AEPO ARTIS

ASSOCIATION OF EUROPEAN PERFORMERS ORGANISATIONS

ACTING FAIRLY?

An **AEPO-ARTIS report** on the impact of chapter 3 of the Copyright in the Digital Single Market directive on the objective of fair remuneration for actors.

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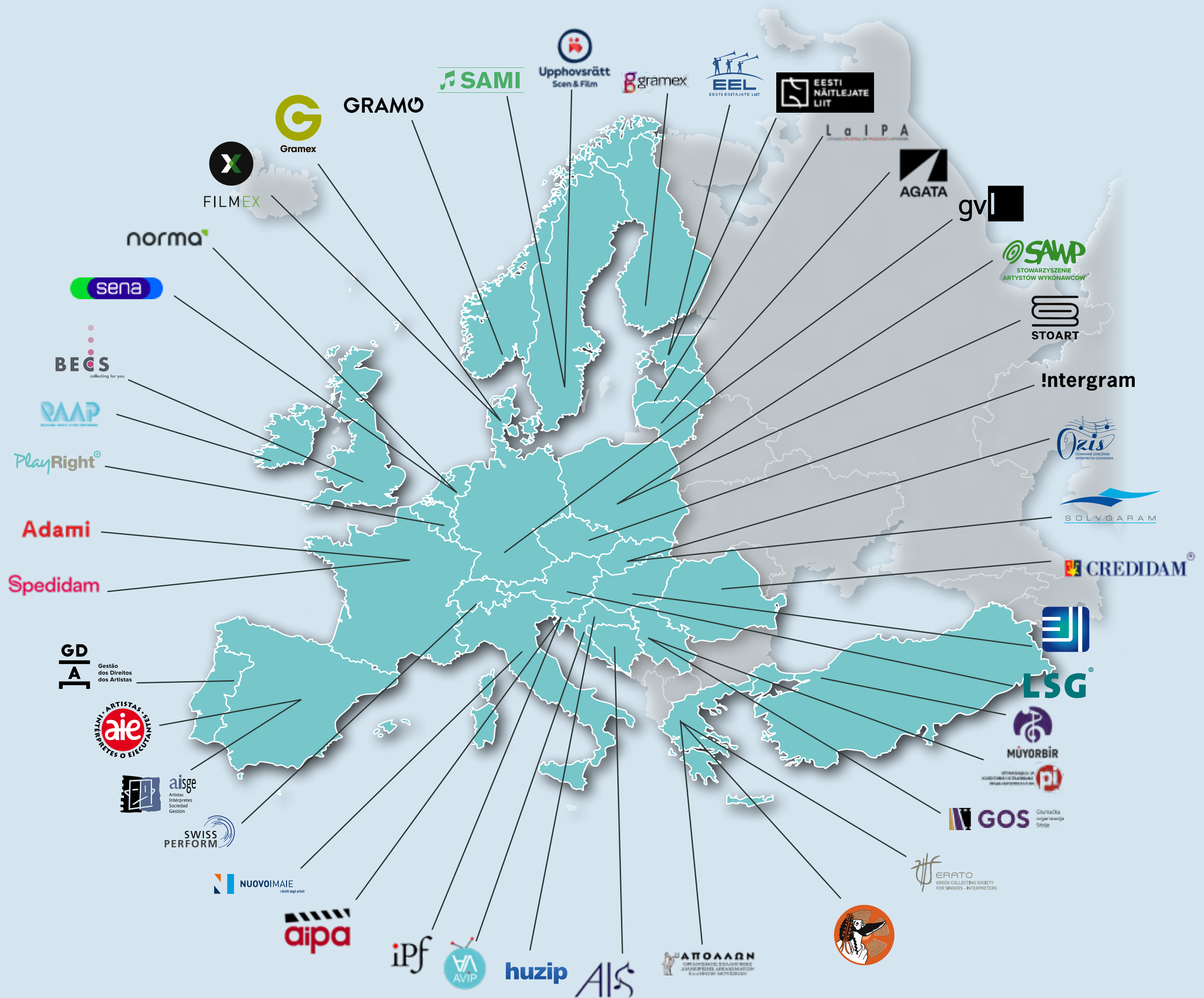


About AEPO-ARTIS

AEPO-ARTIS is a non-profit making organisation that represents collective management organisations (CMOs) of performers' neighbouring rights. Our 42 members are active in 30 different countries and represent more than 650 000 performers in the music and audiovisual sectors.

As the paramount voice of performers' collective management organisations in Europe, the main objectives of AEPO-ARTIS are to develop, strengthen and protect performers' rights as well as to highlight the contribution that performers make to Europe's rich and diverse cultural sector. In addition, AEPO-ARTIS seeks to stress the benefits and importance of the collective administration of performers' rights.

Further aims include facilitating collaboration between European performers' organisations and continuing to develop cooperation on European and international agreements, with a special interest in clauses relating to performers' rights and collecting practices.

In creating this report we worked in close cooperation with CMOs representing professional actors. **AEPO-ARTIS is grateful to them for the time and resources they dedicated to making this report possible.**

Executive Summary

Are actors in Europe fairly remunerated for the transfer of their neighbouring rights?

In 2019, when the European Union adopted Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the "**CDSM directive**"), it identified a number of issues which prevented performers receiving what it refers to as "fair remuneration", in an environment where rapid technological developments such as streaming services and social media platforms were continuing to emerge. To remedy this, it introduced a specific chapter on fair remuneration which imposes an obligation on member states to ensure that performers receive "appropriate and proportionate remuneration" (article 18), as well as measures designed to improve contractual practices (articles 19-22).

This report assesses the impact of this chapter on professional actors, and in particular the use of their work by streaming platforms. It is based on a survey, distributed by AEPO-ARTIS members and which was completed by **2382 actors across 11 EU member states**, making it the most extensive analysis of contractual practices affecting actors since the entry into force of the CDSM directive.

Of these actors, more than 350 chose to leave comments concerning their personal experiences, the overwhelming majority of which were negative. Some of these are included in this report.

Theory is all very well, but practice is something else.

(Actor, Belgium)

A LUMP SUM SHOULD NOT BE THE RULE ...

Article 18 of the CDSM directive grants actors the right to "appropriate and proportionate remuneration" and contains a statement in its recital 73 that **"A lump sum payment can also constitute proportionate remuneration, but it should not be the rule."**

A lump sum payment (also referred to as a "buy out") is a one-time payment made to an actor by a producer, broadcaster or streaming platform. In return for that payment, the actor permanently transfers to them all rights in their performance. Consequently, there is no ongoing contractual relationship between the actor and the producer/broadcaster/streaming platform. The actor receives no further payment, beyond the initial lump sum[1].

The survey results demonstrate very clearly that - contrary to the explicit instruction in the directive - lump sum payments do remain the rule. **Only 19% of actors have ever (i.e. on one or more occasions) worked under a contract that entitled them to receive royalties** (or "residuals") directly from producers, broadcasters or streaming platforms. As a result, the vast majority of actors are systematically excluded from any ongoing participation in the economic success of the exploitation of their performances.

> It is manifestly unjust that we are paid for a job and that, because of its numerous repeats (and now with the internet and streaming it is "blatant"), we are not paid for those transmissions.
>
> (Actor, Portugal)

While the directive states that the practice of paying a lump sum can constitute "proportionate remuneration", this was not a view shared by actors. **When asked whether lump sums are a fair way of sharing streaming revenues, 93% of actors answered "no".**

In addition, the actual amount of the lump sums received was considered to be insufficient, with **81% of respondents stating that the lump sum they received did not fairly remunerate them for their contribution.**

1/ The exception to this is that in some member states performers receive remuneration from their collective management organisations, but only in respect of traditional modes of exploitation such as broadcasting and cable retransmission, and (very rarely) for digital exploitation such as streaming.

ONGOING CONTRACTUAL RELATIONS

The fact that lump sum contracts do remain the rule impacts massively upon the value (or lack of value) of articles 19 to 22 for actors.

While in theory applicable to all types of contracts, these articles were primarily designed to benefit performers who have an **ongoing contractual relationship** with producers, broadcasters or streaming platforms. That kind of relationship exists for featured artists in the music industry, who sign a contract with a record label and in return are entitled to royalty payments, but **does not exist for actors who work under a lump sum contract.** Thus, the vast majority of actors are in a position where the intended benefits of articles 19 to 22 are in practice hypothetical.

> Even asking a question about the content of the contract, or disagreeing with some part, or perhaps asking for a slightly higher payment quickly means that this producer will no longer give you work in the future.
>
> (Actor, Slovenia)

With the survey finding that only 19% of actors had worked under a contract that entitled them to receive royalties, it is self-evident that for the vast majority of actors these provisions are of little if any benefit. Nevertheless, the survey assessed the impact of the directive on those actors who had signed royalty contracts and thus did have an ongoing contractual relationship with a producer/broadcaster/streaming platform.

The findings demonstrate that the measures introduced in articles 19 to 22 of the CDSM directive have been of extremely limited value to actors.

- Article 19 (transparency obligation): **only 12% of actors received the transparent information** on the commercial exploitation of their performances that producers are obliged to provide them with at least once a year.
- Article 20 (contract adjustment mechanism): **only 6% of actors attempted to use this provision.**
- Article 21 (alternative dispute resolution procedure – "ADR"): of those actors who had been involved in a dispute with their producer/broadcaster/streaming platform, only **11% of them used ADR to attempt to resolve the dispute.**
- Article 22 (right of revocation): **this was (almost) never used.**

A differentiation should be made between the results relating to article 19 (transparency) and those relating to articles 20 to 22.

The threat of blacklisting explains why articles 20 to 22 have been of very limited benefit, but it only partially explains why article 19 has also failed. Article 19 requires the producer/broadcaster/streaming platform to proactively provide the required transparent information. There is no obligation on the actor to request it and therefore blacklisting ought not to be an issue. Nevertheless, we see that only a small percentage of actors receive this information. Of course, it is possible for an actor to "remind" the producer/broadcaster/streaming platform of their obligation to provide this information. However, this is where the issue of blacklisting arises again and it is apparent that very few actors would dare to take this approach.

THE EVER-PRESENT THREAT OF BLACKLISTING

Another finding which makes it clear that the intended benefits of articles 19 to 22 are purely hypothetical relates to the issue of "blacklisting". Actors were not specifically asked a question on this subject in the survey, but on their own initiative, they provided extensive feedback on this issue through the open comments section.

The most conclusive and determinative finding of this additional feedback was that **actors are unwilling to even attempt to make use of any rights they have been granted,** because they fear they will be blacklisted (i.e. not be offered future work). In fact, one actor commented that the word "fear" is inaccurate, since blacklisting is an inevitability rather than a likelihood.

The reason that this finding is so important is that **blacklisting is an issue which in reality cannot be solved by legislation such as articles 19 to 22.** These articles, or any others which require the actor to instigate action to benefit from them, are destined to fail. Put bluntly, why would an actor e.g. request contract adjustment in respect of one production if the inevitable outcome were that they would not be offered work in the future?

Consequently, if the goal of the directive for actors (i.e. that they receive fair remuneration) is to be achieved, legislation must be put in place to ensure those actors receive appropriate and proportionate remuneration outside of the contractual relationship between the actor and producer/broadcaster/streaming platform.

Nice, all those rights, but if you as an individual have to act on them, nobody does that, because then you are a difficult actor who will no longer be hired.

(Actor, Netherlands)

CONCLUSIONS AND RECOMMENDATIONS

Previous studies[2] have already shown that chapter 3 of the CDSM directive has failed to deliver "appropriate and proportionate remuneration" for musicians. In the music sector, royalty contracts are far more common than in the audiovisual sector. Nevertheless, it was shown that even there, the contractual provisions in articles 19 to 22 failed to benefit musicians to a significant extent, and that largely the implementation of article 18 had not resulted in the intended "fair remuneration".

The results of this survey based on responses from 2382 actors now show that chapter 3 has also failed to deliver "appropriate and proportionate remuneration" for actors. With the specificities of the audiovisual sector and in particular the continuing prevalence of lump sum contracts and the practice of blacklisting, there is even less chance that articles 19 to 22 can be of assistance to actors.

When transposing this part of the directive, article 18(2) allows the introduction of any mechanism that takes into account the principle of contractual freedom as well as a fair balance of rights and interests. It needs to be pointed out that "taking into account" contractual freedom does not equate to promoting it, especially not when a fair balance of rights and interests needs to be taken into account at the same time. Taking into account the principle of contractual freedom also means taking into account its limitations.

> It would be fair if a percentage payment to the actor were standardised based on the broadcasting of a film or series / ticket revenue, etc.
>
> (Actor, Lithuania)

Nevertheless, it is possible that article 18 can provide a solution. To do this it must be a solution which

(i) is outside of the contractual relationship;
(ii) does not require the actor to instigate any form of discussion or action with or against their contractual counterparty; and
(iii) is a measure that cannot be waived or negated in any contract.

The most reliable solution that would fit these three criteria would be to grant actors an unwaivable right to remuneration for on-demand streaming, to be paid by the end-user and subject to compulsory collective management.

This can be done without the need for additional legislation at EU level; it can - and should - be done at national level. In fact, several member states (Belgium, Italy, Poland, Slovenia and Spain) either already had such a right or implemented article 18 by introducing such a right. By introducing such a right, all member states would not just increase the possibility for actors to be remunerated fairly, they would also ensure that they comply with their obligations under article 18.

Without such a solution, the CDSM directive is destined to remain of very little benefit to actors.

2/ https://www.iaomusic.org/the-impact-of-the-dsm-directive-on-eu-artists-and-musicians-part-2-2024/

Introduction

For decades, the remuneration of actors in the audiovisual sector has been characterised by imbalances between actors and "producers/broadcasters/streaming platforms" (who, for the sake of convenience, will hereafter be referred to as "producers").

When the EU adopted Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the "CDSM directive"), it recognised this, stating that *"Authors and performers tend to be in the weaker contractual position when they grant a licence or transfer their rights..."*[3] and identified a number of issues which prevent performers receiving what it refers to as "fair remuneration".

The CDSM directive aimed to address these long-standing concerns and in particular those relating to *"new business models"*, such as *"online audio and video streaming services"*, noting that *"in some areas it is necessary to adapt and supplement the existing Union copyright framework, while keeping a high level of protection of copyright and related rights."*[4]

What is happening here is modern-day slavery.

(Actor, Hungary)

To do this, it introduced a specific chapter on fair remuneration which imposes an obligation on member states to ensure that performers receive "appropriate and proportionate remuneration" and in addition introduced a number of measures designed to improve contractual practices.

Under article 30 of the directive, the Commission is obliged to conduct a review of whether its objectives have been achieved or not no sooner than 7 June 2026. In multiple statements, Vice-President of the European Commission Virkkunen has made it clear that she wants this work to be finalised in 2026. While the Commission seeks evidence on the effectiveness of the directive, this is a timely opportunity to examine whether performers now receive the *"fair remuneration"* intended to be delivered by chapter 3 of the directive.

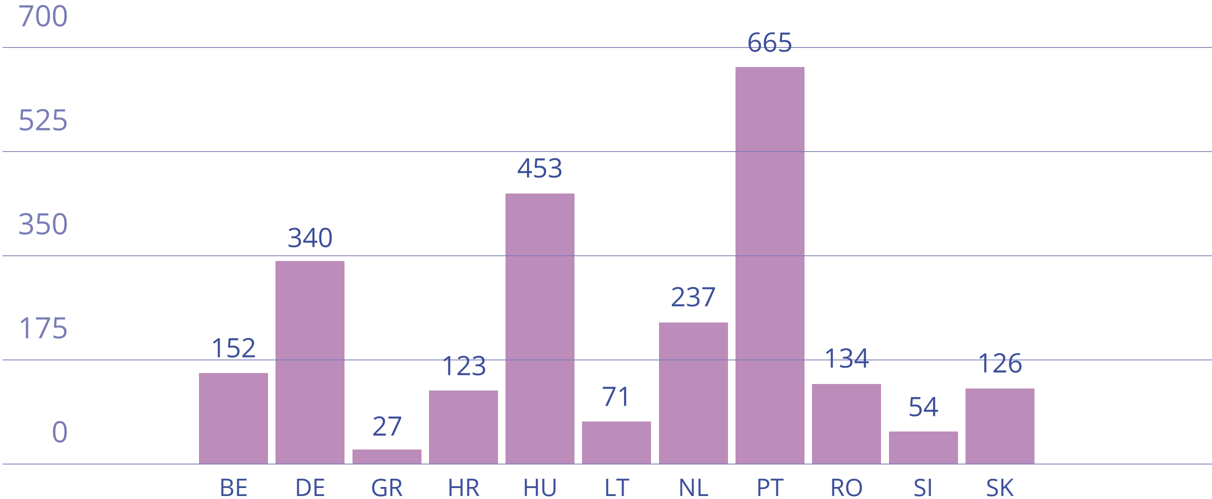
3/ At recital (72). See also recital 61.
4/ At recital (3)

Scope and methodology

This report assesses the impact of articles 18 to 22 on professional actors. It is based on a survey distributed by AEPO-ARTIS[5] members to professional actors, which was translated into 11 different national languages and distributed to actors in **11 different EU member states:** Belgium, Croatia, Germany, Greece, Hungary, Lithuania, the Netherlands, Portugal, Romania, Slovakia and Slovenia.

The survey was open from 10 November 2025 to 10 December 2025 and collected anonymised responses from **2382 professional actors**, making it the most extensive analysis of contractual practices affecting actors since the entry into force of the CDSM directive.

FIG. 1: TOTAL RESPONSES: 2382



In addition to the questions included in the survey, there was an option to leave comments in an open text field. **More than 350 actors left comments** which reveal the strength of feeling far better than statistics can.

5/ https://www.aepo-artis.org

The CDSM Directive and its objective of fair remuneration

Chapter 3 of the CDSM directive, entitled "Fair remuneration in exploitation contracts of authors and performers", introduces five articles designed to achieve that objective.

In article 18, it obliges member states to introduce a "mechanism" to ensure actors and other performers receive "appropriate and proportionate remuneration". In articles 19 to 22, it targets the contractual relationship that actors have with producers and introduces various measures designed to improve that contractual relationship.

We have been being robbed for a long time.

(Actor, Portugal)

ARTICLE 18: THE PRINCIPLE OF APPROPRIATE AND PROPORTIONATE REMUNERATION

Article 18[6] of the CDSM directive introduces an explicit principle that performers are entitled to "appropriate and proportionate remuneration" for the exploitation of their performances, and it obliges member states to ensure that this happens. To achieve this, they are *"free to use different mechanisms and take into account the principle of contractual freedom and a fair balance of rights and interests."*

This article is aimed at being the solution to certain concerns identified in the recitals, and in particular the concern that performers typically negotiate with producers on the basis of significantly unequal bargaining power, resulting in an inability for performers to secure fair contractual terms.

For example:
Recital (72) "Authors and performers tend to be in the ***weaker contractual position*** *when they grant a licence or transfer their rights, including through their own companies, for the purposes of exploitation in return for remuneration, and those natural persons* ***need the protection provided for by this Directive to be able to fully benefit from the rights harmonised under Union law…****"*

However, it is recital 73 that is of most relevance to actors. Specifically referring to the principle of "appropriate and proportionate remuneration", the recital makes it explicitly clear that **lump sum payments "should not be the rule":**

6/ Article 18:
1. Member states shall ensure that where authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject matter, they are entitled to receive appropriate and proportionate remuneration.
2. In the implementation in national law of the principle set out in paragraph 1, Member states shall be free to use different mechanisms and take into account the principle of contractual freedom and a fair balance of rights and interests.

Recital (73) The remuneration of authors and performers should be appropriate and proportionate to the actual or potential economic value of the licensed or transferred rights, taking into account the author's or performer's contribution to the overall work or other subject matter and all other circumstances of the case, such as market practices or the actual exploitation of the work. ***A lump sum payment can also constitute proportionate remuneration but it should not be the rule. …"***

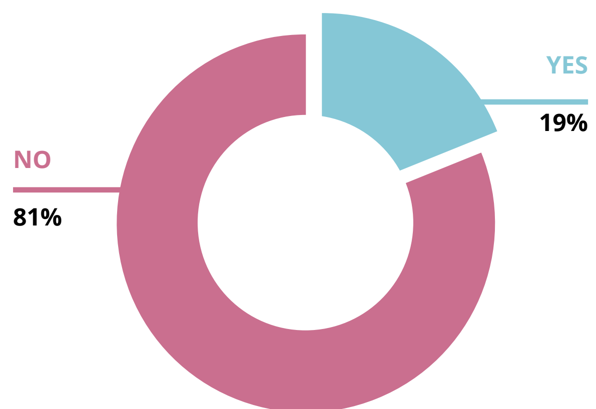
However, despite these provisions in the directive **it is clear that lump sum payments do remain the rule.**

Only 19% of actors stated that they have ever worked under a contract providing ongoing payments (i.e. "royalties" or "residuals").

It is general practice that actors are made to sign a "buy-out" agreement even before the casting. If the actor does not accept the offered amount and wants to negotiate, they are not even invited to the casting.

(Actor, Hungary)

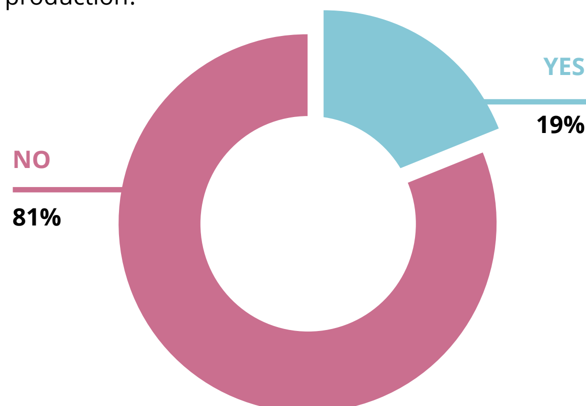
Fig. 2: Have you ever worked as an actor on the basis of contracts with a producer of films/ series or a broadcaster that entitles you to receive royalties (or "residuals") directly from that producer/broadcaster?



The survey also addressed the contention that "A lump sum payment can also constitute proportionate remuneration".

This contention was not supported by actors. **81% of actors stated that they believe the lump sum they receive does not fairly remunerate them for the contribution they make to the production.**

Fig. 3: Do you consider that the buyout/ lump sum payment you receive fairly remunerates you for the contribution you make to a production?



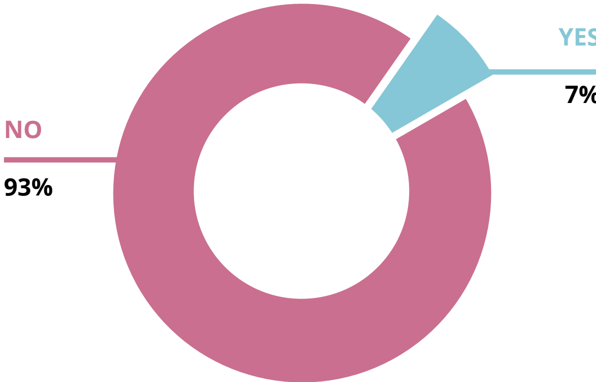
Specifically on streaming, actors were also asked whether the dominant market practice of lump sum payments is a fair way of sharing the revenue generated in this increasingly important industry. An even more emphatic response was recorded.

93% of actors stated that they did not consider receiving a lump sum payment (with no possibility of additional royalties or residuals) to be a fair way of sharing streaming revenue.

Fig. 4: Do you think that receiving a lump sum or buyout payment (with no possibility of additional royalties or residuals is a fair way of sharing streaming revenue?

In the past 25 years I have encountered royalty contracts only once. And that concerned only cinema visitor numbers. Otherwise, no one offers this and as an actor/co-creator you never see anything from it.

(Actor, Netherlands)



The conclusion is clear: for what concerns actors, article 18 has **not** achieved its objective. Lump sum payments **do** remain the rule in audiovisual contracts and these payments are overwhelmingly believed to be **neither "appropriate" nor "proportionate".**

BLACKLISTING

Whereas article 18 introduces the principle of "fair remuneration" that member states must ensure performers receive, chapter 3 of the directive also introduces four specific measures (in articles 19 to 22). These measures are designed to address a number of problematic issues the directive had identified relating to performers' contracts and contractual practices.

Prior to examining the impact of articles 19 to 22 it is however essential to address the issue of "blacklisting".

Blacklisting is the practice of producers identifying actors "who cause problems", which results in a limitation of future work for these performers.

One of the most revealing findings in the survey is that among actors there is an almost **universal fear of "blacklisting"**. In fact, one respondent commented that the word "fear" is inaccurate, stating that blacklisting is an inevitability rather than a likelihood.

Any attempt to negotiate ends with the producer's refusal to request the actor's collaboration anymore. I have many examples.

(Actor, Romania)

Types of behaviour that would result in blacklisting include questioning the contractual terms proposed to an actor (e.g. requesting to be paid in a manner other than a lump sum) and attempting to make use of the provisions contained in articles 19 to 22.

Of the **more than 350 comments received,** the most common complaint was blacklisting:

I would never enter into conflict with a broadcaster or a company. There are lists. Then you are no longer booked. Especially in the voice-over sector.

(Actor, Germany)

They do not negotiate with the actor. If the actor wants to negotiate, they intimidate or blacklist them.

(Actor, Hungary)

The reason why the finding that there is an almost universal fear of blacklisting is so decisive and ought to be stressed is that - in the overwhelming majority of cases - **blacklisting deprives articles 19 to 22 of having any impact**. Articles 19 to 22 of the CDSM directive - or any other legislation focussed on contractual relationships - will undoubtedly fail if it requires the actor to take any action to enforce the rights granted. Such legislation is only of hypothetical benefit.

Consequently, if actors are to receive appropriate and proportionate remuneration, measures require to be put in place that address the issue **outside of the contractual relationship** between the actor and producers.

> In all cases, at the moment of hiring we are practically coerced into accepting the conditions imposed by the producer, under penalty of, if we do not accept, losing the work.
>
> (Actor, Portugal)

> Essentially, we receive contracts for signing that maximally protect the producer, and we can choose whether we will work under their conditions or we will not work; if you want to ask something or discuss something, they immediately label you as someone who causes problems
>
> (Actor, Croatia)

ARTICLES 19 TO 22: IMPROVEMENTS IN CONTRACTUAL PRACTICES?

Articles 19 to 22 build upon concerns identified in recitals 72 to 81 relating to contracts between performers and producers. In particular they introduce measures aimed at ensuring actors (and other categories of performers) have:

(i) sufficiently transparent information that would allow them to determine whether the amounts they receive from the producer are being calculated accurately (article 19);
(ii) the right to renegotiate their contracts in the event that the remuneration originally agreed turns out to be disproportionately low (article 20);
(iii) access to a voluntary alternative dispute resolution (ADR) procedure (article 21); and
(iv) the possibility in certain circumstances to revoke the transfer of their rights to the producer (article 22).

While in theory applicable to all types of contracts, articles 19 to 21 were primarily designed to benefit performers who have an **ongoing contractual relationship** with producers. That kind of relationship exists for featured artists in the music industry, who sign a contract with a record label and in return are entitled to royalty payments, but **does not exist for actors who work under a lump sum contract.**

> My only choice – and this applies to film, dubbing and theatre as well – is either to sign the pre-determined and unilaterally drafted contract, or not sign it and lose the job.
>
> (Actor, Hungary)

To help actors working under a lump sum contract, there is the possibility in article 20 to obtain an additional remuneration, which can result in a correction of the original lump sum when this "turns out to be disproportionately low compared to all the subsequent relevant revenues"[7] .

It is for this specific reason that an additional safeguard has been built into article 19 on transparency. The default position is that member states may provide that producers do not have to produce the relevant information *"when the contribution of the author or performer is not significant having regard to the overall work or performance"*[8]. However, the text also adds the proviso that the producer will not be excused from providing this information when "… the author or performer demonstrates that he or she requires the information for the exercise of his or her rights under article 20(1) and requests the information for that purpose."

7/ Article 20(1) Directive 2019/790.

ARTICLE 19: TRANSPARENCY OBLIGATION

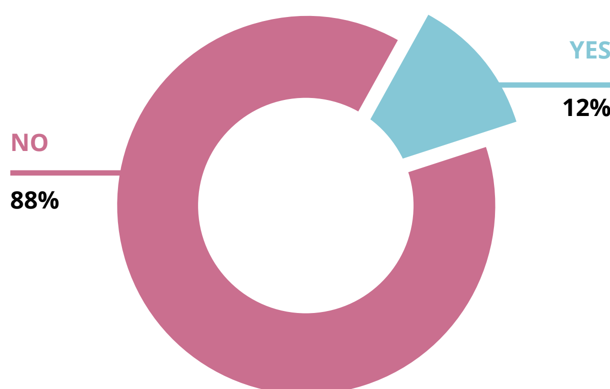
Article 19[9] builds upon recital 75 which highlighted a lack of transparency in contractual practices involving performers. It introduces a **transparency obligation**, requiring producers to provide actors, at least once a year, with information on the exploitation of their performances "in particular as regards modes of exploitation, all revenues generated and remuneration due".

This information ought to enable actors to verify the accuracy of the payments they receive and continuously monitor the commercial success or otherwise of the production. Importantly, producers must deliver this information proactively. In other words, they must provide actors with this information, at least once a year, regardless of whether or not the actor has requested it. The directive however allows this obligation to not apply when the actor's contribution is "not significant".

> Unfortunately I have not been receiving information about the origin, nor about the amounts of the royalties of the works in which I participated.
>
> (Actor, Portugal)

The survey showed that in the vast majority of cases, producers failed to comply with this obligation. **When asked whether they had received the level of information provided for in the directive, only 12% of actors working under a contract providing a recurring remuneration responded that they had.**

Fig. 5: Have you received detailed transparency information from a producer/broadcaster, covering all uses of your productions?

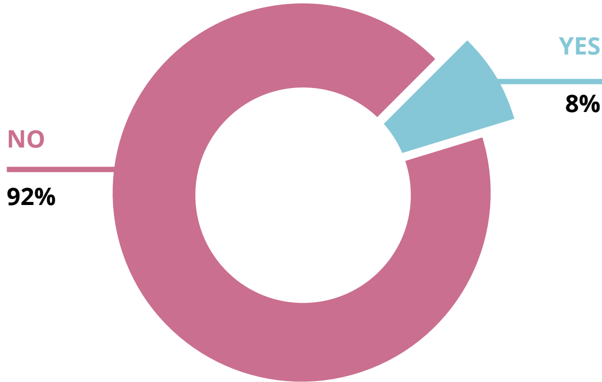


8/ Article 19(4) Directive 2019/790.

9/ Article 19(1) Transparency obligation
Member statesshall ensure that authors and performers receive on a regular basis, at least once a year, and taking into account the specificities of each sector, up to date, relevant and comprehensive information on the exploitation of their works and performances from the parties to whom they have licensed or transferred their rights, or their successors in title, in particular as regards modes of exploitation, all revenues generated and remuneration due...

While 93% of actors working under a lump sum contract report that they consider a buy out to not be a fair way of sharing streaming revenue, only 8% of them reported to have made use of their right under article 19 to demand information from a producer to allow them to consider making use of the contract adjustment provisions in article 20.

Fig. 6: Have you ever requested that a producer/broadcaster provide you with detailed transparency information?



Again, the role of blacklisting cannot be underestimated. The testimonies received from actors explain why it is unlikely that actors who did not receive transparency information would ask for it.

> The last time I mentioned, in a project, to the production company, that I wanted more information about streaming revenues, or that I wanted an agreement if the series were sold to streaming, I was looked at badly in the production.
>
> (Actor, Portugal)

ARTICLE 20: CONTRACT ADJUSTMENT

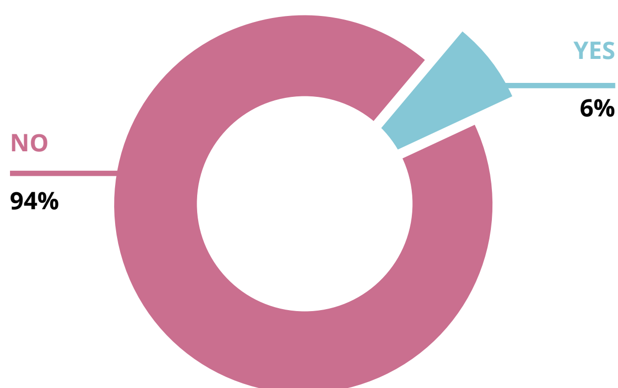
Article 20[10] establishes a **contract adjustment mechanism**, allowing performers to claim additional remuneration where the original remuneration provided in the agreement proves disproportionately low in light of subsequent exploitation.

The survey results demonstrated that only 6% of actors working under a contract providing a recurring remuneration made use of this provision.

Demands are considered undesirable in our circles. The actor becomes a so-called tough or problematic negotiator and is therefore no longer invited to cooperate in the future.

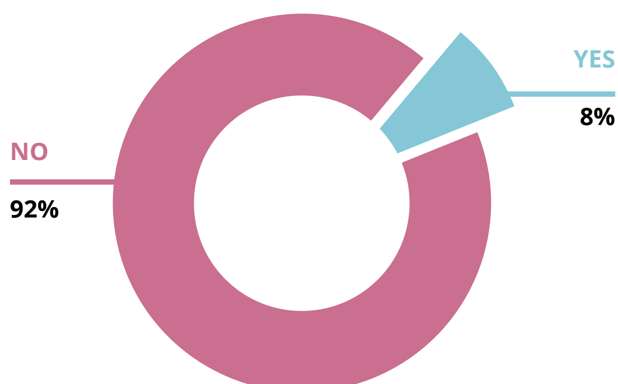
(Actor, Slovenia)

Fig. 7: Have you ever asked your producer/ broadcaster for such additional remuneration?



In the group of actors working under a lump sum contract, 8% reported to have attempted to claim additional remuneration, a percentage that corresponds exactly with those who made use of their right to obtain information from their producers.

Fig. 8: Have you ever attempted to claim additional remuneration?



10/ Article 20.1. Contract adjustment mechanism
Member states shall ensure that, in the absence of an applicable collective bargaining agreement providing for a mechanism comparable to that set out in this Article, authors and performers or their representatives are entitled to claim additional, appropriate and fair remuneration from the party with whom they entered into a contract for the exploitation of their rights, or from the successors in title of such party, when the remuneration originally agreed turns out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of the works or performances.

While 6% and 8% are clearly very low percentages, they do indicate that some actors have attempted to make use of this provision.

However, even if 37%[11] of those actors reported that the attempt resulted in an additional payment, the survey revealed the consequences of actors who had done so:

> Disney reassigned me twice as a disciplinary measure after I sought additional remuneration.
>
> (Actor, Germany)

> In Slovakia it applies that both private and now also public producers pay actors only a one-off fee, without entitlement to licences. As soon as I asked for a licence share, I was thrown out of the shoot.
>
> (Actor, Slovakia)

These real life experiences suggest that while it is possible that an actor may use one of the provisions in articles 19 and 20 once, they are very unlikely to try to do so a second time.

11/ 37% of respondents have indicated that the request for an additional remuneration resulted in receiving an extra payment. It should be noted that these positive results are limited to Germany, Slovenia and Slovakia.

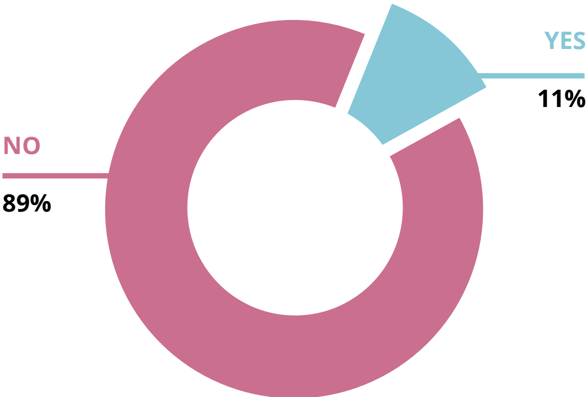
ARTICLE 21: ALTERNATIVE DISPUTE RESOLUTION

The existence of blacklisting is implicit in the directive at recital 79, which states *"Authors and performers are often **reluctant** to enforce their rights against their contractual partners before a court or tribunal".* To address this, article 21[12] was introduced requiring member states to provide access to alternative dispute resolution procedures.

Despite being well intentioned, the survey results show that article 21 has been of little success, with only **11% of those actors that had had a dispute with their producer ever having made use of the ADR provision[13].**

> We are all afraid to ask for anything more because we are all replaceable. I would not even use ADR because I would never again work for that production or television. Only the law can protect us.
>
> (Actor, Croatia)

Fig. 9: Have you ever used alternative dispute resolution procedure if you have had a disagreement with a producer/broadcaster?



As can be seen from numerous comments in the survey, it is clear that actors are reluctant to have resort to this procedure, despite it being designed to achieve amicable settlements.

As one actor stated:

> Triggering any type of litigation or extra collection as suggested here always results in not being hired in the future. The actor who does it will no longer be called either by the studio/producer or by the client.
>
> (Actor, Portugal)

12/ Article 21 Alternative dispute resolution procedure: Member states shall provide that disputes concerning the transparency obligation under Article 19 and the contract adjustment mechanism under Article 20 may be submitted to a voluntary, alternative dispute resolution procedure. Member states shall ensure that representative organisations of authors and performers may initiate such procedures at the specific request of one or more authors or performers.

13/ For actors under lump sum contracts, this percentage is only 3%.

ARTICLE 22: RIGHT OF REVOCATION

Article 22[14] introduces a **right of revocation,** theoretically enabling performers to terminate exclusive licences or transfers where their performances are not exploited.

Of all the measures contained in articles 19 to 22, it is this one which is of the least interest to actors. In part this is due to the ever-present issue of blacklisting, but it is also because article 22 was not designed with actors in mind. It was primarily designed to apply where only a very small number of performers were involved in a production or musical recording and is more relevant to authors in the audio and audiovisual sectors (who also benefit from the provisions in articles 18 to 22). Given the fact that most film/tv productions involve numerous actors it would be impracticable for one actor to be able to revoke their rights since the result may be that it would no longer be possible to exploit the production at all.

I do not take on producers or similar … The business is already hard enough.

(Actor, Germany)

Furthermore, the directive itself reduces the scope of article 22 for actors by clarifying that “specific provisions could be laid down at national level in order to take into account the specificities of the sectors, **such as the audiovisual sector… ”.**

Several member states (including Greece, Portugal and Sweden) have gone so far as to explicitly exclude the audiovisual sector from the scope of article 22.

For actors, article 22 is in practice irrelevant. It was designed to benefit other categories of rightholders and our survey results reflect this, with only a handful of actors having even attempted to use this.

14/ Article 22.1 Right of revocation
Member states shall ensure that where an author or a performer has licensed or transferred his or her rights in a work or other protected subject matter on an exclusive basis, the author or performer may revoke in whole or in part the licence or the transfer of rights where there is a lack of exploitation of that work or other protected subject matter.

Conclusions and recommendations

This report set out to examine the impact of the CDSM directive on actors and in particular whether the provisions contained in chapter 3 have achieved the objective of ensuring that actors receive fair remuneration. The findings show that this objective has not been achieved.

Previous studies[15] have shown that chapter 3 has failed to deliver "appropriate and proportionate remuneration" for musicians. In the music sector, featured artists will be remunerated via royalty contracts, while non-featured artists will be paid by a "session fee" or lump sum. Nevertheless, it was shown that even for featured artists, the contractual provisions in articles 19 to 22 failed to benefit them to a significant extent. It was also seen that in a large majority of cases the implementation of article 18 had not resulted in "fair remuneration" for either featured artists or non-featured artists.

> It could potentially be a fair system; however, the amount that is paid is small and disproportionate to the commercial value of the product that is produced.
>
> (Actor, Greece)

With regard to understanding why chapter 3 has failed actors, perhaps the most valuable finding for policymakers is that because of the specific nature of the audiovisual sector, the provisions in articles 19 to 22 can never be of value to actors. The results of a survey of **2382 professional actors** show beyond doubt that blacklisting is a determinative factor in why the directive has failed. **Realistically, no amount of legislation is capable of removing the threat posed by blacklisting.** Furthermore, without intruding upon the principle of contractual freedom there is little that legislation can do to prevent the continuing prevalence of lump sum contracts, which 81% of actors consider do not fairly remunerate them.

Consequently, the only provision in chapter 3 that potentially could prove to be of benefit to actors and create a system of fair remuneration is article 18. However, its implementation at national level has been largely ineffective. With the majority of member states opting for a verbatim transposition without any additional mechanism, its existence is of no added value to actors in those member states. However, if member states were to implement it in an effective way, there is a possibility that actors would receive fair remuneration in practice.

Based upon these findings, the Commission and member states should conclude that if actors are to receive the fair remuneration intended by the CDSM directive, the solution is not to be found in articles 19 to 22; nor any other legislation that attempts to improve contracts. The focus of the Commission and national legislatures should be upon the **effective implementation of article 18.**

15/ https://www.iaomusic.org/the-impact-of-the-dsm-directive-on-eu-artists-and-musicians-part-2-2024/

When transposing this part of the directive, article 18(2) allows the introduction of any mechanism that takes into account the principle of contractual freedom as well as a fair balance of rights and interests. It needs to be pointed out here that "taking into account" contractual freedom does not equate to promoting it, especially not when a fair balance of rights and interests needs to be taken into account at the same time. Taking into account the principle of contractual freedom also means taking into account its limitations.

A mechanism will only benefit actors if it:

(i) is outside of the contractual relationship;
(ii) does not require the actor to instigate any form of discussion or action with or against their contractual counterparty; and
(iii) is a measure that cannot be waived or negated in any contract.

The most reliable way in which an effective implementation can be achieved is by granting actors an additional unwaivable right to equitable remuneration for on-demand streaming, subject to compulsory collective management and collected from the end-user. Such a right would take into account the principle of contractual freedom and would ensure that – given their weaker bargaining position - the actor is not solely reliant on producers to obtain a fair remuneration. Nor would such a right be affected by blacklisting, since it would be an unwaivable right, with the payment automatically being collected by the CMO, not the individual actor.

This can be done without the need for additional legislation at EU level; it can - and should - be done at national level. In fact, several member states (Belgium, Italy, Poland, Slovenia and Spain) either already had such a right or implemented article 18 by introducing such an on-demand streaming right.[16] By introducing the unwaivable remuneration right referred to above, all member states would not only ensure that actors were remunerated fairly, they would also ensure that they comply with their obligations under article 18.

It is appropriate that the last word should be given to an actor:

> The biggest problem is that production companies give us the opportunity to work but want our rights to be theirs on this and on other planets for eternity. And we mere mortals waiting for an opportunity are forced to sign something we are against only so we do not die of hunger, for having chosen a professional area that moves societies and the world, but does not secure a future unless we sell our soul.
>
> (Actor, Portugal)

16/ In the Netherlands, the Dutch legislator has stipulated in the Copyright Act that remuneration for on-demand use is to be determined through negotiations between — in short —associations representing authors and associations representing producers. The remuneration agreed upon by these parties, is presumed to be fair if it is appropriate and proportionate to the use made of the right by the producer or by a third party to whom the producer has transferred or licensed the right. The relevant Dutch parties are currently in the final stages of these negotiations. Streaming platforms are represented in these negotiations and will be liable for the payment to authors and performers through their respective CMOs.