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Money From Busking: Legal and Tax Aspects of the Activity of Street Performers in Selected EU Countries

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Keywords

free donations, street performance, street festival, income tax, informal activity, earnings, taxation

Abstract

This paper shows the activities of street performers in selected European countries from the perspective of current challenges in tax law. The research problem concerns the regulation of donations received by street performers by legal and tax legislation. The paper is the result of qualitative ethnographic fieldwork and an analysis of legal acts regulating the rights and obligations of street performers in the legal tax area. The results help to raise public awareness of both the legality of street performances and the lawful treatment of donations received from spectators. Moreover, the article promotes knowledge concerning the social benefits of donations to street performers. Furthermore, the authors highlighted contemporary trends and challenges related to street performers' receipt of donations and how donations received in different currencies or cashless forms are taxed.

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I. Introduction

The paper presents the issue of legal and tax regulations about donations received by street performers. Following Marta Połeć's definition[1], a street performer conducts informal artistic and entertainment performances in urban spaces on her or his initiative. These performances are not formalised activities or affiliated with organisations. Moreover, these activities include performative presentations of theatre, dance, music, circus, or visual arts. In addition to informal performances, we also focus on street performances that are part of formalised activities – most often street festivals such as circus or street theatre festivals – in which spectators are allowed to make donations to the performers regardless of whether the event organiser also pays the performers. The urban space where street performances occur is usually public – open, unfenced and freely available.

This paper aims to show the activities of street performers in selected European countries from the perspective of current legal and tax legislation. The paper contrasts the descriptive and normative approaches to the taxation of donations received by street performers. On one hand, the descriptive approach refers to street performers' knowledge of the issue, their beliefs and activities. On the other hand, the normative approach shows what actions specified in the legislation, especially in tax legislation, street performers are obliged to take regarding the donations they receive. Moreover, the normative approach may support understanding what opportunities related to obtaining social benefits street performers are entitled to on this basis. The paper concludes by discussing the implications of how the activities of street performers can be supported in the design of the tax system in European countries.

Although the topic of street performance has increasingly featured in scholarly works, it has been concerned with aspects of urban space[2] [3] [4] [5] [6] or

1 M. Połeć, *Artyści uliczni polskich miast* (2018).

2 P. Simpson, 'Apprehending everyday rhythms: Rhythmanalysis, time-lapse photography, and the space-times of street performance' (2012) 19 *Cultural Geographies*. 423.

3 P. Simpson, 'Chronic Everyday Life: Rhythmanalysing Street Performance' (2008) 9 *Social & Cultural Geography.* 807.

4 E. Grygier, 'Przestrzeń miejska jako scena dla muzyków ulicznych' (2012a) *III Ogólnopolski Zjazd Studentów Muzykologii*. 168.

5 V. Doumpa & N. Broad, 'Buskers as an Ingredient of Successful Urban Places' (2014) *Future of Places*. 1.

6 K. Doubleday, 'Performance Art and Pedestrian Experience: Creating a Sense of Place on the Third Street Promenade' (2018) 59 *The Geographical Bulletin.* 25.

focused on street performers without referring to street performers in general[7] [8]. The legal themes raised relate to urban regulation and restrictions on performance opportunities.[9] [10] This paper fills a research gap by revealing the legal and tax aspects of street performance. The research problem posed concerns the legal and tax regulation of donations received by street performers. The paper, therefore, answers the research question: How are the donations received by street performers regulated by tax and legal regulations in selected European countries? The countries analysed here are Germany, Poland, Hungary, Belgium, and the United Kingdom. However, it should be emphasised that the lack of comparable solutions and the different rules for classifying the activities of street performers in different countries mean that different regulations apply to these activities, in some cases concerning more general entrepreneurs, hired employees or artists and creators.

II. Nature of Street Performers' Activity

The activity of street performers is an original example of a traditional, universal and non-formalised activity, simultaneously characterised by an economic dimension. The activity is ephemeral – it does not require regularity, it is not strictly bound to a particular urban space, nor does it involve dependence on certain individuals or groups. Instead, it depends on changing weather conditions, as well as other events, often difficult to predict from the perspective of the users of the space that make it impossible to perform in their area (such as renovations, outdoor events, and public gatherings). As a result, street performances can rarely be carried out regularly or constitute a reliable livelihood. In Poland, street performances are a seasonal activity between May and September. The motivations to perform on the street are more likely to be personal, social, artistic or entrepreneurial than purely economic– even if they are, and this only applies in the short term. Street performers are more performers than artists since, beyond street performances, they are not necessarily engaged in artistic activities.

7 N. Wees, 'Improvised Performances: Urban Ethnography and the Creative Tactics of Montreal's Metro Buskers' (2017) 67 *Humanities.* 1.

8 J. Williams, 'Busking in Musical Thought: Value, Affect, and Becoming' (2016) 35 *Journal of Musicological Research.* 142.

9 A. Astor, 'Street performance, public space, and the boundaries of urban desirability: The case of living statues in Barcelona' (2019) 43 *International Journal of Urban and Regional Research.* 1064.

10 M. Połeć, *'Street performances: Good practices in urban space management'* (2022) <https://www.kozminski.edu.pl/sites/leon/files/files/Polec_Marta_Wystepy_uliczne_Dobre_praktyki_w_zarzadzaniu_przestrzenia_miejska.pdf>

Anthony Giddens[11] points out that work is simplistically considered labour for which people are paid. Whether paid or unpaid, work consists of 'activities involving mental and physical effort, the purpose of producing goods and providing services to satisfy human needs.[12] Understood in this way, work is the basis of the economy. In more detail, an occupation is a work performed for a fixed wage. Given the above, it is difficult to call being a street performer an occupation. A low social status characterises street performance;[13] due to the collection of donations in a public space, it may be associated with begging.[13] Performing on the street is distinguished from begging primarily by the intention to entertain or amuse rather than to elicit pity.[14] Moreover, street performers do not solicit donations from passers-by for this purpose.

Street performances are also distinguished from begging by how donations are collected. As a result of technological changes, the traditional practice of 'passing the hat' is increasingly being replaced by cashless donations. The BLIK mobile payment system, which allows transfers using a phone number linked to a bank account, is becoming popular in Poland. Unlike physical donations, the payments are recorded in the account, although it is difficult to link them directly to the remuneration for the street performance. The BuSK.co[15] app was designed for street performers. A special tab with a code for cashless payments allows contributions in different currencies to be made using Apple Pay, Google Pay, or PayPal. Depositors decide for themselves whether they want to pay an additional transaction fee or whether it will be deducted from their deposit. The London authorities launched a similar initiative in collaboration with the Swedish company iZettle when, as a test, selected street performers were given contactless card readers so that passers-by could reward them by transferring a set amount of two pounds.[16]

Despite street performances' informal nature, they are a permitted and legal activity, although often regulated.[17] The Judgment of the Court in the case of R.

11 A. Giddens, *Socjologia* (2005).

12 id. p. 397.[13] M. Połeć, 'Wizerunek artystów ulicznych w mediach' (2019) 20 *Zarządzanie w Kulturze*. 157.

13 E. Grygier, 'Muzyk(a) ulicy. Pomiędzy sztuką, a żebractwem' (2012b) *Teksty pokonferencyjne PIA – SAID*. 1.

14 Połeć, op. cit., n.3.

15 The Busking Project, 'Everything you need to know about Cashless Payments on busk.co' (2021) <https://busk.co/blog/busking-tips-tricks/everything-you-need-to-know-about-cashless-payments-on-busk-co/>.

16 P. Dziubak, 'Londyn wprowadza pierwszy na świecie system płatności zbliżeniowych dla performerów' (2018) <https://www.cashless.pl/4304-londyn-wprowadza-pierwszy-na-swiecie-system-platnosci-zblizeniowych-dla-performerow>.

17 P. Dziubak, 'Londyn wprowadza pierwszy na świecie system płatności zbliżeniowych dla performerów' (2018)

J. Tolsma,[18] playing the barrel organ on the public highway in the Netherlands, collecting donations in a can, noted the absence of a direct legal link between the service performed by the street performer and the remuneration he received from passers-by. The justification cited the voluntary nature of the donations, the amount of which, if any, depended on the subjective motivations of the donors. Moreover, passers-by did not request specific pieces as in case of a musical service. Therefore, despite the inherent economic value of the performances, they do not constitute an activity that needs to be registered as a business.

As Połeć indicates,[19] street performances are increasingly subject to licensing by land managers responsible for specific locations in urban spaces. In Polish cities, more complex regulations apply to street performances in Kraków, Gdańsk or Zakopane. These regulations most often oblige performers to inform the relevant manager of the nature of the street performance, obtain permission to occupy the space and pay a fee to lease it. Regulations may also entail a ban on using a sound system, an obligation to comply with special rules and regulations, maintenance of order and tidiness at the place of activity, and readiness to present the permit during the control.

As Doumpa and Broad write,[20] street performance is one of the few forms of live entertainment that low-income people can afford. In addition to the social, inclusive nature of art in urban spaces, street performance can be considered a phenomenon of cultural heritage. In addition to tangible cultural products, we distinguish intangible ones, showing how communities live, change, and develop, revealing their uniqueness.[21] Cultural heritage, through a collection of symbols, meanings, and images, constitutes an important element of national identity, and tourism contributes to a country's economic development.[22] The characters and stories depicted by street performers often refer to the cultural heritage of regions and countries—legends, people important to a community's culture, phenomena

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18 NK „https://www.cashless.pl/4304-londyn-wprowadza-pierwszy-na-swiecie-system-platnosci-zblizeniowych-dla-performerow"https://www.cashless.pl/4304-londyn-wprowadza-pierwszy-na-swiecie-system-platnosci-zblizeniowych-dla-performerow.ʳation – Definition –, C-16/93' (1994) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61993CJ0016>.

19 Połeć, op. cit., n.12.

20 V. Doumpa & N. Broad, 'Street Performing: Low Cost, High Impact' in *The City at Eye Level: Lessons for Street Plinths, ed.* H. Karssenberg, J. Laven, M. Glaser & M. van t'Hoff (2016). 113.

21 F. Lenzerini, 'Intangible Cultural Heritage: The Living Culture of Peoples' (2011) 22 *European Journal of International Law*. 101.

22 T. Petronela, 'The Importance of the Intangible Cultural Heritage in the Economy' (2016) 39 *Procedia Economics and Finance*. 731.

characteristic of urban life, or traditional professions.[23] [24] According to Alivizatou-Barakou et al.,[25] mass culture and new technologies are contemporary threats to the survival of traditional professions. Indeed, the possibilities of street performances are limited by their licensing.[26] Such licenses might be perceived as a result of attempts to reconcile different activities in an area of limited urban space, often of a commercial or mass nature. The threat of technological advances leads to increased noise pollution in cities,[27] which is one rationale for the regulation of performances.

Street performances are, therefore, an example of artistic and cultural activity in the urban space, part of the intangible cultural heritage. This activity is often grassroots, informal, and irregular. The possibilities for street performance depend on weather conditions, technological changes, and the regulations of urban space managers. Nevertheless, street performances have an economic dimension and entrepreneurial potential. Given this, it is worth considering what legal and tax obligations and social benefits arise for street performers after receiving donations from the public.

III. Research Methodology

The research methodology consisted of separate empirical and theoretical research[28] conducted by the authors. The empirical ethnographic research by Marta Połeć investigated the informal organisation of street performances and the formal organisation of festivals that included street performances. The ethnographic research was conducted by Marta Połeć in Polish cities in 2014-2018 and during Polish and European street festivals, such as Carnaval Sztukmistrzów in Lublin, Festiwal Artystów Ulicznych i Precyzji in Radom, Sztuka Ulicy in Warsaw, La Strada in Bremen, Fringe in Edinburgh, and many others from 2021-2023. During these festivals, performers collect donations from

23 A. Zygmunt, 'Miasto' in. *Polska ginąca,* ed. P. Zalewski (2007). 262.

24 A. Kaul, 'Music on the edge: Busking at the Cliffs of Moher and the commodification of a musical landscape' (2014) 14 *Tourist Studies*. 30.

25 M. Alivizatou-Barakou *et al.,* 'Intangible Cultural Heritage and New Technologies: Challenges and Opportunities for Cultural Preservation and Development' in: *Mixed Reality and Gamification for Cultural Heritage*, ed. M. Ioannides, N. Magnenat-Thalmann & G. Papagiannakis (2017). 129.

26 Połeć, op. cit., n.3.

27 D. Cohen & B. Greenwood, *The Buskers: A History of Street Entertainment* (1981).

28 J. Stochaj & Ł. Roman, 'Wybrane metody teoretyczne w naukach społecznych i ich zastosowanie' (2013) 6 *Obronność – Zeszyty Naukowe Wydziału Zarządzania i Dowodzenia Akademii Obrony Narodowej*. 178.

the audience, often receiving remuneration from the organisers or covering some of their expenses (such as transport, accommodation, and food). At the same time, extra-programme performers (usually former participants in the official festival programme) performed during the festivals without remuneration beyond donations.

The research methods used during the fieldwork were participant observation and anthropological interview.[29] Participant observation involved assuming a variety of roles: festival participant, volunteer, person involved in the organisation, in addition to a member of a performing team. Anthropological interviews were conducted with street performers, festival performers and festival organisers. In addition, analysis of other qualitative material[30] was used, including desk research and media discourse.

Antoni Kolek's theoretical research analysed the legal regulations governing street performances in several European countries. For this purpose, the legislation in effect in those countries was analysed, along with the available material from the European Commission (EC 2022)[31] and the Compendium of Cultural Policies & Trends database[32]. The analysis of legislation regulating street performers included taxation rules and coverage by social security contributions. The conclusions of the analysis are based on national and case law.

IV. Legal and Tax Issues from the Perspective of Street Performers

Street performers were rarely aware of the legal aspects associated with the donations they received for their performances, such as employment forms, income taxation, or the basis for social benefits. This may have been due to their assumption that street performance was strictly a temporary and short-term activity. For the most part, they acknowledged that the amount of donations they received depended on factors beyond their control:

Well listen... you can make a few hundred zloty in a day. And you can make nothing. I made zero today. *(Portraitist, 2015)*[1]

29 M. Kostera, P. Krzyworzeka & M. Połeć, *Antropologia organizacji: Jak prowadzić badania terenowe?.* (2023).

30 G. Gibbs, *Analizowanie danych jakościowych.* (2019).

31 'European Commission, The Situation of Artists and Cultural Workers and the post COVID-19 Cultural Recovery in the European Union' (2021) <https://www.europarl.europa.eu/RegData/etudes/STUD/2021/652250/IPOL_STU(2021)652250_EN.pdf>.

32 'Compendium of Cultural Policies & Trends' <https://www.culturalpolicies.net/database/search-by-country/country-profile/category/?id=12&g1=4>.

For me, the determinant of a good performance is not the amount of cash in the hat, because that's very relative. There can be a great performance and there can be thirty zloty in the hat. It could be that I'm leaving and thinking to myself, 'Jeez, it was sooo washed out!' – and there's a hundred and thirty in the hat. But for me the indicator is how these people clap. When they're laughing through the whole show and clapping, it's really great! *(Mime, 2015)*

At the same time, street performers stressed that in the long term, their work could harm them: they could become accustomed to instability and unpredictability, exaggerate the importance of randomness, and accept the illusion of having no control over their own destiny. Therefore, there have been few long-term informal street performers. Usually, such activity was continued within an institutional framework, such as cooperation with artistic collectives, cultural event organisers, art agencies, or the performer's own business. Performing on the street was, therefore, mainly attractive for people beginning or ending their careers, for people seeking seasonal work, and for people with temporary financial difficulties:

As for my expenses, I have to maintain the house. I have a small pension. I have a creative work pension, the lowest one, 850 zloty (...). That's what I have to make up for. I even still write such tabloid articles for the newspaper, so that's an additional four hundred zloty a month. *(Actress, 2012)*

Despite the inherent economic aspect of street performances, they often fulfilled more than a financial purpose. Performances have social value, enabling performers with disabilities or those past working age to become or remain physically active. Street performers were able to develop their entrepreneurial, artistic, social and organisational competencies, professionalising and expanding their activities. Indeed, many street performers eventually set up their businesses. As they recalled, their time as street performers enabled them to develop professionally. Learning how to perform in front of all types of audiences inspired street performers to experiment with and refine various artistic and business ideas.

Although street performing was usually a way to improve their economic situation, few performers considered it a professional livelihood. An interviewee with previous entrepreneurial experience recounts how, after consulting an accountant friend, he legalised playing on the street as a business activity:

I had to (...) just report there, to this employment office, as unemployed. And then I had a hard time for five years. I collected Coca-Cola cans, I was even begging... it was just... a period of crisis (...). And a bit of ambition carried me away! 'Mr manager, boss' – that's how they used to call me, [and] suddenly: begging (...). And then, only then, in agreement with the accounting office .... with the lady who [used to] do [accounting] for me – how do I do it to open this business? And I've just already registered the business for this street playing. *(Musician, 2015)*

However, nearly all of the interviewees expressed not knowing how to legalise the donations they receive and helplessness in relation to the limitations of their activities:

Do you know what this is called? A source of untaxed income. Do you know what the tax on that is in Poland? Eighty percent on what you have untaxed. If I can't explain where I get this money from.... And 'performing on the street'? There is no such thing. I would have to pay eighty per cent on the amount that I declared I earned. [On top of that:] no insurance, no pension, professional burnout, depression. So, just as I said: loneliness among many people. *(Circus performer, 2017)*

In Poland, street performing is rarely a profession of a vocation. However, in some cases, street performers may wish to receive social benefits. Receiving donations in the form of coins and banknotes are difficult to document. However, cashless donations can partially overcome this limitation. While BLIK payments cannot be linked to specific donations for street performances, the BuSK.co app is designed to reward those performances. It is, therefore, worth considering what the legal and taxation obligations for donations to street performers are, as well as the possibilities of their eligibility for social benefits in Poland and other European countries.

V. An overview of regulations regarding street performers in selected European countries

Due to the lack of specific regulations, street performers should be considered part of the broader category of artists. It is impossible to find a general definition in European law of who a performer is or how a person can become one. Nor are there uniform solutions in social security for performers in EU countries. Some Member States apply general social security rules for self-employed workers to street performers. Others have detailed rules and systems that consider the specificity of a performer's activity.

Case law often treats performers as freelancers or as business owners. In some situations, performers may be referred to as students taking a workshop or masterclass. However, performers have a professional career pattern that involves alternating or combining the statuses of employment and self-employment. However, the lack of a single legal definition of who is and is not a performer creates ambiguity and, taking into account the specificity of the artist's profession, is problematic in implementing the right to social security.

In addition, the literature on cultural economics points to significant fiscal consequences resulting from the lack of uniform regulations in the European

Union. The works of R. Towse[33] and B. S. Frey[34] emphasise that the heterogeneity of tax systems and different approaches to arts funding can lead to inequalities in artists' incomes. Artists can achieve higher net incomes in countries where tax relief is more developed. In contrast, street performers often operate on the edge of legality in countries with a more rigorous approach to taxation, avoiding formal registration. This situation requires further research on the impact of tax regulations on the mobility of street performers in Europe.

The issue of social security for artists has been the subject of work by international organizations. In 1980, UNESCO demanded social security for performers.[35] According to UNESCO, artists should enjoy the same rights as comparable groups of the active population guaranteed by national and international law regarding employment and working conditions. This means that performers' activities should also guarantee their right to benefits in the event of illness, old age, maternity, unemployment, and access to health care services.

In 2007, the European Parliament called for EU member states to develop and implement a legal and institutional environment supporting performers. The regulations should consider the unusual nature of artistic work. Moreover, the European Parliament drew attention to the freedom of movement of people enjoyed by artists, including street performers, and the possibility of transferring pension rights between Member States.[36]

European countries have two traditions related to ensuring social security. The provision model in force in Great Britain (known as the Beveridge model) is implemented by acquiring the right to benefits based on residence in a country, and the benefits themselves are financed from public sources, mainly taxes.[37] In continental Europe, the insurance model (the Bismarck model) is distinguished by granting the right to benefits based on the contributions paid and not on the residence condition in a given country's territory. The benefits are financed from the contributions paid.[38]

Based on data from the Compendium of Cultural Policies and Trends, in Denmark, Greece, Ireland, Italy, Malta, Norway, Portugal, Romania, Slovakia,

33 Towse, R. (2010). A textbook of cultural economics. Cambridge University Press.

34 Frey, B. S. (2003). Arts & economics: Analysis & cultural policy. Springer.

35 UNESCO (1980), Records of the General Conference Twenty-first Session Belgrade, 23 September to 28 October 1980, http://unesdoc.unesco.org/images/0011/001140/114029epdf#page=144

36 European Parliament (2007), European Parliament resolution of 7 June 2007 on the social status of artists (2006/2249(INI)).

37 Esping-Andersen, G. (2015). Welfare regimes and social stratification. Journal of European Social Policy, 25(1), 124-134.

38 Esping-Andersen, G. (2015). Welfare regimes and social stratification. Journal of European Social Policy, 25(1), 124-134.

Spain, and Sweden, there are no specific solutions covering entitlements to social security benefits addressed to artists, which means that, as a rule, artists are subject to general regulations.[39] In many EU countries, solutions relevant to artists are marginal and concern only a limited number of rights. Germany and Finland provide artists with comprehensive solutions that consider the nature of their activities.

5.1. Germany

Germany has one of the most comprehensive social security systems for self-employed artists, including health and pension insurance. German legislation follows the insurance tradition and distinguishes farmers, self-employed people, and artists. All self-employed artists are required to join the Artists' Fund if they meet the following criteria:

- They see their work as artists as a permanent career and do not have more than one employee.
- Artistic work is based on creating or teaching music, applied or visual arts, or publishing one's own work as an author or journalist.
- The artist earns at least EUR 3,900 annually from their artistic or publishing activities.

Many street performers may not meet these conditions, so their activities will not be covered. According to data, at the end of 2016, 192,000 artists, including approximately 25,000 performing artists, were insured in the system.[40]

The provisions of the Artists' Social Security Act (Künstlersozialversicherungsgesetz, KSVG) have been in force since 1983; the Act offers a special form of insurance support for artists and writers[41]. These regulations assume that the specific nature of creative work makes it impossible for artists to receive constant and systematic remuneration and causes dependence on the users of their services. This is not a standard employee-employer relationship. Therefore, The German legislation obliged companies to use artistic services to pay for the artists' social insurance fund (Künstlersozialkasse). Consequently, self-employed artists must pay half of the contributions to the statutory health and social insurance (short-term benefits) and, since 1995, to the pension and disability

[39] Compendium of Cultural Policies and Trends. Available at https://www.culturalpolicies.net

[40] Die Künstlersozialkasse, https://www.kuenstlersozialkasse.de/ueber-uns/die-kuenstlersozialkasse

[41] Die Künstlersozialversicherungsgesetz (KSVG), Gesetz über die Sozialversicherung der selbständigen Künstler und Publizisten (Künstlersozialversicherungsgesetz – KSVG https://www.kuenstlersozialkasse.de/fileadmin/Dokumente/Gesetze/KSVG.pdf

insurance system (long-term benefits). The other half of the funds are financed from taxes (20% federal subsidy) and the funds of a state institution (30% Künstlersozialabgabe).[42] In practice, the average amount of contributions artists pay is EUR 235 per month in the old Länder and EUR 197 in the new Länder[43]. Under the regulations, self-employed artists may be exempt from compulsory health insurance during the first three years of their careers. However, they can still take out voluntary insurance in the state or private system.[44]

The social security model operating in Germany includes activities to ensure artists' social security. The adopted model of financing artists' social insurance through a lower contribution burden (50% financed by the insured person) manifests state support for this group of self-employed people undertaking work related to the artistic industry. Because the nature of this professional group requires different solutions, support for people in the cultural professions, including street performers, is an element of state cultural policy.

5.2. Poland

In Poland's legal system, the right to social security covers creators, artists, and performers who receive a decision from the Commission for the Pension Provision of Creators. The Commission decides on recognising an activity as creative or artistic and sets the date of its commencement based on documents confirming the duration and nature of the activity. However, in practice, these provisions are rarely applied, and at the end of June 2023, 115 artists received titles to social security.[45] Among other factors, this is due to the lack of contribution preferences, which are specific to entrepreneurs and allow them to defer contributions for a maximum of six months and then pay a reduced contribution for 24 months.

However, work is underway in Poland to regulate the professional artists, enabling them to:

– take advantage of preferential social and health insurance contributions
– obtain subsidised insurance premiums for the lowest earners

42 Bundesministerium für Arbeit und Soziales 2021 (Sozialbericht 2021) https://www.bmas.de/DE/Service/Publikationen/Broschueren/a101-21-sozialbericht-2021.html

43 Verena Tobsch, Werner Eichhorst, Germany: Social insurance for artists and writers https://www.oecd-ilibrary.org/sites/9789264306943-8-en/index.html?itemId=/content/component/9789264306943-8-en#endnotea5z2

44 Artists' Social Insurance Act (Künstlersozialversicherungsgesetz)

45 Insurance (individuals) in retirement and disability insurance by insurance title groups - as of June 30, 2023. https://psz.zus.pl/documents/493365/532850/Ubezpieczeni+ubez+emer+rentowe+wg+tyt+ubezp.+II+kw.+2023.xlsx/0352984f-e071-b429-4485-48e4c-c323279?t=1690976364260

– deduct 50% of the costs of generating income from artistic activities
– receive a Professional Artist Card, guaranteeing further rights
– apply for a scholarship or financial aid

However, it is not certain that street performers will be considered professional artists.

5.3. Hungary

In Hungary's social security system, more than 75% of actors, dancers, musicians, event organisers, technicians, designers, and other cultural professionals are self-employed. EKHO has been serving these people since 2005[46] – a social security subsystem tailored to the needs of people in the creative sector. The criterion for obtaining the status of a creative creator is to earn less than HUF 60 million (approximately EUR 170,000).[47] Under the regulations, the minimum mandatory basis for social security contributions is the minimum wage; the remainder of a citizen's income, including social security contributions, should be taxed at 15%.

To sum up the solutions regarding social security for artists, it should be stated that EU countries have no uniform rules for ensuring social security. These regulations are established at the level of each Member State; in practice, the provisions that apply to business owners also apply to street performers. This means the same regulations apply to street performers and other entities engaged in systematic and organized economic activity. As in Germany, special regulations result from the state's desire to support people performing cultural professions. However, no EU solutions pertain specifically to artists, including street performers.

VI. Tax regulation of street performances in selected European countries

From an international perspective, double taxation treaties apply to income received in one country that is not the country of tax residence. This means a street performer who has already paid taxes abroad should receive financial compensation in his country of residence through a tax credit or tax exemption. However, despite the application of double taxation avoidance agreements, street

46 The EKHO law (Act CXX/1995)

47 Compendium of Cultural Policies and Trends, Hungary, hungary_072016.pdf (culturalpolicies.net)

performers must complete all formalities regarding clarifying their tax situation with the tax authorities of the country of residence to avoid excessive double taxation. This may mean submitting a tax return or other documentation to the tax authorities.

6.1. Germany

In 2009, Germany, after three judgments (Gerritse,[48] Scorpio,[49] i Centro Equestre[50]) changed the tax system for foreign artists by adapting the regulations to EU law. The ECJ rulings clarified which parts of artists' income are subject to taxation. The rules include special tax rules for artistic, entertainment, and sports activities, which allow EU/EFTA (European Free Trade Association) countries' residents to deduct expenses directly related to German performances. The costs of travel, drinks, accommodation, and meals, which are covered directly by the event organiser, are not taxable.

Moreover, state support for the culture and art sector consists of regulations contained in legislation, which constitute the basis for reducing VAT on certain cultural goods. For instance, purchasing books is subject to a rate of 7%. Under certain conditions, public cultural and non-profit activities (e.g., theatre performances) are completely exempt from VAT and corporate tax.[51]

Artistic and cultural activities are often carried out within non-governmental organisations. The Act on the Taxation of Foundations took effect on January 1, 2000, providing tax relief for establishing and donating to foundations. More recently, additional tax relief has been introduced in the act regulating donations. The tax exemption threshold for income from voluntary activities (the standard exemption for course instructors) has been increased and extended to other groups, including artists.

6.2. Belgium

Given the principle of aggregation of insurance periods, depending on the country, artists may encounter many difficulties in obtaining the right to short— and long-term benefits. In some countries, artists do not meet the requirements to

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48 Arnoud Gerritse v Finanzamt Neukölln-Nord (C-234-01), 12 June 2003

49 Scorpio Konzertproduktionen GmbH v. Finanzamt Hamburg-Eimsbüttel (C-290/04). ECJ, 3 October 2006

50 Centro Equestre de Leziria Grande Lda case v Bundesamt für Finanzen (C345/04), 15 February 2007

51 Compendium of Cultural Policies and Trends, Germany, https://www.culturalpolicies.net/database/search-by-country/country-profile/category/?id=15&g1=4

be eligible for certain benefits. For example, dancers who retire between the ages of 45 and 47 have not worked long enough to qualify for a full pension.

Every year, the public authorities in Belgium provide every person who has worked there with a statement of the number of days worked to obtain pension rights. The Belgian Social Fund for the Performing Arts, established in Flanders and managed jointly by management and workers in the live performance sector, provides a common supplementary pension scheme for all live performance workers in the country, regardless of their nationality[52].

6.3. Hungary

Because many countries have performers who are not citizens and taking into account the territorial scope of legal regulations, many non-resident taxpayers did not have the right to deduct expenses from their income under tax law. We can, therefore, talk about excessive and unfair taxation of migrants. The lack of the right to deduct costs may be considered a form of discrimination against artists who can deduct expenses constituting pre-tax deductible costs. In 2007, Hungary allowed artists to deduct expenses incurred within Hungary's tax jurisdiction from their income. This means that artists, including non-resident street performers, can pay taxes on the same terms as residents.

6.4. Poland

Under the Polish Personal Income Tax Act provisions, income obtained from street performances is subject to taxation. If each month's income does not exceed an amount equal to 75% of the minimum wage (75% x PLN 4,242 (approximately EUR 1,000 = PLN 2,969.4 from January 1, 2024), the street performers do not have to register a business activity[53]. However, when the activity is carried out personally, in an organised and continuous manner, and is performed for profit-making purposes following the regulations, the funds obtained by the street performers constitute income which, after deductions, should be taxed. If the activity is permanent, the street performers are considered to be engaging in non-agricultural business activity, which is covered by social security and health insurance contributions,[54] and is subject to taxation on the terms chosen by the

[52] Find out how the Belgian pensions and taxation systems affect foreign residents. Information for those who have retired to Belgium and those who retired from work in Belgium, https://www.angloinfo.com/how-to/belgium/money/pensions-wills/pensions

[53] Art. 5 Act of March 6, 2018 - Entrepreneurs' Law, Journal of Laws of 2023, item 221)

[54] The amount of social security contributions depends on the declared amount of income, not lower than 60% of the average forecast remuneration; the amount of health insurance contributions depends on the chosen form of taxation

entrepreneur. In this case, the street performers can choose to be billed according to:

– tax scale, then the tax-free amount is PLN 30,000. PLN and the tax rate is 12% and 32% on the surplus above PLN 120,000 PLN[55]
– flat tax, 19% without tax allowance [56]
– lump sum from recorded income, 15%.[57]

Importantly, the taxpayer is responsible for recording income but is not obliged to issue documents confirming the donation, such as receipts or invoices. However, if the income is occasional, the artist or performer may be subject to the criterion of an activity performed personally; in this case, the income should be calculated taking into account 20% of the costs of obtaining income and an advance payment of income tax of 12% should be made.[58]

In the case of unregistered activity, there is no obligation to pay social security and health insurance contributions. In contrast, engaging in a non-agricultural business activity requires the street performer to pay contributions and be entitled to short—and long-term benefits.[59]

VII. Conclusions from the comparative analysis: good practices support the maintenance of the intangible heritage of street performers

One of the key challenges related to the taxation of street performers is how to qualify the income they receive. In most tax systems, donations can be treated as income; in some cases, they may be subject to tax exemptions. For example, in Germany, artists whose activity meets the criteria of artistic creation can benefit from preferential tax rates or VAT exemptions. In Poland, however, exceeding a certain income threshold may result in the need to establish a business and pay social security contributions, which significantly affects the artist's final income.

55 Article 27 Act of July 26, 1991, on personal income tax (Journal of Laws of 2022, item 2647, as amended)

56 Article 30c Act of July 26, 1991, on personal income tax (Journal of Laws of 2022, item 2647, as amended)

57 art. 12 section 1 point 2 letter y Act of November 20, 1998, on flat-rate income tax on certain income obtained by natural persons (Journal of Laws of 2021, item 1993, as amended)

58 Article 13 Act of July 26, 1991, on personal income tax (Journal of Laws of 2022, item 2647, as amended)

59 Act of October 13, 1998, on the social security system (Journal of Laws as amended)

The analysis of legal and tax regulations pertaining to street performers indicates the lack of comprehensive solutions among EU countries. The solutions are rudimentary and often refer to running a business without considering the nature of street performers' activities.

Paying attention to good practices and demands articulated by street performers, it is worthwhile to standardise regulations at the EU level and introduce solutions that support the activities of street performers. This can be done by introducing

– tax preferences
– simplified settlements in the field of tax residence
– easier access to benefits from the social security system
– simplified settlements through a cashless payment system

Artistic activity can be creative or performative. It is often project-based and temporary, which may challenge performers' eligibility for social security. Artistic activity also includes the activity of street performers, which is a special case due to the seasonality of the activity, its mobile nature, and obtaining donations from unique recipients.

When analysing the impact of income thresholds on the financial situation of street performers, it is worth paying attention to specific examples. In Poland, income above a certain limit is associated with registering a business, which generates additional costs and requires meeting certain administrative obligations. In Germany, conversely, a higher tax exemption threshold applies for creators, meaning many artists can avoid paying taxes if their income remains relatively low. These differences mean that choosing a place of activity can be a strategic decision affecting the financial stability of street performers.

VIII. Summary

This study presents legal and tax regulations concerning funds received by street performers. The specificity of street performers' activities indicates their discontinuous and non-routine nature. The analysis of legal and tax regulations in selected European countries makes it possible to compare two approaches to the issue of taxation and coverage of contributions received by street performers. The research methods used in the study allow us to answer the research question about imposing public levies on funds received by street performers in selected European countries.

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