



## Social Security Insurance for Artists and Writers

Social security for artists and writers (including journalists, editors, publicists) was introduced in 1983 (1992 in the new German federal states, i.e. former East Germany), integrating self-employed/freelance artists/writers into the statutory social insurance system. It involves compulsory statutory pension, health and long-term nursing care insurance at financial conditions tailored to the individual's income situation.

Insured artists/writers pay contributions at the same level as any regular employee. The second part of the contribution, effectively the "employer's contribution", is financed via a levy paid by companies which utilise artistic and written works (referred to as the "artist social security contribution") and via a Federal Government subsidy. Such a distribution of contributions payable means that artists and writers are in a better position compared to other self-employed persons.

The Artists' Social Security Fund (German KSK) in Wilhelmshaven is responsible for the implementation of the social security scheme for artists across the entire country.

### Prerequisites for social security for artists

The Act on Social Security for Artists stipulates that such persons who pursue self-employed/freelance artistic or writing activities as a source for their livelihood will be insured. The purpose of the Act is to cover serious participation in the country's economy - it is not the intention of legislation to include those who engage in artistic activities in their spare time or 'hobby poets'.

The scope of protection afforded by social security for artists extends to encompass visual and performing artists, musicians, journalists as well as teachers of art, music and journalism. In marginal cases, such as areas of activity which fall between artistic pursuits and craft trade work, the key aspect is whether such persons are recognised as artists and treated as such within the relevant professional circles. Such professional recognition may, for example, be indicated by membership of artistic associations or by participation in art exhibitions.

A publicist is considered to be anyone who works as a writer/author, editor, journalist or any other kind of publicist.

The occupation of an artist or publicist must be pursued on a self-employed/freelance basis (no duty to follow instructions as to the time and place of performance of work, no integration into external business operations and/or procedures or bearing one's own entrepreneurial risk).

Self-employed/freelance artists/writers are only considered to be entitled to protection within the scope of the legislation if they do not exercise a significant role as an employer. In order for the Law governing Social Security for Artists and Writers (German KSVG) to take effect, no more than one staff member may be employed in connection with the artistic/writing activity. Notwithstanding this, trainees or persons in part-time marginal employment (with a monthly gross salary of up to €450) may work for an artist/writer without adversely affecting insurance protection pursuant to the KSV Law.

A further prerequisite for insurance cover: Income from self-employed/freelance work as an artist or writer must exceed the minimum income limit for compulsory social insurance of €3.900. Artists/writers may, however, earn below this level on two occasions within a six-year period without losing their insurance protection.

**Career entrants** – defined as persons who have been engaging in self-employed/freelance activity as an artist/writer for less than three years – are, however, excluded from this regulation. Such persons frequently experience a difficult start-up period and need to establish a sales market. For this reason, they continue to enjoy insurance cover even if they do not make any profit at all.

In the event of an interruption to self-employed/freelance activity as an artist/ writer during this three-year period occasioned by childcare, civilian service, military service or temporary employment, the career entry phase is extended accordingly.

### **Scope of social insurance**

Self-employed/freelance artists or writers fulfilling the stated conditions are insured pursuant to the KSV Law; their cover includes statutory pension, health and long-term nursing care insurance. They are entitled to claim benefits from these three insurance areas in the same way as any other member of the statutory social insurance system. Thus, within the pension insurance system, for example, they have the right to receive an old age pension or a disability pension due to diminished capacity to work and also have access to medical and occupational rehabilitation benefits (including convalescence treatments, vocational training schemes) and to the state-funded additional pension plan known in Germany as the “Riester Pension” after the minister who instigated the scheme. Within the statutory health insurance system, they are entitled to the full range of benefits (in-patient and outpatient medical treatment, medicines, medical devices such as dentures, visual aids and statutory sick pay in the event of incapacity for work). Long-term nursing care insurance encompasses benefits for care in the home and residential care. The funding agency in all cases is not the Social Security Fund for Artists, but the respective German pension, health or long-term nursing care insurance where the artist/writer has her/his membership.

One particular aspect of sick pay for self-employed/freelance artists/writers needs to be pointed out: In the event of incapacity for work occasioned by sickness, entitlement to sick pay to compensate for loss of income usually does not commence until from the seventh week of incapacity for work onwards. Notwithstanding this, commencement of payment of sick pay may be stipulated from an earlier point in time. The statutory health insurance companies offer a so-called 'optional scheme' for this purpose. Persons wishing to use such an optional scheme to secure entitlement to sick pay before the seventh week of incapacity for work are required to pay a supplementary contribution. This supplementary contribution is payable to the person's health insurance company.

### **Calculation of contributions**

In the same way as normal employees, the amount of contributions paid to the artists' social security scheme depends on the level of income. However - as one particular aspect of this scheme - contributions paid by self-employed/freelance artists/ writers, who usually do not have a fixed monthly income, are calculated on the basis of an estimate of earnings. In other words: Assessment is effected based on a prognosis rather than retrospectively on the basis of actual income, although typical parameters and data gained from previous income also influence the calculation.

Example: If annual income is expected to be €12.000, €93,00 will be payable as a pension insurance contribution monthly, with the 2019 contribution rate for pension insurance being 18,6 % (half of which - or 9,3 % to be paid by the insured person).

$$\frac{12.000 \text{ €} \times 9,3 \%}{12 \text{ months}} = \text{€93,00 monthly}$$

In 2019 the statutory contribution rate for health insurance is 14,6 %. The proportion payable by the insured person is 7,3 % + half of "kassenindividuellen Zusatzbeitrag". Assuming an annual income of €12.000, the monthly health insurance contribution payable is €73.00 (+ half of "kassenindividuellen Zusatzbeitrag")

$$\frac{12.000 \text{ €} \times 7,3 \%}{12 \text{ months}} = \text{€73.00 monthly} \\ (+ \text{ half of "Zusatzbeitrag"})$$

For members with children, the contribution rate for long-term nursing care insurance is 3,05 % (proportion payable by the insured person 1,525 %). The contribution rate for those without children is 3,30 % (proportion payable by the insured person 1,775 %). An example for the calculation on the basis of an annual income of €12.000:

Insured person with a child:

$$\frac{12.000 \text{ €} \times 1,525 \%}{12 \text{ months}} = \text{€15,25 monthly}$$

Insured person without a child:

$$\frac{12.000 \text{ €} \times 1,775 \%}{12 \text{ months}} = \text{€17,75 monthly}$$

Thus the amount of contribution payable can be easily calculated on the basis of the level of income and the respective contribution rate.

As already mentioned, career entrants are subject to insurance even if their income does not exceed the minimum income limit for compulsory social insurance. In calculating the contributions payable by such persons, earnings are assumed not to exceed this level (meaning so-called minimum contributions are payable).

Persons achieving a high level income are only required to pay contributions up to a maximum level.

The KSK will provide detailed information on the amount of contributions payable and the basis of calculation when implementing an insurance agreement.

### **Implementation of the artists' social security scheme**

Social insurance cover pursuant to the KSV Law cannot be instigated until the KSK has received registration of the person subject to insurance. For this reason, self-employed/freelance artists/writers who are not yet insured should contact the KSK without delay either in writing or by telephone.

The KSK will then send detailed information material and a questionnaire to determine whether there is a requirement for compulsory insurance pursuant to the KSV Law. The KSK is required to undertake a precise investigation of whether self-employed/freelance artistic/writing work is being carried out. The intention of the legislation is that the special statutory insurance cover provided by the artists' social security scheme can only be afforded if the preconditions are fulfilled. For this reason, applicants should understand that the KSK will

undertake a detailed examination of the prerequisites stipulated by the KSV Law and may on occasion contact the applicant to make further enquiries.

This way of proceeding is ultimately in the best interests of all persons insured, as the social security scheme for artists is funded by generous Federal Government grants and by the artists' social security levy, and this is the only way of protecting the system from abuse such as attempts by persons who do not belong to the artistic or writing professions to avail themselves of its benefits.

If, on the basis of the questionnaire, the KSK ascertains that there is a requirement for compulsory insurance, it will register the artist or publicist in question with the German statutory pension insurance scheme (German DRV), which is the competent pension insurance authority, and with the person's chosen statutory health insurance company/long-term care insurance company. The KSK itself is not a funding agency. The processing of pension applications is effected by the DRV; health insurance cards are issued by the health insurance company.

Self-employed/freelance artists/writers have the right of free choice of health insurance company. This means that artists/writers may decide whether they wish to become a member of a general local statutory health insurance fund (AOK), a public health insurance fund or a health insurance company operated by a company or guild. Anyone who is already a member of one of these types of health insurance companies remains compulsorily insured pursuant to the KSV Law. Any change of health insurance membership is subject to the deadlines for notice or termination stated in the respective insurance regulations.

A further task of the KSK is to calculate and collect contributions from insured members. For this purpose, at the end of every year the KSK requires insured persons to provide an estimate of the expected income for the following year. This is used as a basis for calculating the monthly contribution due (see above). Because of the uncertainties associated with making such a prognosis, insured parties are, however, permitted to correct estimates up or down at any time if the original income expectation fails to materialise. Contributions will then be adjusted to the new estimate of income with immediate effect (from the first day of the following month). This procedure ensures that the amount of social insurance contributions payable corresponds to the respective economic situation of the self-employed/freelance artist/writer at all times.

It is in the best interests of all insured parties to make sure that estimates of income correspond as precisely as possible to their economic circumstances. If, for example, estimated income stated is too low, this may have an adverse effect on later claims for benefits (such as the calculation of pension or retirement pay, or also the amount of sick pay entitlement in the event of incapacity for work).

The KSK is entitled to require insured parties to provide notices of income tax assessment in order to check whether insurance contributions are generally in line with income actually achieved. Such investigations are conducted by the KSK on a random basis. Per year, around 5% of all insured persons may currently expect such a random check.

### **Exemption from health insurance requirement**

Self-employed/freelance artists/writers who wish to be privately insured rather than being members of a statutory health insurance fund are entitled to seek exemption from compulsory health insurance pursuant to the KSV Law if they are either career entrants or if they belong to the so-called 'high-income earners'. Further information can be obtained from the Social Security Insurance for Artists and Writers.

Application for such exemption must be made to the KSK. Any exemption granted by the KSK to 'high-income earners' is irrevocable, whereas career entrants have the opportunity of (re-) entry to statutory health insurance once their period of career entry has elapsed.

Anyone obtaining exemption from compulsory health insurance pursuant to the regulations of the KSV Law in order to take out private health insurance is required to take out private insurance against the risk of long-term nursing care.

On application, the KSK grants an allowance for health insurance contributions to artists/writers who are exempted from compulsory health insurance. The amount of this allowance is the same sum as the contribution that the KSK would have to pay to the health insurance company – in effect like an 'employer's contribution' – in the case of statutory health insurance. This means: The amount of allowance depends on income and may, for example, be extremely modest in the case of a low income. The highest possible allowance payable is fifty per cent of the actual contributions for private health insurance (German PKV).

An allowance for private long-term nursing care insurance is also granted on application.

Career entrants in particular should familiarise themselves with the differences between private and statutory health insurance before relevant applications are submitted.

Some helpful remarks:

- Contributions for statutory health insurance do not depend on age or any existing risk (such as an illness). They are always adapted to the insured person's particular income situation, something which can fluctuate greatly in the case of self-employment and freelance work.
- Private health insurance premiums are based on age of entry and personal risk (e.g. supplementary premium payments for existing illnesses). Premiums are not adjusted to take account of any decrease in the policyholder's income.
- An additional premium element is payable for family members in the case of private health insurance. By way of contrast, membership of statutory health insurance provides full benefit cover to all family members without additional contributions as long as the family members are not subject to mandatory insurance themselves.
- If/when self-employed activity ceases at any point, such as in old age, the KSK allowance for private health insurance contributions will also cease. Although pension providers will also provide an allowance for private health insurance once a pension has been granted, the level of this allowance will exclusively be based on the amount of the pension (low pension - low allowance). Only those who have been a member of the statutory health insurance schemes for the majority of their working lives are permitted to enter the Pensioners' Health Insurance Fund (KVdR), where contributions are particularly low.

### **Annex: The term 'income' as defined by KSK**

Every October, the Social Security Insurance for Artists and Writers (German KSK) sends to each insured member a registration form on which to state expected income for the following year. This annual registration of income will be a routine matter for artists who have been insured by the KSK for a longer period of time. Those new to the KSK will perhaps be a little surprised that such a categorical prognosis of income is required even if – as may well be the case with career entrants – very few indications exist as to the level of income in the current year, let alone income for the next calendar year. However, the statutory provisions forming the basis of KSK practice are 'artist friendly'. Pre-registration of expected income is effected in an unbureaucratic manner and provides a transparent and helpful basis in terms of insurance law with respect to the calendar year in question.

Artists registering their income to the KSK should understand a few facts relating to the KSK understanding of the term 'income'.

- The insured member is asked to state the profit from artistic activity, i.e. revenue from this activity less operating expenditure.

- **Operating income** is

- all monetary income and income of monetary value which result directly from the self-employed/freelance artistic/writing activity pursued (e.g. remunerations, fees, proceeds from sales, royalties, licences, compensation fees for cancellations and benefits in kind), but not benefits granted by the German Federal Employment Agency such as business start-up grants, unemployment benefit, social welfare benefits, back-to-work benefits, flat-rate tax exemptions for instructors and trainers, and expense allowances.
- Copyright payments (e.g. via such collecting societies as the German Society for Musical Performing Rights and Mechanical Reproduction Rights (GEMA) or VG Bild-Kunst);
- Scholarships subject to income tax;
- Prize monies subject to income tax.

- **Operating expenditure:** all expenses (and costs) in connection with the member's self-employed/freelance artistic/writing activities pursued, such as:

- Expenditure on equipment (e.g. tools, office equipment and supplies, computers etc. if recognised as tax deductible)
- Expenses for operating premises (rent, heating, cleaning)
- Travel costs, costs of continuing and advanced vocational training, costs of materials and postage, telephone bills and similar cost of sales and expenses incurred for production of income
- Company insurance policies (company liability, legal expenses insurance, property insurance cover)
- Membership fees for professional organisations and associations (not own social insurance contributions!)
- Expenses for auxiliary staff (wages and salaries, remunerations paid, employer's social security contributions)
- Write-downs and depreciations for wear and tear and depletion.

Expenditure such as special expenses pursuant to Income Tax Law (such as contributions to the artist social security insurance or premiums for private health or life insurance) is non-deductible.

The artist social security scheme defines and uses the term 'income' in the same way as it is understood in Income Tax Law.

In calculating expected income for the following year account should be taken of actual levels of income in the current and past years. If no experience of actual levels exists, e. g. in the case of career entrants, it is legitimate to base estimates on a value which is in accordance with the member's financial situation. Forthcoming demands for contributions by the KSK will then be based on the amount of this estimated income.

The KSK member will, however, not be bound to her/his own estimation for the whole duration of the calendar year. A new estimate of income may be made at any time. The KSK will then adjust the assessment of contributions to the new figures.

**Care needs to be exercised in the case of “tax tricks”!** An urgent warning needs to be issued with regard to the “completely legal tax tricks” which are published in a wide range of sources and which are designed to enable taxable income to be defined downwards to a level where it is no longer subject to taxation. The KSK conducts random investigations in-

volving a requirement to submit income tax assessments for the last three or four years. If such a process reveals that actually taxed income is regularly below the minimum income limit for compulsory social insurance of €3.900, the KSK will question the plausibility of income registrations with different figures. The consequence of this will be: income will officially be stipulated as being "below the minimum income limit". Insurance cover will then no longer apply. This practice is supported by the Social Courts. This means that the exercise of too much creativity in the submission of tax declarations may have adverse repercussions for social security.

Further information about the social insurance for artists and writers can be obtained from the 'Künstlersozialkasse'.