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Measures for the betterment of the labor market position of non-standard working regimes in the cultural and creative sector in the Netherlands

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ABSTRACT

This article reflects on possible effects on income and earning capacity of creative workers of three measures that were recently introduced or that are being discussed to combat the vulnerability of non-standard working conditions in the cultural and creative sector in the Netherlands: the Balanced Labor Market Act, the Fair Practice Code for Culture, and a call for certain unified agreements, for instance in the form of minimum tariffs for self-employed workers. Each of these measures separately has its merits and the intention to improve working conditions. Therefore, the power lies in their joint introduction, which combines general legislation with a moral benchmark and subsector-specific solutions. However, in this combination several unintended consequences loom, such as the possible separation between professional and amateur creative workers, a higher threshold for talent to enter the sector, threats to artistic and aesthetic innovation, and the prioritization of fairness over equality.

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Introduction

Workers in the cultural and creative sector have longer been associated with vulnerability in terms of income security and earning capacity. In 'Creative Justice: Cultural Industries, Work and Inequality,' Mark Banks (2017) argues that injustice and inequality represent structural problems within the cultural and creative industries. This has been further exposed by the COVID-19 crisis that made the existing seemingly-structural precarity more visible and urgent (Comunian and England 2020; IDEA Consult et al. 2021). With scholars and sectoral organizations emphasizing the low incomes, precariousness and volatility of work of people working in this sector, the call for (policy) measures to deal with these problems increased over the past years. In this regard, Banks (2017) argues that a strive for equality (everyone has the right to seek cultural employment on an equal basis with others) and equity (positions and rewards should be the result of a fair and just process) is the way forward. However, as emphasized by Mangset (2020), public cultural policy has been struggling to find adequate solutions to some of the structural challenges that this sector is facing.

The present article explores this context from the viewpoint of the Netherlands. This focus can prove to be interesting for three reasons. First, the Dutch labor market stands out internationally, with an extremely high frequency of flexible and part-time work arrangements, and a rapid increase in the share of non-standard work contracts (Hartog and Salverda 2018; OECD 2019a). This holds within as well as

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beyond the cultural and creative sector. The rate of self-employment in the Netherlands has since many years been high and is still increasing. In 2017, 16.7% of the total workforce was self-employed, which was an increase of 5.6 percentage points between 2000 and 2017, and all non-standard work regimes combined take up 34% of total employment in 2017, a number that has been growing at a greater pace than in many other European countries (OECD 2019a; Eurostat 2019). A study by the Dutch Ministry of Finance concluded that growth in self-employment in the Netherlands was above the EU average, and was being driven by tax incentives originally introduced to encourage entrepreneurship, innovation and economic growth. It showed concerns about whether such workers were adequately protected in terms of labor law and social protection (The Netherlands Ministry of Finance 2015). The OECD states that 'the Netherlands is at an important juncture and urgent decisions need to be taken about the kind of labor market that is desired in the future. Unless gaps in tax treatment, social protection, and regulation between employment forms are narrowed, the segmentation of the Dutch labor market is likely to worsen and may reach a point of no return' (In: Commissie Regulering van Werk 2020, 110). Second, as a response, this call for policy measures in the Netherlands has been answered by a few such measures which are either already implemented or are being proposed and debated, initiated by both government and the cultural and creative sector. The Dutch labor market can therefore prove to be an interesting arena to observe how such measures individually and in combination might live up to their intended outcomes. Third, the Dutch policy of 'flexicurity' which combines labor market flexibility with security for part-time and temporary employees has since the mid-2000 s been a source of inspiration for EU policy making, where current EU-level documents see flexicurity as a guidance for structural reforms (Bekker and Mailand 2019). A reflection on recent adjustments and additions to Dutch policies and its (un)intended effects could prove insightful for possible adoptions on a greater EU level as well.

The present article reflects on possible effects on income and earning capacity of creative workers of three of these measures in particular: the Balanced Labor Market Act (BLMA), the Fair Practice Code for Culture (FPC), and a call for certain unified agreements, for instance in the form of minimum tariffs for self-employed workers. The BLMA was implemented in the beginning of 2020, and intends to reduce the flexibility in the general labor market (not specific for the cultural and creative sector) by stimulating employment with permanent contracts while discouraging organizations to work with flexible contracts. The FPC, launched by sectoral representatives in October 2017 and further refined in 2018 after working sessions with cultural and creative professionals, is a moral code of conduct for entrepreneurship and working in the cultural and creative sector. The third of the measures under consideration in this article falls under the umbrella of certain unified agreements, such as Collective Labor Agreements (CLA) or agreements on minimum standard fees for hiring the services of self-employed individuals. This article aims to formulate a reasoned response to the research question: What are the intended and unintended outcomes of the three measures when it comes to income and work situation among cultural workers within non-standard working regimes? The current study addresses the effects of these measures in isolation, and reflects on what might happen when measures interact together, in terms of cultural supply, labor market composition and cultural policy.

Information for this article has been sourced from a wide array of regulatory and sector-specific documents (i.e. Commissie Regulering van Werk 2020; OECD 2019a, 2019b; Koolmees and Vijlbrief 2020; Kunsten '92 2020, 2017a, 2017b; SER & Raad voor Cultuur 2016, 2017; The Netherlands Ministry of Finance 2015; Van Peursem and Ozen 2018) to which a series of five interviews with sector specialists in various roles have been added. These include a union representative from the Kunstenbond, a representative of the Dutch Social Economic Council, a researcher working for an institute for arts, culture and related policy, a former member of the steering committee charged with creating a Labor Market Agenda for culture which resulted in the FPC, and a university professor who specializes in social security and labor relations. The open interviews, based on a topic guide and conducted online by both authors in the period of November and December 2020 and later transcribed, can be labeled as 'expert interviews'. The interviewees were selected because separately and combined they possess a knowledge advantage of three types of knowledge: *technical knowledge* that contains information about operations governed by rules and field-specific application routines;

process knowledge that is practical knowledge of the sequence of happenings in someone's context; and *interpretative knowledge* that entails someone's interpretations and subjective viewpoints (Bogner and Menz 2009). Conducting expert interviews can 'serve to shorten time-consuming data gathering processes, particularly if the experts are seen as "crystallization points" for practical insider knowledge and are interviewed as surrogates for a wider circle of players' (Bogner, Littig, and Menz 2009, 2). In order to avoid the risk of granting the relevance of expert knowledge the status that would constitute non-validated confirmation, interview data were triangulated against each other, policy documents and the academic literature. Furthermore, the interviews functioned for the researchers to understand the intricacies of the policies under investigation, rather than to elicit the respondents' personal opinions and reflections on the measures as such or to build theory from data.

Background

Non-standard working regimes

Non-standard work can be described as any form of (paid) work that is not being performed under a permanent full-time contract, and as such entails self-employed work, (on-call) variable hour flexible work, as well as part-time work (OECD 2019b).¹ Workers' preferences are becoming increasingly more heterogenous; people start experiencing the need to determine the ways in which they organize their work. It could be conceivable that the COVID-19 situation accelerates this need and desire for more individual solutions as workers are increasingly bound to at-home work. Non-standard work can bring benefits in terms of quick adaptability for both employers and workers, however, working in non-standard forms is not always by the wish of the worker, and it can entail risks and uncertainties compared with other work forms. For example, within the non-standard working regimes, those individuals with flexible contracts generally experience less work security, have higher chances to become unemployed, incur lower income levels and lower levels of income security, gain less income (7%), and have higher chances to enter poverty. Additionally, workers with flexible contracts have less access to schooling and education, face harsher work conditions, and experience a higher degree of occupational accidents (Commissie Reguleren van Werk 2020; Menger 2017). Even though self-employed individuals are generally more satisfied with their labor market position compared with other non-standard working regimes, they do also experience to a large degree the greater risks associated with any type of non-standard labor market position.

From the point of view of the employers, long-term contracts and sustainable labor relations are not necessarily attractive for many employers. Such contracts do not allow for adjustments to fluctuations in the demand for the goods and services of the organization, and can come with legal and administrative responsibilities and duties at the account of the employers. Especially smaller firms hesitate to hire people because of those economic and legal risks (Commissie Reguleren van Werk 2020). Moreover, the tax system in various countries provides an incentive for a firm to hire an unincorporated self-employed worker over a salaried employee, as this can amount to considerable labor cost savings for the firm as they are not liable for employer social contributions on the worker's behalf (OECD 2019b).

Within a nation's economy at large, a high share of non-standard work is not necessarily associated with higher productivity or even employment, and it has been demonstrated that increases in non-standard employment have contributed to increases in inequality (OECD 2019b).

The labor market for creative and cultural workers

From the point of view of the creative worker, there is an increasing use of the 'portfolio' model of work, combining many different jobs and commissions either through self-employment or through a combination of (on-call) flexible work regimes (see e.g. Wyszomirski and Chang 2017). Bridgstock et al. (2015, 334) characterize such a portfolio model as 'comprising piecemeal creative and non-

creative jobs, short-term project-based and self-employment-based work.' At the top of the labor market, the portfolio model of work occurs because people like the variety and challenge. As such, self-employed workers regularly refer to the need for autonomy as one of the motives for their choice of self-employment (Cnossen, Loots, and van Witteloostuijn 2019). However, at the 'basis' of the labor market, the portfolio model of work is the result of a need for sufficient income and at times an inability to find a more stable position to provide for that (Commissie Reguleren van Werk 2020).

Nonstandard working regimes characterized by short-term contracts, part-time jobs, self-employment, freelance work and other varieties of flexible work organization have become increasingly predominant in the cultural and creative sector globally ever since the 1970s (de Peuter 2011). In fact, after they had typified cultural production for decades, the increasing levels of uncertainty and personal responsibility have become more pervasive in other domains of society as well (de Peuter 2011). Even though the cultural and creative sector is often being characterized as frontrunner in the trend towards nonstandard working regimes (e.g. Pratt 2008; Ross 2009), regulation and legislation seem to not necessarily keep pace which could be due to certain specific characteristics. First, the different subsectors contain significant structural differences in terms of economic characteristics: the types of products and other output differ vastly, the modes of financing can range from being mostly subsidized to being completely dependent on the private market, and there are vast differences in terms of sectoral composition (e.g. total size and the size of the different organizations within the subsector) and power dynamics within each subsector. Second, the subsectors itself are very fragmented, with a myriad of sectoral organizations, professional and trade networks, and different interest groups, each with its own (and often quite active) lobby, making the application of and formation of consensus on general policies difficult (IDEA Consult, VUB-SMIT, and KEA 2017). Third, in this sector, distinctions between the work and the relative position of salaried employees and that of self-employed individuals are often not crystal-clear. Many workers face the absence of a stable workplace and a frequent alteration of jobs, frequently spread over various subsectors. This, combined with high individual character of work in the sector, works against unionized representation despite the value it could play in terms of worker protection (Been and Keune 2019; Hesmondhalgh and Baker 2011; Umney and Coderre-LaPalme 2017).

Meanwhile, working in the cultural and creative sector remains attractive for many, even if work in this sector regularly means remuneration that is low compared to the social and economic value of the sector, to remuneration in comparable professions, as well as in regard to the number of working hours. Creative workers are typically featured as passionate workers, with high intrinsic motivations. As such, they have been labeled as 'entrepreneurs of the self' (c.f. Du Gay 1996). Many want to enter creative labor markets, leading numerous individuals to self-select into self-employment given the absence of a high degree of permanent job opportunities. The number of self-employed 'entrepreneurs' has been growing both in absolute as well as in relative terms. This holds true throughout the general labor force, but especially so in the cultural and creative sector. These self-employed creatives often have a rather meagre income (partly due to low hourly rates), which causes a suppressed earning capacity and therefore a less favorable income position (Hesmondhalgh and Baker 2010). Moreover, work in this sector is often project-based, with creative workers jumping from one temporary project to the other (Caves 2002; Grabher 2004), several of which are of informal and/or non-remunerated nature (Alacovska 2018; Skujina and Loots 2020). As such, work in this sector often is of a highly flexible nature characterized by intermittent periods of work and income and a combination of creative and non-creative jobs, cf. the 'portfolio career' (Menger 2017; Ross 2009; Throsby and Zednik 2011). Such flexibility, whether or not voluntarily chosen (see e.g. Morgan, Wood, and Nelligan 2013), could condemn workers to a state of what Bourdieu (1998) calls 'flexploitation'.

The three measures

The remainder of the article explores the three aforementioned specific measures that have been implemented or are being discussed for implementation in recent years to strengthen the relative position of creative workers under non-standard working regimes in the Netherlands. Each of these

measures has the potential to take on the vulnerable labor market conditions for cultural and creative workers from a different angle. First, the Balanced Labor Market Act (BLMA) takes on part of the issue from a top-down **legislative** angle, as the act consists of new mandatory legislative rules that employers in all sectors need to follow. Next, the Fair Practice Code for Culture takes the approach from a **moral** standpoint, as the FPC is a directive written by and for the cultural and creative sector calling on the sector (employers) to be fairer and more transparent in their practices. Finally, the issue of the vulnerable position is taken on from **sub-sector specific** points of view, by a reviewing of (sector-specific) unified agreements. In this discussion, a call for a minimum tariff for hiring self-employed workers takes center stage.

Balanced labor market act

The BLMA has been in effect since January 1, 2020, and is aimed at reducing the gap between permanent and flexible work by adopting a number of legislative changes that are meant to make hiring people in permanent positions vis-à-vis temporary positions more attractive for employers. The act aims to protect workers with flexible contracts who bear greater risks compared to employees with permanent contracts. Moreover, the act holds a collective aim as well. Research has demonstrated that unstable employment regimes (such as flexible work) can have an effect on physical and psychological health and well-being (Russell, Leschke, and Smith 2020). Therefore, flexible workers (compared to workers under a permanent contract) rely more frequently on governmental support in terms of benefits for unemployment, illness, incapacitation and income support. As such, flexible work entails a cost for society, which the BLMA seeks to mitigate as well.

Key provisions of the act include measures to make flexible work more expensive for employers, such as a higher unemployment insurance premium for flexible workers in comparison to that for permanent workers, a mandatory alignment of primary and secondary working conditions and pension schemes among different work contracts, and larger financial obligations for employers in terms of last-minute cancellations for on-call employees. Moreover, in order to lower the risks for the employers associated with having permanent contracts, the act also provides lower thresholds for termination of permanent contracts. These provisions take away some of the key advantages of using flexible contracts from the point of view of the employer, making the offering of permanent employment a relatively more attractive option for them.

As the aim of the BLMA is to increase permanent employment, it could be wondered whether this outcome is something to be desired in the cultural and creative sector. For instance, it could be argued that for many creative workers, the relative freedom of working without a permanent position enables them to build up the portfolio career in which they maintain their independence (Dollinger, Burke, and Gump 2007). Moreover, many intentionally design such a portfolio career in order to continuously acquire a multitude of differentiated inputs that they seek for continued artistic inspiration (Throsby and Zednik 2011). In addition, working in limited-time flexible project teams is often the common way of organizing for many creative endeavors (take for example film production as detailed by Hesmondhalgh and Pratt 2005), and creating rapid solutions to an unpredictable demand can often require a high degree of flexibility (Caves 2002). Furthermore, as the BLMA might lead to more permanent compositions of creative teams and ensembles, and continuity in team composition can bring added benefits, it could be argued that this in the long run might hamper creativity and experimentation as the constant renewal of ideas that is so typical of cultural production might stagnate. Finally, as many employers rely on flexible workers in this sector, and as these contracts will become more expensive for the employers, there is a very reasonable fear that the higher costs will lead to either lower production quantity or quality of cultural goods, which could initiate a downward spiral of decreasing visibility, decreasing consumption, decreasing income from audiences, governments and funds, thus leading to even lower production rates. The outcome could be a diminution of job opportunities and incomes for creatives.

In order to prevent the further deterioration of the income position of artists and other creative professionals, some argue that the government must provide support to cover these additional costs in markets that rely partly on governmental subsidization (Kunsten '92 2020).

The fair practice code for culture

The FPC is a code of conduct, and considered to be a practical tool for all workers and employers in the cultural and creative sector, as well as for all its supporters and consumers. Codes as well as industry standards, guidelines, business customs and ethics are not legally binding. These instances of 'soft law' come into being to regulate the behavior of actors (Borén and Power 2021). The FPC was first introduced in the Netherlands in October 2017 and was the result of a collaborative process among many sectoral representatives – boosted and financially supported by the Dutch government – spanning several years. Two reports released in 2016 (SER & Raad voor Cultuur 2016) and 2017 (SER & Raad voor Cultuur 2017) on the cultural labor market lay the foundation for the initiative to create a FPC in the Netherlands. In these reports, the Dutch Social and Economic Council – an advisory body in which employers, employees and independent experts work together to reach agreement on key social and economic issues – and the Dutch Council of Culture – a body established by law to advise the Dutch Government and Parliament on the arts, culture and media – concluded that even though the cultural and creative sector is a high-quality industry of international standing, it is also subject to erosion and a worrisome labor market. Spurred by these reports, the sector joined forces by collectively drafting the 'labor market agenda for the cultural and creative sector 2017–2023' (Kunsten '92 2017a) – a document that sets out action plans and agreements to collectively improve the labor market position of cultural professionals – and the FPC (Kunsten '92 2017b), a moral directive that calls upon the ethical consciousness of all involved in the sector.

The FPC underwrites the values of fair pay, fair share and fair chain: it encourages the sector to aim for a fair, sustainable and transparent operational management, and to take account of each other's interests with respect, solidarity and trust, in the service of a strong sector that fully utilizes and makes profitable the potential and opportunities of creative professionals and artists (Kunsten '92 2017b). As such, the key provisions of the FPC focus on the idea that work should be fairly remunerated. This means that whenever Collective Labor Agreements (CLAs) exist, they should be applied throughout the sector, even if they haven't been ratified to be generally binding. If remuneration directives exist, they should be applied as much as possible. If a Collective Labor Agreement does not apply, for example in relation to freelance work, payment should be reasonable and fair. Moreover, the FPC acknowledges the flexibility of work in the cultural and creative sector. In this respect, it is deemed important that the ratio between paid and unpaid workers is being deliberated, with close attention to fringe benefits, pseudo-independence, equal treatment, and an accommodation of internship and volunteering positions (with clear job descriptions and suitable remunerations). Finally, in terms of transparency, organizations and self-employed professionals are called upon to be as transparent as possible by sharing information, knowledge and expertise.

As wide consensus exists on the importance of a moral code in this sector, both among institutions as well as the government, the FPC has been making its way in governmental policy decisions. In the performing arts, for example, the FPC had initially been introduced according to a 'comply or explain principle,' with organizations expected to explain in their annual reports how the FPC's principles have been put in practice, or why not (Hoogenboom 2018). For the subsidy period of 2021–2024, payment according to the Fair Practice Code has become a condition to receive government funding. However, this could prove to become an insurmountable problem in the near future, as the total extra cost for implementing the FPC has been calculated to amount to 25,4 million euros based on the current offerings of nationally subsidized institutions (Geukema, Goudriaan, and Van der Woude 2020). Moreover, as many cultural organizations are currently in

a very precarious situation caused by the world-wide pandemic, it needs to be seen to what extent a 'moral' commitment to fair pay, fair share and fair chain can be implemented whilst in a struggle for survival, possibly leading to more fair practices, but less paid work.

Specific unified tariff agreements

There has been a prolonged debate on whether it is possible within Dutch law to create room for mandatory minimum tariff agreements for self-employed contracts.² Until recently the common interpretation of Dutch law entailed that self-employed individuals are entrepreneurs, and as such are subject to competition law which excludes the possibility of setting minimum tariffs (Lianos, Countouris, and De Stefano 2019). It was therefore legally prohibited to establish minimum standard tariffs as this would resemble the forming of a cartel to reduce competition and thus in effect would hamper a free market (Doherty and Franca 2020).

However, as it is becoming increasingly clear that many self-employed individuals are not able to sufficiently negotiate for their own benefit, and are taking on jobs that are paying well below levels to self-sustain, combined with the spread of non-standard forms of work, some friction arose between labor law and competition law, in particular concerning the collective bargaining of self-employed workers (Lianos, Countouris, and De Stefano 2019). Therefore, new acts and interpretations of the existing law have been sought. First, the Dutch cabinet announced plans to introduce a legal minimum tariff for self-employed individuals of gross 16 euro per hour from 2021 onward, to protect them against poverty and prevent that they are being hired at too low of a tariff. However, in June of 2020, it was decided to withdraw these plans, as it became increasingly clear that the proposed act would bring about large administrative burdens, caused confusion, was not necessarily welcomed by self-employed individuals, and was difficult to monitor by different governmental administrative agencies (Koolmees and Vijlbrief 2020). Complying to these limitations would excessively halt the effectiveness of the proposed measure. A concurring development, however, proved more promising. In July of 2019, the Dutch Authority for Consumers & Markets (Autoriteit Consument & Markt), has developed a recommendation on tariff agreements for self-employed, in which it is stated that self-employed individuals under certain conditions are allowed to collectively agree on minimum tariffs in order to obtain a reasonable income and therefore improve the position of self-employed at the bottom of the labor market while preventing them becoming subject to 'social dumping' practices (Doherty and Franca 2020). This alternative interpretation of among others competition law makes it possible to make collective agreements on wages in cases that self-employed workers operate 'side-by-side' with employees. In those cases, the recommendation prescribes that self-employed individuals cannot be considered 'enterprises' as under competition law. This has opened the door for several minimum tariffs within collective labor agreements (CLA) on the subsector level. Examples are to be found in the theater and dance CLA which states that self-employed individuals in these circumstances must earn 130% of salaried employees, while in architecture the CLA sets this standard on 150%. These higher nominal wages as such act to compensate for the higher personal costs a self-employed individual has compared to a salaried worker, for instance in terms of spending on (disability) insurances and savings for pensions. As these CLAs have been ratified to be generally binding, they apply subsector wide. As subsectors within the cultural and creative sector vary widely in terms of type of work, remunerations, and sectoral structures (see e.g. Galloway and Dunlop 2007; Throsby 2010), a general CLA that covers all is both unobtainable and possibly undesired. Subsector-specific agreements, or in cases for specific types of work within a subsector, that take account of the intricate aspects of work and employment should therefore be pursued. Still, collective interest organization in the cultural and creative sector is sometimes difficult to establish out of the lack of interest in it of its workers, who underwrite the individual responsibility for their success or lack thereof (Been and Keune 2019). Nonetheless, besides formal agreements codified in CLAs, there have been developments in terms of guiding

directives for tariffs. For example, in the visual arts subsector in the Netherlands, there is an easily applicable (and widely applied) remuneration directive (Van Peurseem and Ozen 2018). However, it is important to note that the extra costs associated with this is covered by increased subsidies.

Interdependence

The three developments outlined above, the BLMA, the FPC and specific (unified) agreements each attempt to improve certain aspects of unfairness and inequality in the labor market from its own perspective. However, as each of these are not stand-alone solutions, but are applied simultaneously, there is a large interdependence. This article views a reflection on this interrelationship as crucially important, as it seems evident that a combined approach of measurements on different levels is necessary towards finding structural improvements in the labor market position of workers under non-standard working regimes. As it shows in the descriptions, general overarching policies are unable to fully solve the dire vulnerability that many creative workers face due to the vast differences in employment and working standards in each of the subsectors. Specific measures that take the idiosyncrasy of the particular subsector or job within a subsector into account would be necessary to create tailor-made solutions for the vast array of precarious working situations. However, these overarching policy measures do play an important role in setting a foundational layer on which subsector-specific solutions can be formed. As such this foundational layer therefore provides the legal (cf. acts such as the BLMA) as well as moral (cf. appeals such as the FPC) bedrock that any subsector-specific measure needs to adhere to (Figure 1). This foundational layer provides the bandwidth within which space for individual and/or subsector agreements can be formed to further enhance working conditions.

As the three different measures all take on a different approach, it requires varied responses from different actors for these measures to be successfully implemented. The BLMA forms a legal obligation for any employer, and as such requires compliance. The FPC as a moral directive, however, requires 1) an active role of employers who are not legally forced to comply. Moreover, it necessitates 2) a leading role of subsidy providers and other commissioning governmental agencies in requiring the cultural institutions they financially or otherwise support to comply with the FPC directives. As well as it 3) requires a certain level of restraint from the creative workers in the sense that the FPC can only work if all workers stand their ground against practices that are or are being perceived unfair, including taking up underpaid work. For the subsector-specific measures to succeed, a strong unity of workers sharing specific jobs or tasks within specific subsectors needs to be present, as well as clarity on what those jobs and tasks entail. Moreover, a collective interest to arrange overarching measures for the whole needs to be present. As such, the progress towards subsector-specific measures has been limited to those subsectors where jobs and tasks are clearly delineated and defined, such as in architecture and certain specific situations with theater and dance.

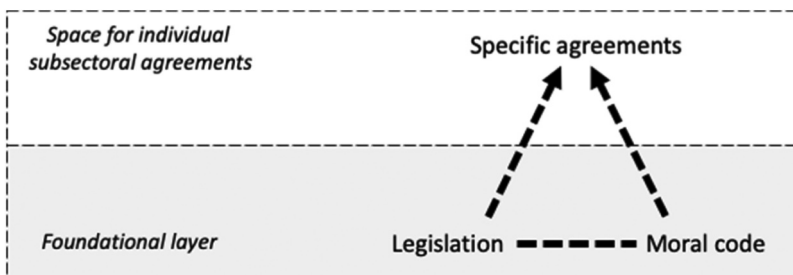


Figure 1. Interdependence between the three types of measures.

Possible effects of the simultaneous implementation of the three measures

Given the different efforts that are simultaneously being pursued at the moment in the Netherlands, from legislative, moral and subsector-specific points of view, the present article aims to provide a further reflection on their possible effects on income, the quantity as well as quality of cultural production, and artistic innovation. Analogous to Mangset (2020), this article presents different scenarios, which he describes as ‘potential future developments under certain circumstances, [which are] not necessarily [...] probable predictions.’

In the attempts to provide more protection for (creative) workers, an overall effect can be expected of increasing costs for organizations that hire creative workers. This is the plausible effect of all three of the measures above. First, in its attempt to achieve more permanent employment, the BLMA makes flexible labor more expensive in order to stimulate organizations to opt for offering permanent contracts. Next, the FPC with its focus on fair pay, fair share, and fair chain calls upon cultural organizations to provide fair circumstances and transparency for creative work. In order to implement this, cost increases for cultural and creative organizations are inevitable. Finally, unified agreements on tariffs for hiring self-employed workers will amount to cost increases as well.

Considering the scenario in which public funding for culture will not increase, and a significant increase in revenue from private markets is not to be expected, the increase in costs will most likely result in one of two outcomes (or both). On the one end of the spectrum, if cultural employers will attempt to keep current levels of production and programming in terms of quantity while facing an increase in costs, the cost increases will have an effect on the amount of labor they can employ. This could have an effect on aesthetics with resulting choices in terms of content. For instance, in the performing arts it could lead to perhaps shorter shows that require less (paid) preparation time, shows with less performers or shows with less production costs in general in terms of staging, etc. However, being intricately quality-maximizers (Hansmann 1981), venues that stage the performing arts have in the past never shown too inclined to implement such solutions to address the productivity lag (owing to the increasing cost of labor that is not at pace with growing potential for income, cf. Baumol and Bowen 1966) that they have long lastingly been associated with.

On the other end of the spectrum, and perhaps a more likely scenario, is that the increase in costs will lead to a reduction in quantity of production for cultural institutions that rely on hired labor in order to keep quality levels at their desired level. Even if such a scenario may go against the strong desire of organizations and their executive staff for creating new artistic outputs each time, the increased costs of production may lead them to relatively produce less new works, and perform more works that have been produced before. This would in addition require organizations to address large enough audiences with each production over which they are able to spread the fixed costs of a production, leading to a relatively small ratio of fixed to variable costs (Hansmann 1981). Such audience-maximizing strategies are likely to initiate more competition for resources among cultural institutions, due to which some may drop out of the sector.

In both ends of the spectrum, being either shorter/smaller productions or less new productions, a significant result is a probable decrease in the available work for creative workers. Combining this with an increase in income under condition of the aforementioned measures for those that have permanent positions or do find paid commissions, it could result in a smaller set of ‘professional’ creative workers that will be better able to create a sustainable career within their respective fields, complemented with a larger ‘amateur’ field of non-paid creative workers. Indeed, one thing the cultural and creative sector has proven throughout time is that its constituents have an internal urgency to create (e.g. Been and Keune 2019; Bilton, Eikhof, and Gilmore 2020; Cnossen, Loots, and van Witteloostuijn 2019; Siebert and Wilson 2013; Umney and Coderre-LaPalme 2017). Therefore, it could be assumed that even when new measures aimed at solidifying worker conditions for creative workers might result in the availability of less paid work, a large (or relatively larger) portion of the creatives will continue exercising their creativity, albeit in a more hobby variant. Indirectly, the Dutch government is anticipating such effects, as she simultaneously to the introduction of these measures

introduced new possibilities for personal development and professional (re)training under the subsidy titled 'the Netherlands continues to learn' (Nederland leert door) (Bennaars and Ter Haar 2020).

Besides effects on income and amount of paid work available, the measures also merit a reflection in relation to the future of artistic innovation. As the measures make a push for more permanent employment (cf. the BLMA), they could likely result in more permanent ensembles and less turnover within creative (project) teams. As suggested by Borén and Power (2021), the potential costs of (soft) law instruments could lead to an asymmetrical power hierarchy, which favors larger actors over smaller ones. The larger and well-established cultural providers have been considered 'too big to fail' (Hands 2020), with, also in a crisis or post-crisis situation as that expected in the aftermath of the recent pandemic, governments prioritizing to supporting larger institutions (Betzler et al. 2020), and large commercial players likely to rely on a diversified (digital) product/service portfolio. Possessing the market power that allows them to pass on the market risks onto sourced (small) organizations and individuals (Hesmondhalgh and Pratt 2005), it is still to await if, how and in which degree larger organizations will be able to reconcile a restricted turnover of people with the turnover of ideas of novelty. Moreover, building on the previous projections, the cultural and creative sector could become populated by a smaller pool of professional artists. As diversity and a large turnover among projects are often claimed to be drivers for new opportunities as well as artistic innovation (e.g. DeFillippi and Arthur 1998), the reduction in diversity and (professional) depth in the Dutch sector as a whole and turnover within could be argued to hamper artistic innovation in the long run. In addition, a large body of permanent staff creates an organizational necessity to achieve certain amounts of income, which can lead to choosing pragmatic considerations in terms of following well-known avenues over more experimental paths, a process which Herman (2019) coins as 'pragmatized aesthetics.'

Furthermore, the greater division between professional and amateur providers of creative work and the higher (minimum) remuneration required to commission creative workers could also have an effect on entry into the creative market. Young talent traditionally gains a first foothold within the sector by taking on a myriad of small, low-paid gigs that enables them to build their network and their portfolio (e.g. Scott 2012). The higher threshold for paid work, and possible smaller ensembles, could result in less cultural employers taking the chance on engaging with an unproven talent and instead opting for more established cultural providers. This lowering of chances to break through into the sector, in combination with the limited propensity of independent workers to hire or join forces with colleagues as a way to establish scale economies (Haans and van Witteloostuijn 2018; Loots, Cnossen, and van Witteloostuijn 2018) could decrease the influx of new artistic ideas, therefore again possibly hampering artistic innovation.

Discussion and concluding remarks

Already before the COVID-19 pandemic, the cultural and creative sector has shown fragility because of its internal structure and the inherent characteristics of many of its activities (IDEA Consult et al. 2021). From the perspective of workers, non-standard working regimes such as those described in this article can offer benefits, such as freedom, a sense of self-determination, occasions for self-expression and reciprocity, and the ability to take opportunities when they arise (Cnossen, Loots, and van Witteloostuijn 2019; Banks 2017). For a long time tax incentives were in place in the Netherlands that could provide a financial benefit for creative workers to become self-employed on the one hand, and for employers to use non-standard working regimes on the other hand. However, this freedom often comes at a cost of insecurity and is associated with higher risks in case opportunities do not come forth. Furthermore, following non-standard working regimes brings about a need for better long-term planning for these workers, as they bear a larger personal responsibility towards future planning of pensions and insurances for unforeseen circumstances. For workers in the cultural and creative sector, oftentimes these non-standard working regimes bring them in weak positions of negotiation versus possible employers

or commissioners, regularly resulting in low and underpaid work, especially compared to salaried employees. As such, these non-standard working regimes come with a trade-off between having work on the one hand, and having an income on the other. All too often, creative workers place the importance of having work over having an adequate income (Been and Keune 2019; Umney and Coderre-LaPalme 2017). The desire to produce, combined with the need to produce in order to continuously work on a personal portfolio makes them potentially subject to exploitation (Cohen 2015).

This article reflected on three measures that were recently introduced or that are being discussed to combat this situation in the Netherlands. Each of these measures separately has its merits, and the intention to improve aspects of the conundrum. Therefore, the power lies in their joint introduction, which combines general legislation with a moral benchmark and subsector-specific solutions. However, even in this combination several unintended consequences loom, such as the possible separation between professional and amateur creative workers, a higher threshold for talent to enter the market, and threats to artistic and aesthetic innovation. In order to fully make all good intentions a reality, an exogenous increase in public funding of the sector seems to be necessary, however unlikely.

Important to note, is that *fairness* (equity) and *sameness* (equality) do not necessarily go hand in hand; more so, they are often incompatible (Banks 2017). Equity implies that each person gets what (s)he deserves, with capacities, social (dis)advantages and other relevant elements to be justly accounted for in the allotment for social positions and the distribution of rewards, for which a Fair Practice Code may be a device; while equality in relation to the cultural sector implies that each person gets an equivalent share, yet also that everyone who wishes to uptake cultural work should have an equal chance to (1) enter, (2) participate in and (3) earn a living from that work (Banks 2017). Critical cultural labor market studies have increasingly more so elucidated the lack of just practices and the presence – even acceleration – of inequalities in the cultural and creative sector that affect workforce admission, participation and advancement (Eikhof 2017; McRobbie 2018; Oakley and O'Brien 2016; Skujina and Loots 2020). The extent to which the three measures discussed in this paper are able to alleviate or even remove such unequal work and income opportunities is very partial, in particular due to the restricted amount of resources that circulate in the cultural and creative sector (Banks 2017), yet also due to the power of some actors vis a vis other (Belfiore 2020).

For example, while flexible work can induce inequalities among workers (OECD 2019b), putting boundaries onto flexible work arrangements and introducing minimum wage rates also could in some subsectors produce inequalities by incentivizing employers and commissioners to engage with some over other workers, and by limiting the opportunities of newcomers to develop credentials (even if at low cost, in portfolio career modalities). Specifically in the transition from education to a professional work life, some individuals as well as groups, depending on socio-demographic or socio-economic features, are more likely to build an edge over others, which is not a reflection of equal opportunities (Comunian, Faggian, and Jewell 2011). Even if the same downsides of cultural work are confronted by all cultural workers, they are experienced differently across demographic groups: experiences are distinct according to age and class origin. Think of, for example, older workers that are secure in their careers compared with younger entrants from less affluent origins (Brook, O'Brien, and Taylor 2020), for whom the discussed measures may play out differently. Having shown to be entrenched by unequal patterns of access and opportunities, unequal patterns of representation, distribution and recognition, unequal distribution of rewards, etc. (Banks 2017), cultural sectors' and their labor markets' composition can become strongly affected by measures that have good intentions but do not discriminate between groups. In our specific case, if fairness implies a higher wage cost for employers, it is likely to affect the equality of opportunities of those individuals and groups willing to work in the cultural and creative sector. As such, the probability that these measures combined reach equality and equity within the sector, as Banks (2017) recommends, seems unlikely, leaving the strive for a 'just' sector most likely unanswered.

In cultural policy circles, inequalities as well as unfairness at the *demand side* of cultural production have longer been a concern, which has led to high levels of expertise in guaranteeing the accessibility to and participation by various groups, underwriting paradigms of cultural democratization and cultural democracy (Bonet and Négrier 2018). Nonetheless, inequalities and inequity at the *supply side* appear to

be more newfangled as a cultural policy theme, on which reasonable thought and good practice need to be developed still. The three measures described here, do not merely lie within the competence of national cultural policy-making, but relate to broader issues including the costs of labor, the flexibility of labor and labor relations, which are regulated at other levels of policy, some at the international level. National (cultural) policy must comply with international requirements, as, for example, the non-discrimination principle in European Law. Nonetheless, cultural policy can in a number of ways address the labor market position of cultural workers as well as the antecedents and expected consequences of measures as the ones discussed. To start with, cultural policy can guard the tension between fairness and equality at the supply side of cultural production and develop (temporary) schemes that counter-balance the effects of one over the other, and that influence the behaviors of either incumbent organizations and workers, or newcomers. It could set requirements for employers and workers, if they engage in cultural activities that are organized with public money (which is the case for the Fair Practice Code in the Netherlands). However, what may lie beyond the scope of cultural policy, is the installment of justice in an entire sector; rather, the cultural policy-maker could adhere to the 'reduction of harm' principle (cf. Banks 2017) and raise an awareness of practices with its intended and unintended consequences. What cultural policy may want to avoid, is to become an additional decision maker that by means of its selections and rules obstructs the diversity and opportunity of a workforce in the cultural and creative sector, as education institutions, employers and gatekeepers at times do (Eikhof 2017).

Finding good solutions for strengthening the labor market position of creative workers under non-standard working regimes requires a well-established foundational layer that offers protection in legal as well as moral terms, combined with subsector-specific agreements and solutions. However, as this article argues, unintended consequences of the combined policy measures are not merely conceivable, as they might be even expected. It remains an open question at what level of public policy the downsides of these policy measures are best addressed. Does it require sector-specific cultural policy, more granulated subsector-specific policy that takes the idiosyncrasies and inner workings of a subsector into account, or does it rather require general labor policies that go beyond the cultural and creative sector?

As the COVID-19 pandemic seems to work as a magnifying glass, uncovering the extent of the precarity that has been common practice within the cultural and creative sector, it remains to be seen in what direction this sector and the fate of its workers will develop (Betzler et al. 2020; Comunian and England 2020). This sector is often praised for its resilience, which is said to allow its constituents to survive complex and uncertain times and austerity movements (Newsinger and Serafini 2019). This propensity for survival has however often placed the burden on its most precarious workers (Hesmondhalgh and Pratt 2005). Combating this on top of dealing with its pre-existing structural issues could prove to become an existential policy challenge. Whether the current cultural policy in the Netherlands could provide long-term improvements for all those under non-standard working regimes remains to be seen and can rightfully be debated. However, a combined approach that creates an ensemble of legal, moral and subsector-specific measures seems to be necessary to find pathways forward.

Notes

1. Many countries consider part-time work as a form of non-standard employment, however, in the Netherlands, part-time work is prevalent – by a wide margin the highest in the OECD – and not considered non-standard (OECD 2019a).
2. This debate is not limited to the Netherlands. Especially since the advent of the so-called 'gig economy', regulators are struggling to recategorize the different manifestations of self-employed individuals, as well as create bespoke policy directives. See e.g. the influential work by De Stefano (2015), later advanced by among others Cohen (2017) from a United States point of view, and Todolí-Signes (2017) from a European point of view.

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