actors and audio-visual workers' unions. Having decided to recommend to I.F.M. the establishment of a joint European administrative office in association with its fellow federations, Conference calls upon the Communities to maintain constant relations with this office.

Brussels, 5th June, 1975.

CHAPTER III

THE WORKER IN THE FILM INDUSTRY

Legal problems

114. Article 4, paragraph (2) of Regulation EEC/1612/68 stipulates : "When in a Member State the granting of any benefit to undertakings is subject to a minimum percentage of national workers being employed, nationals of other Member States shall be counted as national workers, subject to the provisions of the Council Directive of 15 October 1963" (*).

115. Article 3 of that Directive stipulates that "a film shall be regarded as having the nationality of a Member State where it satisfies the following conditions:

d) the screenplay, adaptation, dialogue and, if specially composed for the film in question, musical score must be written or composed by persons who are nationals of the Member State in question or who come within its cultural domain;

e) the director must be a national of the Member State in question or a person who comes within its cultural domain;

f) the majority of the executants, that is to say of the following - principal players, executive producer, director of photography, sound engineer, editor, art director and wardrobe chief - must be nationals of the Member State in question or persons who come within its cultural domain.

Participation in the activities referred to in d), e) and f) by nationals of other Member States, or by persons who come within the cultural domain of any such

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(*) Directive 63/607/EEC implementing in respect of the film industry the provisions of the General Programme for the abolition of restrictions on freedom to provide services.

State, shall not preclude recognition of the nationality of a film where the Member State in question accords its nationality to that film."

116. Directive 63/607 thus introduced discrimination of nationality by leaving it to the discretion of Member States as to whether the performance by a national of a Member State of jobs included under d), e) or f) should be regarded as an obstacle to recognition of the nationality of the film. Article 4, paragraph (2) of Regulation EEC/1612/68 extended this exception to paid jobs.

The post-war cinema in Europe has been characterized by economic and cultural nationalism. As almost all films are subsidized,this exception is a case of serious discrimination which has been introduced and maintained despite provision by the General Programme - in its Titles II and III - for the abolition of all discrimination on grounds of nationality.

However, the exceptions to the rule of non-discrimination concerning nationality that existed during the transitional period were not at that time incompatible with the provisions of the Treaty, since the achievement of free movement posed problems that were to be solved gradually. But the discrimination mentioned was maintained in the Community regulations even after the end of the transitional period.

117. Recently, on 4 December 1974, a judgement of the Court of Justice of the European Communities (Case N° 41/74 : VAN DUYN) decreed that "it is provided, in Article 48, paragraph (1) and (2), that freedom of movement for workers shall be secured by the end of the transitional period and that such freedom shall entail the abolition of any discrimination based on nationality between workers of Member States as regards employment, remuneration and other conditions of work and employment. These provisions impose on Member States a precise obligation which does not require the adoption of any further measures on the part either of Community institutions or of the Member States and which leaves them, in regard to its implementation, with no discretionary power" (Law, 5 and 6).

The judgement thus means that the non-discrimination rule is directly applicable in the Member States as from the date of expiration of the period of transition, and any legal provision to the contrary will be automatically void.

The exceptions of Directive 63/607/EEC are not justified upon other grounds recognized by the Treaty (Article 55 on activities connected with the exercise of

official authority in a Member State, or of Article 56 on the provisions for special treatment for foreign nationals on grounds of public policy, public security or public health and also those stipulated by the provisions concerning the free movement of goods, capital and persons).

Thus, the directive can no longer allow any exception to the mandatory general rule of non-discrimination based upon the nationality of workers, which forms one of the fundamental principles of the Treaty.

118. In this connexion, the judgement in the VAN DUYN case of 4 December 1974 referred to Article 48 of the Treaty and thus covered paid employment, whereas the directive in question concerns activities connected with the provision of services. However, in another judgement, in the WALRAVE-KOCH case (N° 36/74), the Court decreed that "the activities referred to in Article 59 (provision of services) are not to be distinguished by their nature from those in Article 48, but only by the fact that they are performed outside the ties of a contract of employment" (Law, 23). The same judgement also recalls that "in the sector relating to services, Article 59 constitutes the implementation of the non-discrimination rule formulated by Article 7 for the general application of the Treaty and by Article 48 for gainful employment. Thus, as has already been ruled (Judgement of 3 December 1974 in Case 33/74, VAN BINSBERGEN), Article 59 comprises, as at the end of the transitional period, an unconditional prohibition preventing, in the legal order of each Member State, as regards the provision of services - and in so far as it is a question of nationals of Member States - the imposition of obstacles or limitations based on the nationality of the person providing the services" (Law, 32 and 33).

The Court judgements mentioned do not concern film-making activities; they therefore apply to them by analogy only.

119. With regard to the nature of the discrimination clause in Article 3 of Directive 63/607, it should be noted that it was not intended only to determine the nationality of films produced within the Community; but it conditioned the nationality. Although this conditioning no longer has any practical effect upon the free movement of the films of Member States, owing to the non-discrimination rule, it nevertheless remains valid for films produced with participation from outside the Community.

120. The reservation expressed by Article 4, paragraph (2) of Regulation EEC/1612/68 has thus lost all legal force.

However, in order to avoid any possible doubt or misinterpretation in the minds of administrations and those who come under this jurisdiction, it would be necessary to remove from this Article 4 (2) the phrase : "subject to the provisions of the Council Directive of 15 October 1963".

The nature of film-making

121. Another question which arises is whether film-making also comes under Community law in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty, or whether it should be regarded more, or solely, as an artistic activity. In the latter case, it would not be covered by the provisions of the Treaty. This question merits some thought, because cinematography is very often regarded as "an art"; it is referred to nowadays as "the seventh art". It is true that a film is an intellectual creation, that it is produced by artists and that it therefore constitutes - despite its intangible, ephemeral character - an artistic creation.

On the other hand, it cannot be denied that this art must also be considered from another aspect - that of trade and industry. Films attract audiences of millions to the cinemas, with receipts amounting to millions of francs, lire, pounds, marks, etc. There are countless sales outlets, represented by the cinemas, besides the production industry itself with its studios, laboratories, etc.

122. Whatever the case may be, the General Programme for the abolition of restrictions on free establishment and free provision of services provides for the liberalization of all film-making activities, thereby recognizing the economic character of the industry.

In addition, Directive 63/607/EEC defines the film, enumerating the criteria by which its nationality can be determined; it governs the movement of films between Member States and tends towards the achievement of a film common market.

It relates to activities that are purely economic in character; consequently, there is no reason for the Directive to depart from the non-discrimination rule.

Administrative problems

123. Although the circuit is thus closed at the legal level and the discrimination that persisted in certain Community regulations is thus eliminated, it is surprising to learn that the abolition of discrimination by one or other regulation or

directive sometimes changes nothing, or only little, in fact, in the real professional or commercial situation. It is not sufficient to repeal certain restrictions in the regulations in order to take advantage of changes in certain infrastructures and professional practices.

124. In France, access to employment for a fairly large number of occupations in the film industry is regulated; i.e. a large number of technicians must hold the professional identity card as specified by Article 15 of the Film Industry Code (1), issued to a number of technicians, classified by branches (production, administration, direction, shooting of scenes, properties, sound, editing, make-up) and by film of long or short footage.

For the practice of these occupations, the rules issued and applied by the C.N.C. prohibit film producers from engaging anyone who has not attained a specified standard of professional qualification, substantiated by the possession of this professional identity card.

125. In order to avoid any confusion, it may be noted that the card is not a professional card for non-nationals (whether or not of the Community), as required in Belgium, for example, or a non-national trader's identity card, as required in France or under certain national regulations in Italy or Luxembourg (*) - documents which have been abolished for the nationals of Member States by Directive 70/456/EEC.

Moreover, if this professional identity card for the nationals of Member States had not already been abolished by this Directive, it would have been abolished by the Judgement of the Court of Justice N° 2/74 in the case REYNERS v. the State of Belgium, and Judgement N° 36/74 in the case WALRAVE-KOCH v. Union Cycliste.

126. The French requirement to hold a professional identity card for cinematography, on the other hand, is an obligation imposed also upon French nationals.

In order to carry out the activities specified in Regulatory Decision N° 51, the technician must hold this card, issued to him by the C.N.C. on the advice of a committee of employers and employees, given on the basis of criteria which take

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(1) For the activities in question and for the conditions of issue of the card, see Regulatory Decision N° 51 of 10 July 1964 of the National Centre of Cinematography (C.N.C.), which lays down the required conditions.

(*) Art. 1 of the law of 19 February 1965 in the Grand Duchy of Luxembourg.

account of both professional experience already gained and the diploma obtained by the applicant in the schools with special courses. Thus,in this particular case, there is no question of discrimination based upon nationality.

127. The end result is the same, however. It is to be found in practice that this condition prevents all opportunity of access to many occupations in French film-making for almost all nationals of the other Member States.
Thus, in France the free movement of the latter is obstructed by a regulation which prevents them from finding a job in this country in the production of films, whereas French nationals can have full benefit of this freedom in the other Member States.

128. The Community solutions that seem feasible for ending this inequality are :

- Co-ordination of the conditions of access to the occupations in question, with this access subjected to similar conditions within the Member States. Such co-ordination should probably be accompanied by the introduction into Member States of a professional identity card similar to that existing in France (1).

- The co-ordination, only, of the regulations on holding the professional diploma corresponding to specific conditions of professional qualification.

These two solutions presuppose the obligation to establish mutual recognition of diplomas and other certificates.

129. These recommendations have already been made by the departments of the Commission (2); but whatever system is chosen, its establishment will probably be a lengthy and difficult business. It will certainly come up against stiff opposition. Italy has already declared her opposition to this obligation, and as for France, such an obligation would mean a lowering of the standard of professional qualification in order to allow unconditional freedom of access to these occupations, which are so important as means of informing and imparting culture to the public. It would

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(1) Similar diplomas, of the same standard, exist in this branch of activities in Belgium; but they are not recognized in France. In contrast with the French obligation, Belgium does not demand - even for her own nationals - a diploma for engaging in these same occupations.

(2) Commission document for the working party on the cinema, containing :
a) a list of the qualification-criteria for the ten principal film-making occupations (first assistant producer, director of photography, art director,chief sound engineer, film editor, wardrobe chief);
b) a list of possible solutions at the European level.

probably depreciate an industry which is already seriously disturbed by a grave cultural crisis.

It therefore seems desirable - and the free theatrical trade unions support this position - that the national authorities and the European Communities should establish rules applicable to the workers of the Member States.

Actually, this problem leads to the conclusion that it will be necessary to study the systems of professional training for the principal film-making occupations, with a view to harmonization of training conditions at the European level.

Films and television

130. In this context the question also arises whether it is not high time that the Community institutions began to concern themselves with the situation in the field of television. The competition and inter-penetration that now characterize the film and television media make the adoption of regulations in one or the other problematical.

It has become impossible to operate any true distinction between a production on film for the large screen and another intended for the small screen, when we are witnessing the development of a single, large professional family of audio-visual programmes (account must also be taken of the future of the cassette). This situation will perhaps make possible a unified approach and unified legal treatment (1).

131. There is another important point. The author has been informed from various sources - governmental and trade union (Netherlands and Germany) - about the great difficulties encountered by the nationals of Member States in getting a job, particularly in radio, television and film production, in the United Kingdom. The trade unions of that country require the nationals of Member States to be members of a British trade union (see Chapter II, page 46, para. 95). In addition, the latter require the artistic worker who is a national of another Member State to be assisted in these branches of activity (in which unemployment is high : according to certain sources, as much as 80% in the film-making industry) by British workers (2).

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(1) Source : Cl. Degand - Paris.

(2) Meeting of the Committee of Artistic and Theatrical Trade Unions in the EEC in Brussels on 9 and 10 October 1975.

Although there is no question of discrimination if these requirements are also imposed upon nationals, the author has a strong impression, based upon information gathered, that these practices are often applied in order to oust nationals of other Member States from jobs in the United Kingdom.

It may be noted that any Community worker who feels that his rights have been encroached upon, and also the trade unions representing him, can approach the Commission of the European Communities on the matter, and the Commission will request the United Kingdom Government for an explanation. If the information supplied does not seem to be satisfactory, the Commission can bring the case before the Court of Justice of the European Communities.

CHAPTER IV

SPORT AND SPORTSMEN

Introduction

132. As pointed out at the beginning of this study, cultural workers form a heterogeneous group, in which self-employed persons, employed persons in the private sector and public servants can be distinguished. Moreover, culture is nowadays no longer confined to the old, traditional conception, i.e. to the aesthetic forms alone (literature, music, plastic arts); account is now taken of other possibilities for expression, development or communication. Sport, too, is embraced by this modern conception.

The principal subject studied in this chapter is the football player, since in the context of this study he provides the best example of the sportsman in general. He represents, in fact, the typical sportsman and, more than other sports or recreational activities, football illustrates the difficulties and problems for the sportsman with regard to freedom of movement.

Background

133. Sport embraces the following categories : professionals, semi-professionals, non-amateurs, semi-amateurs and amateurs. The co-existence and joint administration of amateur football - including the millions of young people who practise it - and professional or semi-professional football constitute, in practice and in law, the most difficult problems in modern sport. To meet the enormous financial commitments involved, this sport has emphasized - more, even, than others - the entertainment side, which increases the difficulties even further.

134. In the last few years, the status of footballers has experienced rapid development in its social, economic and administrative aspects. Born of pure amateurism, it has become commercialized and the player's status has gradually changed from the phase of voluntary performance, with no obligations or pay, to that of

professionalism, while at the same time maintaining all the intermediate gradations (semi-professionalism, etc.). Moreover, the practice of this sport is no longer confined entirely to the national territory of the player, who has acquired a European and even international character. Owing to the growth of international contracts and the great number of contracts between clubs and players of different nationalities, Community law is inevitably playing an increasing role in this sport (and, mutatis mutandis, in so many other sports). At the same time, this trend is making it necessary for the Member States and the sports organizations to begin to adopt a uniform European attitude. Community legislation affecting sport is often mandatory in character - which may help towards the establishment of this uniformity; but in the meantime the sports clubs and federations of the Member States may encounter specific difficulties. Some explanations of these difficulties will be given at the end of the chapter.

International structure of football

135. The regulation of football does not emanate solely from the Member States or national federations; it is largely dictated by the international federations such as F.I.F.A. (International Federation of Football Associations) and the European federation, U.E.F.A. (Union of European Football Associations), to which the national associations are affiliated. These international federations, especially F.I.F.A., dominate the organization of football at the present time; they control the rules and regulations which govern the activity of amateur and professional footballers.

This supervision is not confined geographically to the countries or national associations of the Member States; the influence of F.I.F.A. is worldwide.

The affiliated national associations have undertaken to recognize only one national association in each country, and in order to be able to belong to F.I.F.A. the national association must, in fact, supervise football in its country.

U.E.F.A. extends its privileges to the associations of Western Europe, both members and non-members of the Community, while the countries of Eastern Europe are bound exclusively by F.I.F.A. rules, and for reasons of state are governed by a different legal system.

Community law

136. This structure of international federations and national associations appears to constitute a monopoly, a trust or a cartel, to the detriment of economic freedom

according to the conception of the Treaty. If this is so, the system would conflict with Community law, under Articles 85 et seq., of the Treaty (rules on competition)(*). The system of player-transfer likewise seems to conflict with the rules on competition and probably also with the labour law of Member States (obstruction of the footballer's freedom of employment).

Moreover, some of the conditions of these international federations appear to be contrary to other rules of Community law. These contradictions lie within the purview of the articles concerning the free movement of individuals (Articles 48 et seq. of the Treaty).

Football and free movement

137. Already, during the transitional period established by the Treaty for the gradual achievement of freedom of movement for individuals, several questions have been put to the Commission by members of the European Parliament regarding the legality of the regulations governing the position of sportsmen in relation to Community regulations in force at that time; these questions concerned especially football and cycling. The most important one submitted to the Commission at that time came from the German delegate, Mr SEEFELD (Written question N° 369/70), who wished to know whether certain regulations imposed by the football associations, restricting the inclusion of non-national players in the team of a football club (two or three non-nationals), where such players were nationals of other Member States, were in conformity with the Community regulations in force regarding free movement.

138. In its reply, the Commission of the European Communities declared that the application of Community rules to footballers depended primarily upon the personal status of the non-national player, that is to say, whether his activity was or was not to be regarded as work within the meaning of Articles 48, 52 and 59 of the Treaty (paid work, self-employed work or performance of services). If, on the other hand, the sports activities are carried out in an amateur capacity (not for pay or profit, with no subordination and therefore not professionally), they do not come under Community law, not being in this case regarded as economic activities within the

(*) It may be said against this that the creation of other forms of organization is still possible, one example in this sphere being the Professional Tennis Organization, established in spite of the existence and opposition of the International Lawn Tennis Federation.

meaning of Article 2 of the Treaty. However, if they must be called work within the meaning of the above-mentioned articles, then Community law applies to the player in question, with the Commission sharing the view that the prohibition of joining a team for Community members constitutes discrimination. However, at the time when the Commission replied to this question - during the transitional period and, therefore, at a time when the implementation of the Community rules on free movement was being prepared - only the employed person had full enjoyment of free movement as established by Regulation EEC/1612/68 from October 1968, and consequently discrimination based upon nationality was only abolished for employed persons who were nationals of Member States and not, at that stage, for self-employed persons and providers of services.

139. Thus, in a report of 1973(*) - published after the expiration of the transitional period - the Executive Committee of the European Football Federation still uses at its basis the notion of the non-application of Article 52 of the Treaty. In fact, it advises the national associations to do everything to ensure that the professional player is regarded as "self-employed" by the laws of the country, in order thereby to escape the application of the Community rules on free movement for employed persons.

At the same time the Commission and the Member States interpreted Articles 52 (self-employed persons) and 59 (providers of services) as not becoming directly applicable merely by virtue of the ending of the transitional period. They were of the opinion that the Community measures stipulated in Articles 54 (2) and 63 (2) (implementing directives of the General Programme, by branch of activity) and 57 (1) (directives for mutual recognition of diplomas) were essential complements which could not be replaced by the mere expiration of a period of time. One can therefore say that, according to this notion, Article 52 did not result directly in subjective rights for the benefit of nationals of Member States, enabling them to demand protection before the national courts merely by the fact that the period of transition had expired and notwithstanding the absence of directives as stipulated in Articles 54 (2) and 57.

However, these views have been out of date since the Court ruled that free movement exists for workers from the time of expiry of the transitional period and that this entails the abolition of all discrimination on the basis of nationality

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(*) Report on the "Status of the player in Europe and within the Common Market", P.63.

between the workers of Member States. (See Chapter I, pages 6 and 7, paragraphs 9 and 10.)

In its judgement in the WALRAVE-KOCH case, the Court of Justice declared that it did not matter much whether the person concerned was regarded as an employed person or as a provider of services; the precise nature of the legal tie by virtue of which these services are carried out is immaterial, since the non-discrimination rule covers the whole area of the performance of work or services in identical terms.

Although this judgement makes no mention of the self-employed person (since the Court case did not concern this category), another judgement, in the REYNERS case, extends its field of application to the self-employed person. This judgement rules that Article 52 also provides for unconditional prohibition, as from the end of the period of transition, of imposing upon the nationals of Member States restrictions on the basis of nationality.

Since the nature of the work done by the player has become immaterial in determining the application of Community rules (1) (which remains within the competence of the national judge to whom the case is referred), it is interesting, however, briefly to trace the change in the status of the football player, from amateurism to professionalism. A brief glimpse of this is given for a few Community countries, in an annex at the end of the chapter.

Brief analysis of the judgement in the WALRAVE-KOCH case

140. In the judgement of the WALRAVE-KOCH case, the Court ruled as follows :

Sport comes under Community law in so far as it constitues an economic activity within the meaning of Article 2 of the Treaty. This provision on the purview of

(1) Unless the nature of his work were to be regarded as governed by a contract sui generis. Some writers (P.ABAS, Netherlands, and L.SILANCE, Belgium) are of the opinion that the contract of employment for professional sportsmen is defined by its different character from the contract of employment existing within socio-cultural law. L.SILANCE adds that the drafting of a specific kind of sports contract would have to be envisaged, to which certain provisions of social law could be applied since professional sport is a fact.

Community law is relevant also to other spheres of recreational, artistic or cultural activity (see Chapters II and III).

On the other hand, sporting and recreational activities practised in the capacity of amateur - i.e. with no remuneration and hence not as an economic activity - do not come under Community law.

141. The Court also evoked association with economic activity in determining whether or not discrimination existed in cases where the regulations of the association or club impose - as is almost invariably the case - restrictions on the composition of its teams (limitation of non-national players extending to Community members).

Firstly, it must be noted that it falls to the national court to rule as to the nature of the activity submitted to the court for appraisal, and then to decide in particular whether or not, in the sport concerned, there is any question of the composition of a team. On the latter point, the question was whether or not the couple WALRAVE-KOCH - middle-distance racing cyclists, with a trainer on a motor-cycle - constitued a team.

In the case of the composition of a national team, the right to demand that it should be composed of nationals is not disputed. The judgement becomes more of a problem when it relates to the composition of a sports team in general.

In particular, the Court ruled that :

"This prohibition (of non-discrimination), however, does not affect the composition of sports teams, in particular national teams, the formation of which is a question of purely sporting interest and as such has nothing to do with economic activity" (Law, 8).

Professional sport is, in fact, very widely practised in "teams", either because it is a team sport or because the person who devotes himself to an individual sport does so as part of a team. The judgement leaves a degree of uncertainty to this extent on the prohibition of discrimination in the composition of non-national professional teams. If the rules of a local club reclude or restrict participation by sportsmen who do not come from the locality, it enables participation by non-nationals to be recluded or restricted, irrespective of how far away their country is. If, on the other hand, the rules include a "non-nationals" clause referring explicitly to the latter, it is difficult to imagine that the Court, which

apparently had in mind the composition of national teams, considered this solely a question "concerning sport only and, as such, unconnected with economic activity". In this respect, the term "in particular" creates a certain ambiguity, which is regrettable.

However, in view of the grounds as a whole that were given for the judgement, the criterion adopted by the Court appears to imply the following distinction :

- A clause prohibiting the presence of non-nationals as professional players in the club, or restricting the proportion of non-nationals, would be inapplicable to the nationals of other Member States.

- On the other hand, the preferential choice of nationals would be admissible for the nomination and personal appointment of members of the club with a view to participation in a given sporting competition. "This restriction on the scope of the provisions in question must however remain limited to its own proper objective", the Court rules (Law, 9) - which means that it is given a strict interpretation.

Thus, the application of so-called "non-nationals" clauses, under which the associations cannot include more than two "non-nationals" in competitions, would only be justified, it seems, in exceptional circumstances with national implications, such as a competition between a local club of one country and a local club of another country. (According to comment from the Legal Department of the Commission, Jur. 169/75.)

142. Another point again concerns the application of free movement within the Community in the field of sport. There are many people who think that the Community regulations on free movement apply only to States and that the individuals and associations are not subject to them, at all events not directly (as stated in, for example, the U.E.F.A. report, page 58).

In point 3 of the operative part of the WALRAVE-KOCH judgement, the Court rules in this connexion that "the prohibition of such discrimination (based on nationality) does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at collectively regulating gainful employment and services".

With regard to paid employment as referred to by Article 48, Regulation EEC/1612/68 expressly describes, in its Article 7 (4), as "null and void" "any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal... in so far as it lays down or authorizes discriminatory conditions in respect of workers who are nationals of the other Member States".

Until this declaration became law, in fact, the common view was based upon the argument that Articles 59 et seq. (provision of services) provide only for the abolition of discrimination applied by the public authorities.

143. In points 17-24 of its grounds of judgement (Law), the Court did not, however, allow the interpretation that the prohibition of these discriminatory conditions is confined only to action by the public authorities, since, in fact, "the abolition as between Member States of obstacles to freedom of movement for persons, and to freedom to provide services, which are fundamental objectives of the Community contained in Article 3 (c) of the Treaty, would be compromised if the abolition of barriers of national origin could be neutralized by obstacles resulting from the exercise of their legal autonomy by associations or organizations which do not come under public law;

- Since, moreover, working conditions in the various Member States are governed sometimes by means of provisions laid down by law or regulation and sometimes by agreements and other acts concluded or adopted by private persons, to limit the prohibitions in question to acts of a public authority would risk creating inequality in their application;

- Although the third paragraph of Article 60, and Articles 62 and 64 specifically relate, as regards the provision of services, to the abolition of measures by the State, this fact does not defeat the general nature of the terms of Article 59, which makes no distinction between the source of the restrictions to be abolished;

- It is established, moreover, that Article 48, relating to the abolition of any discrimination based on nationality as regards gainful employment, extends likewise to agreements and rules which do not emanate from public authorities;

- Article 7 (4) of Regulation EEC/1612/68 in consequence provides that the prohibition of discrimination shall apply to agreements and any other collective regulations concerning employment;

- The activities referred to in Article 59 are not to be distinguished by their nature from those in Article 48, but only by the fact that they are performed outside the ties of a contract of employment;

- This single distinction cannot justify a more restrictive interpretation of the scope of the freedom to be ensured."

The transfer system and its consequences at Community level

144. The transfer system does not exist outside football, or at least not outside the world of sport. It started in England in the last century and was adopted by other countries when professionalism was introduced.

It governs the passing of a professional player from one club to another, for an agreed lump-sum payment made by the player's new club to his old one. The transaction must be made with the approval of the national association.

This system is governed by two quite distinct, but indivisible principles, viz., the transaction between the two clubs concerned and the freezing or retention of the player placed on a transfer list.

The transfer system contains a range of different legal aspects which make it extremely difficult to make any actual judgement of the system as a whole. It comprises an engagement agreement (the agreement between the clubs) and at the same time involves aspects of labour law (employment relations between club and player, retention of the player by his club) and, lastly, it also arises from the law of association, because the entire process is governed by the rules and regulations of the national association and the international association (the contract between player and club, in referring to these rules and regulations - particularly Article 14 of the F.I.F.A. rules - implies unqualified agreement by the player to the entire transfer system).

145. It is obvious that, as a whole, this system poses problems as to whether its application does not conflict, both nationally and at Community level, with the rights and freedom of employment of the player and the rules of competition, in view of the monopoly position of the clubs, associations or federations.

In the opinion of almost all authoritative experts on the matter, the structure of the system is a monopoly embracing the managing organizations, the clubs and the

players, which in Europe governs practically all football activity; it may conflict with the Treaty provisions on competition (Article 85 et seq.). However, the present author does not think that the transfer system conflicts with the Community provisions on free movement, since it applies in the same way to the nationals of the country concerned and to the nationals of Member States, thereby observing equality of treatment.

146. Is it necessary - and if so, to what extent - to modify the structure of these football organizations in order to make it conform to the Community provisions? In view of what has been said above, this question must, it seems, be judged in the light especially of Articles 85 et seq. of the Treaty, since the problems involved in the transfer system are stumbling-blocks to the application of Community law.

Difficulties of adaptation

147. The national and international football associations will undoubtedly have great difficulty in conforming to some of the prescriptions of European law, particularly if the changes that would prove necessary concerned the structure of their organization. One must not lose sight of the fact that the present structure, however imperfect it may be, is the result of a development that has been taking place for nearly a century. Except for the associations, no one has hitherto bothered about the organization of sport in general, or of football in particular. It would therefore be wrong to expect any change in the immediate future in the structure of a world organization; if it were introduced "at a stroke", there would be a risk of disorganizing football, thereby causing disturbances in the world of sport.

148. Co-ordination of the football regulations with those of free movement within the Community - particularly regarding the composition of teams - will not be easy.

The regulations apply :

- to all European countries, whether members or non-members of the Community in relation to amateur players;

- outside the Community, in non-member countries, to all amateur or professional football players;

- inside the Community, in the Member States, to amateur and professional players who are nationals of non-Member States.

Since, in the Western European countries, the teams that participate in the national competitions are generally composed, in addition to nationals, of both :

- non-national amateurs - whether or not of the Community - to whom the provisions on free movement do not apply, and

- non-national professionals, Community (to whom they apply) and non-Community (who are not covered by these provisions),

it is understandable that the application of European law relating only to Community nationals makes it impossible in practice to maintain the rules on restriction of the composition of teams for all non-national players.

From the quantitative standpoint, the regulations in question do not concern many players. Western Europe has only 500 clubs playing professional football, and only one-half of these have an organization that meets this qualification-requirement.

For our continent, the total number of professional football players is estimated to be 7500. If this number is divided between 13 or 14 associations, it represents only an infinitesimal part of sporting activity. With semi-professionals or non-amateurs included, their total number would be about 22,000 - which is insignificant compared with the total number of football players as a whole; the Royal Belgian Football Federation alone, for example, has about 90,000 footballers playing in the season. (Cf. U.E.F.A. report on the "Status of the player in Europe and within the Common Market".)

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ANNEX

DESCRIPTIVE NOTES ON THE DEVELOPMENT OF THE FOOTBALLER'S STATUS, BY COUNTRIES

France

No real distinction is made between the professional player and the semi-professional.

In 1936, the Caen Civil Court (Judgement of 24 June) had not yet adopted the notion that the services provided by the football player could be regarded as paid employment : "the occupation of footballer is a new, independent profession which cannot be said to lose its independent character because of the existence of team discipline. Consequently, the accident that has occured to the professional player in question, who is tied by contract to a sports club, does not constitute an accident at work".

In 1947, the Supreme Court of Appeal (Judgement of 30 April) did not consider that there was any tie of subordination between the player and his work, any more than did the above judgement. By its judgement of July 1963, the Supreme Court of Appeal changed its position, treating the occupation of professional footballer the same as that of any other paid worker of the club.

United Kingdom

The United Kingdom makes no distinction between the professional player and the semi-professional. The Football Association regulations recognize only the professional player (see Football Association Handbook 1971-72, page 44) - without giving any definition, however.

The "Report of the Committee on Football", drawn up at the request of the British Government, criticizes this lack of definition, which makes distinction between the status of the amateur player and that of the professional difficult. The regulations in force consider that the player who receives remuneration in addition to his out-of-pocket and travelling expenses - even if it is only one pound more - is a professional. The Committee asks the question : What is the difference between the professional who receives one pound more than his expenses and the player whose club meets all of his outgoings without reservation and is still regarded as an amateur? The Committee therefore proposes to introduce also the status of

semi-professional player.

Article 27 of the Rules of Association regards the professional player, even the lowest paid, as acting under a contract of service (in the "contract of employment" category). It must not be forgotten that in the United Kingdom the contract of employment covers a wider field than on the continent; the footballer is regarded as an "employee".

Established case law likewise regards the relationship of the professional footballer with his club as a contract of service. (High Court of Justice, Chancery Division 2963 in the case Eastham v. NEWCASTLE UNITED FOOTBALL CLUB, and also the "Modern Law Review" p. 210 et seq.)

Federal Republic of Germany

In the Federal Republic, distinction is made between the "Lizenzspieler" and the "Vertragsspieler", the former being a "bezahlter Angestellte eines vom Deutschen Fussball-Bund lizensierten Vereins" (paid employee of a club licensed by the German Football Association). He is generally not a member of the club for which he plays.

The "Vertragsspieler", on the other hand, is a member of the club and is paid for individual sporting services rendered. He must have another occupation outside football.

Under the D.F.B. regulations, the "Lizenzspieler" is an employed person; but these regulations do not say anything about the "Vertragsspieler" in this connexion.

In the general view, however, the "Vertragsspieler" is likewise regarded as a worker tied by a contract of employment. (For example, L.BOHNER in "Berufssportler als Arbeitnehmer 1969" and SCHMIDT in "Recht der Arbeit" pp. 86 and 88, and also HORECK-NIPPERDEG in "Lehrbuch des Arbeitsrechts", page 34.)

Since 1961 the "Bundessozialgericht" has regarded the professional football player as a worker entitled to social security.

Netherlands

Initially, the position of the paid football player was uncertain. Even now, the professional is rather rare, and the majority of paid players are semi-professionals.

To begin with, most writers regarded him as a provider of services. In 1967, the Rotterdam District Court (5 April 1967 N.J. N° 418) and the Raad van Beroep of Amsterdam (4 December 1967), confirmed by the Centrale Raad van Beroep (8 July 1968), attributed the status of employed person not only to the professional footballer who was already recognized as such by the Netherlands Football Federation, but also to the semi-professional.

Italy

The situation in this country is not very clear. Some legal precedents characterize the work of the professional as paid work. Thus, the Corte di Cassazione rules in 1953 that the professional was an employed worker (in the case concerning the Turin Club air accident).

Similary, the Corte Suprema di Cassazione ruled in 1961 that the relationship between club and professional player was subject to a contract of employment; but in 1963 this same court adopted the opposite view - without, it seems, adducing convincing arguments.

Denmark

In this country the problem does not arise, since the status of professional player does not exist.

Belgium

In Belgium, the legal development of the sport has differed from that in the other countries. The Royal Belgian Football Federation does not regard the professional football player as an employed person.

Professionals are not members of their club, but are affiliated to it, and after obtaining their affiliation card they are subject to the rules and regulations

of the Federation. The Federation rules recognize three categories of players : the amateur, the non-amateur and the professional. The non-amateur is the player who trains for part of the day and is paid for it, while the professional is the player who makes the game his profession and signs an undertaking which ties him contractually for remuneration. No rules governing professionalism have yet been laid down, and rules will be established only when the need for them is felt. No precise regulation of the legal position of the profession exists, therefore.

As early as during the 1966-67 parliamentary session, a bill was tabled "concerning the social status of the sportsman". However, this bill has not yet become law; it regards the relationship between player and club as subject to a contract of employment.

In the meantime, a judgement of the Antwerp Court in 1969 made law by ruling, on the basis of detailed grounds for the judgement, that the relationship between professional player and club must be regarded as that of an "employee" bound by a contract of employment.

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CHAPTER V

JOURNALISTS

149. This chapter gives only a summary account of the conditions governing access to the profession of journalist within the Member States.

Although journalism occupies an important place in the cultural sector, the author has not been able to carry any further his investigations on the problems that might exist in this branch of activity - the mobility of which, moreover, is very limited. With a few exceptions, the linguistic barrier forms an obstacle that is difficult to overcome.

However, in the light only of the information - very interesting, incidentally - that he has obtained concerning the requirements laid down by Member States for access to the profession of journalist, the author believes he can state that a considerable number of practical problems neverthless arise from them, which can form an obstacle to freedom of movement.

The author sees them as arguments justifying the brief account given below of the conditions required for practising this profession in the various Member States.

The conditions governing the granting of the title of professional journalist vary with the different countries.

Belgium

150. In this country, practice of the profession is subject to the granting of a press card, whether it be for press activity through the medium of the written word (daily newspapers, etc.), the spoken word (radio and television) or film (cinema, cameramen). Anyone who wishes to join this profession must submit an application for acceptance to the COMMISSION D'AGREATION DE PREMIERE INSTANCE (Commission of the First Instance for Acceptance - an official body). He must be at least 21 years of age, of good moral conduct and able to produce proof of having had two years'

practical experience in the profession; he must undertake to practise journalism as his principal, habitual occupation, for remuneration.

If the information submitted is satisfactory, the Commission, after examining the application, will issue the press card. However, the applicant who can produce a diploma or a certificate issued by a school or institute of journalism will have an advantage in that he will be placed directly in a higher category of the pay scale - which will bring him material benefits.

These conditions apply to nationals of Belgium and other Member States.

France

To join the profession, the applicant can apply - whether or not he is French - for "recognition" to the French Association of Journalists, provided that he holds a professional identity card issued to him by a French body. This obligation derives from a law that has been in force since the last world war. The applicant holding a diploma or certificate from a school of journalism is at present at an advantage in France, where unemployment is fairly high among journalists (around 12%).

Germany

Access to the profession presents no difficulty in this country. No diploma is required, nor membership of any association. The profession is thus free.

Italy

This is the only country of the Common Market that demands a State certificate- i.e. before obtaining the professional card, the journalist must pass a State examination, whether or not he has taken courses at a school of journalism. This requirement is imposed on both nationals and non-nationals.

Netherlands

This country does not require the applicant to hold a diploma from a school of journalism, but makes the issue of a press card conditional upon some practical experience in the profession. However, some priority is given to holders of a diploma or certificate from a school of journalism, which are very numerous in this country.

United Kingdom - Ireland - Denmark

Access to the profession of journalist does not, at first sight, present any special problems; there is no requirement for a diploma or other certificate.

However, as in the other Member States, those applicants who have had training at a school of journalists have more employment opportunities, since unemployment in this branch of activity is not insignificant.

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CHAPTER VI

RADIO AND TELEVISION

151. The reader is perhaps surprised that only indirect allusion is made in this report to the radio and television organizations in the Member States, despite their growing importance in connexion with artistic activities - and hence for European culture. This is due to the fact that in most of the countries, radio and television have official or semi-official status, with the result that these activities have become a form of public service.

152. Article 48 of the Treaty of Rome stipulates that the provisions on free movement within the Community for employed persons do not apply to employment in "the public service". Thus, the sector concerned - radio and television - would not, for the majority of the Member States at least, come under these provisions.

153. However, the author has some doubts about the interpretation of the term "public service" in such a wide sense, which automatically excludes all jobs from application of the free movement of employed persons - i.e. even those done by workers employed in a purely technical or subordinate capacity with no degree of participation in "public service". This interpretation thus enables a large number of jobs or even sectors which are normally economic in character to be excluded from the application of Community regulations governing the free movement of employed persons.

It should not be possible - as is the case, it seems in Italy - for an orchestra to be regarded in certain cities (Milan, Venice) as a "public institution" and hence not subject to the provisions of Article 48 of the Treaty, whilst in other towns in the same country an attempt is made to attribute a public character to orchestras not recognized as such (and thus subject to the Community regulations referred to by Article 48) to evade the obligation, in the matter of engagement, to treat musicians who are nationals of other Member States on the same footing as nationals.

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