

The Regulatory Frameworks For Cinema
Industries in the European Union
and Serbia:
The Role and Impact of Cultural Test

By
Jovana Ilic

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Supervisor:
Professor Paolo Cavaliere

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ABSTRACT

To support its cinema industry and attract foreign producers, Serbia has recently passed a new film incentive provision for foreign feature films. However, Serbian provision does not require films to pass a cultural test, which is an obligatory demand in the European Union for all films applying for the state aid. As Serbia has recently entered the EU accession period that serves for further complying with the EU laws and standards, Serbian cinema regulatory framework alongside mentioned provision will have to be adapted by the end of this period. The thesis addressed the issue of the lack of a cultural test and identified that its main consequences are missing international promotion of Serbian culture. Serbia also fails to use accession period to design the test so it can best meet country's interests. It was, however, revealed that problems go far beyond this, and that the broader regulatory framework for the sector is in need for urgent specific improvements. A set of practical and customised policy recommendations is being offered, inevitably placing the need for cultural test in a broader context of the regulatory framework. The recommendations are designed upon critical comparison of the EU and Serbian legal frameworks, as well as the analysis of the European cultural tests.

Keywords: Cinema Industry, Film Incentive, State Aid, Cultural Test, Cultural Policy, Media Law, Serbia, European Union

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INTRODUCTION

In the beginning of March 2012 Serbia was formally granted the status of a candidate country for European Union membership. As the example of neighbouring Croatia shows, obtaining a full membership could take years,¹ and a candidate country is expected to undertake series of reforms during that time. This inevitably means adjustment to the single market and harmonisation with the EU legislation. As this paper will show, such changes will significantly affect Serbia's film policy, especially in segments related to public financing and the perception of the role of films. Therefore, understanding European legal frameworks and highly complex relations and arrangements between specific goals placed within it is of crucial importance for Serbian policy makers.

One of the most recent laws Serbia has passed is the new Cinema Law (Sluzbeni glasnik RS 99/2011). It represents a modernised, updated and adjusted answer to the out-dated Law from 1991 (Sluzbeni glasnik RS 46/1991). The new law that comes into effect in June 2012 tends to keep pace with contemporary trends in media development and the film industry. Among other things, it proposes new ways of promoting and financing Serbian film production and coproduction. The new law for the first time introduces special financial incentive for foreign producers. In order to attract and motivate them to choose Serbia as their filming location the Serbian government offers 20% refund of the total production expenditure (Article 7).

Such incentive is a well-known tool in other European cinema industries, but European member states are obliged to ensure that any allocated state aid is justified by supporting *cultural product*. This is done in accordance with verifiable national criteria, which is set by

¹ Croatia was granted membership status in 2004, and is expected to join the European Union as a full member in 2013. Source: http://www.eu-un.europa.eu/articles/fr/article_11132_fr.htm (May 24, 2012)

the relevant authorities of each individual state (Cinema Communication 2001, 6). Cultural product in this sense is assessed through the points system across several categories comprised of such factors as nationality of the creative team members, national reference to the content elements (e.g. fictional characters, topic, portrayed locations, language, etc.), cultural contribution (e.g. representation of elements of national culture and heritage) and nationality of production infrastructure (e.g. location of certain stages of production and postproduction).

However, the Serbian film incentive for foreign works has no obligatory cultural test that a refund seeker's film has to pass in order to qualify for financial support. Once a full member of the European Union, Serbia will have to redesign its current cinema law and other relevant legal provisions to meet the EU standards and requirements related to the state-aid. Despite this knowledge and its recently earned candidate status, it still chose not to do so. Films are widely recognised as products important for both cultural and commercial reasons, with a strong impact on social perceptions, and therefore considered as an important topic of different policy fields. The lack of the cultural test and loose related provisions in Serbia could be either strategically adopted decisions or just wrongly designed policy. By offering less restrictive conditions for foreign filmmakers these provisions might go in favour of higher competitiveness among neighbouring EU member states or could be a result of wrongly designed policy that overlooks the high need of Serbian culture for better international image and promotion. As the case may be, such policy design will have its consequences. Therefore, this thesis seeks to answer the following question: What are the policy implications of the lack of a Cultural Test for foreign feature films made in Serbia?

The final aim of this paper is to analyse current sector-related framework in Serbia, to detect its main shortcomings and to propose a set of appropriate and customised policy recommendations to be applied during the accession period. Policy recommendations are intended for both policy-makers within Serbian film and cultural sectors, and for the Government, which is soon expected to pass new Decree on the film incentive provision. In order to achieve this, sector-related European legal framework, followed by a research on individual national systems and cultural tests, will be critically compared to Serbian legal and policy framework, with an aim to pursue a policy-learning process. Due to space limitations, the scope of research related to individual national practices will be limited to British, German and French systems, which stand for largest European cinema industries with highest public investments, but also make a good example of different tests designed to meet specific interests of national policies. For obtaining more information and more in-depth policy-learning, it would be, of course, relevant to explore more individual national systems.

The issue of cultural tests for publically supported films and related regulatory frameworks at national and European level has seldom been the main object of scholarly and policy studies, at least in terms of a comprehensive analysis of all the multiple implications of the issue. The existing literature is very sectorial and deals with the subject from different and specific perspectives such as European competition policy, state aid exemptions, cultural and media studies, etc. The related available policy research mainly focuses on how the public funding for cinema complies with general principles of prohibition of state aid, territorialisation clauses of some aid schemes and their compatibility with the fundamental freedoms of the EU, as well as on conflicting relation of commercial and cultural interests within the film industry. These different perspectives will be analysed in order to identify the broad impact of such regulatory instruments on national cinema industries and culture. Having in mind the

nature of the topic and presented limitations in available literature, qualitative research will be mostly based on legal documents and policy papers.

The thesis is structured as follows: The first chapter will discuss the European competition law and state aid law and in which way they relate to film policies and cultural tests. The following chapter will analyse European cultural tests through the national case studies of the United Kingdom, Germany and France, focusing on objectives and interests of national film and cultural policies. The third chapter will discuss Serbian sector-related regulatory framework, critically comparing it with the European one, using findings from previous chapters in the analysis. Finally, the fourth chapter will propose a set of general and specific recommendations, justified and based on the previously conducted analysis.

1. EUROPEAN LEGAL BACKGROUND: COMPETITION LAW AND STATE AID

On the European Union level, film policies are inevitably observed and arranged from several different aspects of which the two most important (as well as the most conflicting ones) are the commercial and the cultural value of films. Most EU documents regulating the audio-visual sector and more specifically the European film policy, emphasise how important is to find a satisfying balance between the two goals, often referring to it as the conflict between market and art. However, as will be shown in this chapter, meeting the interests of both ends involves dealing with various additional concepts that lie in between.

National approaches to culture and its role vary from society to society, mostly depending on their historical background and those differences can be best seen through the goals of individual cultural policies and national systems for public financing of the sector.² However, being part of the European Union obliges all Member States to obey to certain common provisions related to public financing.

As terms such as *industry* and *products* started dominating cultural sector, it was to be expected that economic rules applied to other commercial industries would eventually affect it. The famous study “The Economy of Culture in Europe” places films within the *industrial cultural sector* whose products are determined by commercial characteristics such as a mass-reproduction, mass-dissemination and export (KEA 2006, 2).³ Since films have also been

² E.g. the difference in the attitude towards public funding of culture and arts in France and Britain based on French “statism” and interventionism on the one side, and British market-oriented approach, with its peak during the rule of Margaret Thatcher, on the other. See for example Graham Devlin and Sue Hoyle’s comparative study “Committing to Culture: Arts funding in France and Britain” (2000).

³ I chose the presented classification since the KEA’s study was developed and prepared for the European Commission, and it can be assumed that it accurately represents how cultural and creative industries are understood among European policy makers. For more on the academic and policy debate over definitions and classifications used in this field see for example

officially classified as cultural and commercial goods in the European Union (Directive 2010/13/EU OJL95/1-2), it comes as no surprise that both cultural and economic objectives are intertwining across the policy field. Also, mass-audience, reach and impact that characterise films, make them even more appealing and strategically important for each side. More precisely, as emphasised in Cinema Communication (2001, 3-5) cinema does have an important role in creating wealth and jobs, but it also has power to simultaneously reflect and affect social perceptions.

The importance of culture and the complexity of relations and aims within the cultural sector in the EU are recognised in the Treaty on the Functioning of the European Union. Article 167 of the Treaty (TFEU, OJ 2010, C 83/122) provides that the general objective of the Union related to culture is to encourage promotion of the collective European cultural identity but also to support diversity and preserve national cultures, by “*taking cultural aspects into account in its action under other provisions of the Treaties*”. As for the authority over the policies, provided by Article 2, par.5 and Article 6/c of the Treaty culture is a field that remains under the competence of Member States, while the Union is allowed to intervene in the national systems by supporting, coordinating or supplementing the actions taken by the Member States. Even though Member States keep their authority over national law making and are not expected to adopt any kind of a uniform European cultural legislation as such, all actions and objectives must be accomplished with respect to the general legislation provided by the Treaty.⁴ This is of a particular significance when planning national film policies,

Susan Galloway and Stewart Dunlop’s “A Critique of Definitions of the Cultural and Creative Industries in Public Policy” (2007) or Michael A. Keane and Weihong Zhang’s “Cultural Creative Industries or Creative (Cultural) Industries” (2008).

⁴ Regardless of the extent of authority over law making in the sector at the national level, it can be argued that certain elements of harmonisation are present though. On the EU level harmonisation of national laws is observed as a facilitating process that ensures that free movement and equal treatment of people, services, products and capital are not obstructed by possible national barriers (EC, Eurojargon; see at http://europa.eu/abc/eurojargon/index_en.htm, May 24, 2012), which matches provisions from the Treaty. However, being that preserving and promoting cultural diversity of its member states is one of the Union’s objectives, it seems natural that competence over culture and related sectors remained at the national level, as long as compatible with the Treaty in general. Therefore, provisions in the audiovisual sector try to ensure

which, while following certain national patterns and in the same time complying with the general EU law, have to pursue both cultural and economic objectives of the film sector. Articles 101–106 (ex 81-86) and articles 107–109 (ex 87-89) of the Treaty contain provisions that deal with two issues of the utmost importance for national film policy design – competition law and state aid, including a special reference to culture.

The issue of financing films in the EU causes numerous controversies and debates based on the previously explained dual nature of a film, and subsequently because of the conflict between considerable public financial support for films (and therefore interventionism) on the one side, and strong regulatory framework on the other (Herold 2008, 34). Some of the basic principles of the Competition Law under the Treaty concern protection of consumers, independency of suppliers, support to innovation, and specifically, as stated in Article 101, prevention of the abuse of dominance or any practices that could restrict or distort fair competition in the internal EU market. It is forbidden to:

- a) *directly or indirectly fix purchase or selling prices or any other trading conditions;*
- b) *limit or control production, markets, technical development, or investment;*
- c) *share markets or sources of supply;*
- d) *apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
- e) *make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.* (Article 101)

Additionally, market and competition rules of the EU foresee automatic application of the Competition Law to any activity that generates profit - be it cultural or not (Herold 2008, 34).

The objectives and characteristics of the Competition Law presented above directly affect another provision, immensely important for the film sector – the one regulating State Aid.

Article 107 (par.1) of the Treaty forbids allocation of State Aid in any way that would

subsidiarity and fulfilment of national and cultural objectives, as well as to enable European entrepreneurs to benefit from the common market with equal opportunity (Cinema Communication 2001, 3)

“distort or threaten to distort competition by favouring certain undertakings or the production of certain goods [...]”. The same article (par.3), however, vaguely provides possibility for the exemption of culture from the previous rule:

- *par.3(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;*
- *par.3(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;* (Article 107, par.3)

The space left for vague interpretations and the central debate on whether state aid as such is compatible at all with the European competition law resulted in number of additional legal and policy efforts to enable clear understanding and smooth implementation of the EU rules. The 2001 Commission’s Cinema Communication introduced for the first time a set of basic criteria for defining if State Aid for cinema is compatible with the EU competition law. The independence of member states in designing their national state aid schemes is somewhat limited, as they must meet the following criteria and have their aid programmes authorised by the Commission (Art. 2.2, p.6).

The first requirement, referred to as the “general legality principle” applies to any state support programme. It demands that national state aid scheme must comply with provisions given by the Treaty as a whole. It results in aid-specific principles through addressing provisions such as preventing possible discrimination based on *nationality*,⁵ *freedom of establishment*, *free movement of goods* and *freedom to provide services* (Article 2.3/a, p.6). This means prohibition of favouring on the grounds of nationality when allocating state aid, or ensuring the aid recipient is free to establish their enterprise in any Member State without having to comply with national labour laws.

⁵ The Treaty defines nationality, or more specifically – the European Union citizen - as anyone holding nationality of any Member State (Article 20) and forbids any discrimination based on it (Article 18).

The second demand specifically applies to the cinema sector and contains several criteria that all national state-aid schemes must include within the selection process – Cultural contribution, territorialisation, aid intensity and aid supplements.

Each production granted the state-aid must be cultural, as per provision given by Article 107/d of the Treaty. Communication provides that such *cultural contribution* is to be determined and assessed according to national criteria and national definition of culture. Even though the Commission does not decide what the culture is or is not, it has the authority and obligation to approve national selection systems and make sure that national criteria and definition of culture and cultural products are verifiable.

As will be shown later, most national state-aid programmes use *cultural tests* to determine whether the film applying for grant satisfies criteria of cultural product and cultural contribution. With the growing trend of attracting foreign large budget film productions among the EU countries by offering various incentives, cultural tests ensure that the EU rules on the state-aid are respected in such cases as well. Models of cultural tests across the EU, as well as the incentive systems and their economic backgrounds will be further examined in the second chapter.

Other important condition refers to *territorialisation*, enabling the producer to spend at least 20% of the production budget in any other Member State. *Aid intensity*, or the amount of the granted aid, cannot exceed 50% of the total film budget.⁶ Finally, to ensure neutral incentive

⁶ This limitation does not apply to difficult and low budget films. Each state should set criteria for defining these films (2001 Cinema Communication, 2.3b/3).

effect and not to favour specific, isolated filmmaking activities (writing screenplays or post-production, i.e), no extra aid is allowed on such grounds (Article 2.3/b).

The existing rules on State Aid and national schemes were set by the Cinema Communication in 2001. However, according to the draft on the new Communication on State Aid, which supposed to be applied by the end of 2012, the key changes will include covering activities of the whole process (from story to delivery), additional limits related to territorialisation, controlling the competition between the states when using state aid to attract large budget productions and to further improving circulation of European films and increase their audience (Draft Cinema Communication 2012, point 14, page 3). The new Communication addresses the field specific criteria for obtaining state aid, taking into account development and trends that have taken place from 2001 in the field of film industry and related national policies. It introduces the principle of the proportionality within the territorial requirements, and proposes that the amount of the local expenditure be proportional to the amount of received aid, not with the amount of the overall production budget (p.4-5).

The new Communication also looks into the growing trend of openly using State aid funds to attract major, big-budget foreign film productions into the EU territory (Section 4, p.6-7). Common among many Member States, such practice is engaged towards direct and indirect economic benefit, employment of local film professionals and development of the local film industry, transfer of knowledge and technology, support to local infrastructure, etc. Such agreements are also considered to have beneficial impact to promoting European locations, identity, culture and heritage. The new Communication recognises those benefits and admits such schemes successfully meet state aid criteria, but expresses concerns that State Aid also serves Member States to compete with each other in attracting lucrative foreign productions,

which is incompatible with the Competition Law. To overcome this problem and to prevent additional increase of budget intended for such subsidising the new Communication proposes the following:

- Any production expenditure should be count for the aid intensity (Article 30, p.6);
- The amount of aid should be limited, in order to support competition based on the quality and price present at different locations (Article 31, p.6-7);
- The maximum aid intensity for expensive foreign productions should be limited (Article 32, p.7).

As shown in this chapter, film and related focuses of cultural policies in the European Union cannot be predominantly designed upon cultural and artistic aspects of cinema. What must be taken into consideration is much broader set of conditions and factors. Being commercial as much as it is cultural or artistic product, film is burdened with numerous additional criteria that must be met, such as being in line with the EU Competition Law or justifying granted state aid in multiple levels. The following chapter will proceed in two sections. The first one will discuss European cultural objectives and key elements promoted through national European cultural policies. The second section will specifically focus on cultural tests, their role, impact and different national approaches and criteria applied to cultural tests in the UK, Germany and France.

2. CULTURAL TESTS IN EUROPE: NATIONAL CASE STUDIES

The previous chapter described principles of the European Competition Law and State Aid. The state aid provided for films in the European Union is itself conditioned with already mentioned conflicting objectives, which are achieved through various mechanisms. The so-called cultural test is the instrument that aims to secure quality of the cultural content and sufficient contribution to the European culture and identity in films supported by the state aid, and justify it therefore.

Prior to showing how cultural tests for films across the EU are designed and applied, and what of the mentioned conditions they must meet, the first section of this chapter will briefly discuss European cultural objectives within film policy and elements that constitute a European cinema work. As the central concept of this thesis, cultural tests in the European Union will be individually described and analysed in the second section.

2.1. EUROPEAN CULTURAL OBJECTIVES

As explained in the previous chapter, in order to qualify for the state aid, a film must comply with certain criteria. One of the criteria is that the aid must be granted to a cultural product, where each Member State verifiably defines what culture is.

Culture is, of course, a very comprehensive concept with no precise, official or ultimate definition, and authors describe it differently within various contexts. In a broader sense, but still grasping its essence, it can be said that culture is *“a set of all processes, changes and achievements that have occurred as a consequence of material and spiritual intervention of human society.”* (Ilic, 1978:23). Most European countries place their national definitions of

culture within this frame. However, different historical and socio-political backgrounds do result in various specific characteristics of culture and objectives of their cultural policies. For example, France and Scandinavian countries tend to preserve a certain extent of an arm's length principle and to pursue dissemination and democratization of culture, while Denmark (even though it used to follow similar pattern) and the UK have turned to more business oriented systems. At the same time, all Scandinavian countries and the UK see culture as an important platform to spur innovation. It can be also noticed that countries with more official languages tend to cherish and promote linguistic diversity (as is the case with Spain and Belgium). Almost all countries, however, have as their cultural objectives protection or/and promotion of language, music, visual/audiovisual/performing arts, architecture, literature and heritage.⁷

As stated in the European Agenda for Culture, on the broader European level, main cultural objectives include “*cultural diversity and dialogue, culture as a catalyst for creativity and innovation and culture as part of the EU’s international relations*”. These are further explained through more specific objectives of supporting intercultural dialogue, artistic mobility, development of cultural and creative industries, regional development and cultural heritage, as well as promotion of cultural aspect through international and external relations (European Agenda for Culture, 2012).

When observed together, cultural objectives of European countries and the European Union can be placed within the corpus of material and nonmaterial culture on the one side, and culture as an instrument for achieving certain goals and benefits on the other. As a form of art itself and a specific depiction of life, film can easily grasp and distribute both material and

⁷ Data collected from COMPENDUM – Cultural Policies and trends in Europe. For more in detail information on national definitions of culture and objectives of cultural policies in European countries see: <http://www.culturalpolicies.net/web/index.php> (May 26, 2012).

nonmaterial culture to the widest possible audience, while at the same time fulfilling and contributing to many of other particular goals stated by the Agenda. Additionally, it can be observed that previously singled-out elements of material and nonmaterial culture that the majority of states focus on (paragraph 2 of this section), including national languages, contribute to the promotion of each country's uniqueness whilst contributing to the European colourful identity and diversity. The following section will discuss how those are employed in national cultural tests across the Europe.

2.2 NATIONAL CULTURAL TESTS – THE UK, GERMANY AND FRANCE

Cultural tests represent key part of film incentive schemes in the Europe and are widely adopted among many Member States as instruments that can provide verifiable assessment of the film applying for State Aid, ensuring that it meets provisions on State Aid set by the Treaty. One of the important goals of European film incentive schemes is to attract high-budget foreign productions (for economic and industry development reasons). Therefore, criteria set within cultural tests ensure that such spending is justified and directed towards cultural product.

Apart from the assessment of direct cultural aspect (often in the support of the European cultural heritage), cultural tests also examine how “European” a film is from the perspective of employees, ensuring that European professionals considerably participate in the production. The 2001 Communication emphasised a lack of an agreed definition of a European work at European level, expressing concern over possible barriers that could emerge from numerous different definitions among Member States and challenge circulation of European productions (Cinema Communication 2001, 8.1, p.19). To overcome this problem and to further support European film production, especially in its losing battle

against US films even in its own market, the new Communication on the State aid proposes different criteria for European and non-European works (Draft Cinema Communication 2012, Annex, p.12). Draft version further provides that the work is required to be produced “*by a producer or producers established in the EU/EEA*” with the production company officially registered as such. Another requirement is a “*significant participation of professionals who are nationals/residents of Member States of the EU/EEA.*” At least 50% of the points from the list below will be considered as *significant participation*.

European Elements	Points
Director	3
Scriptwriter	3
Composer	1
Actor 1	2
Actor 2	2
Actor 3	2
Artistic Directors / Production Design	1
Director of Photography	1
Editor	1
Sound	1
Shooting Location	1
Laboratory	1
Total	19

(Draft Cinema Communication 2012, Annex, p.12)

So far Member States were designing all segments of cultural tests themselves, including the points system. If the new Communication gets adopted, member states will be expected to apply and incorporate this uniform European points system into their national state-aid schemes in 2013.

National cultural tests across the EU are not all the same since each Member State designs one per its own definition of culture and national support schemes, in accordance to the previously analysed general legality principle and sector specific criteria. This section will examine British, German and French cultural tests, as these countries offer the highest public

funding for films (Broche, Chatterjee, Orssich and Tosics, 2007:44) and stand for the largest European film producers (IMDB, 2012).⁸ After presenting key characteristics of all three tests, a brief comparative analysis will follow.

2.2.1. The United Kingdom

In 2007 Britain implemented its first cultural test for films applying for the public funding, often named “cultural test for British films”. UK Film Council - British Film Institute (BFI) assesses applications on the basis of points system (31 points overall, minimum 16 for pass) and four main sections.

- A. Cultural Content (*UK story location, British topic & characters, English language*)
- B. Cultural Contribution (*representing British culture, heritage or creativity*)
- C. Cultural Hubs (*UK location of filming and audiovisual production & postproduction*)
- D. Cultural Practitioners (*producers, cast, crew, key staff... to be UK or EEA citizens or residents*)⁹

To facilitate usage of the cultural test, BFI published a comprehensive guideline that further explains each section and the principle of allocating points. For example, the film can score maximal 16 points in the section A if at least 75% of the story takes place in the UK (regardless of where the film is really shot), if the majority of characters are distinctively British (backstory, accent, etc.), if the scenario is based on distinctively British subject or background material (e.g. historical person/event or literature, screenplay etc. written by a British citizen or resident) and if at least 75% of the language is English or any native language officially recognised in the UK (BFI, 2011:13-15). Points under the Section B (cultural contribution) are allocated on the basis of considerable representation of British

⁸ The number of film produced in 2011 per Member State, including coproductions (in the given order). Data collected from IMDB – Internet Movie Database: <http://www.imdb.com/country> (May 27, 2012).

⁹ UK Film Council - BFI, Cultural Test: <http://industry.bfi.org.uk/culturaltestpoints> (May 27, 2012).

cultural heritage (1 point), an innovative and creative way of filmmaking (1 point) and considerable representation of British cultural diversity (2 points) (p.16-18). The guideline makes an effort to give examples that can clarify in which way criteria can be met, having in mind less measurable nature of the section's content. Points under the Section C (cultural hubs) can be scored if at least 50% of principal photography (filming), visual effects or special effects is done in the UK (2 points) and if music recording, audio postproduction or picture postproduction is done in the UK (1 point) (p.19-20). Section 4 (cultural practitioners), in accordance to the Treaty, levels UK and all other EEA citizens granting such practitioner a point for each professional position stated in the test (maximal 8 points) (p.20-23). The first three sections show that the objectives pursued through British cultural test are promotion of cultural heritage in the broadest sense, promotion of cultural diversity, innovation and development of local creative industry.

It is important to note that the British system provides another possibility for a film to qualify as British, without taking the cultural test - through either bilateral coproduction treaties of the UK and other countries (currently there are nine such treaties of which only one is with the EU Member State – France), or through the European Convention on Cinematographic coproduction.¹⁰ In case of the latter, however, other additional criteria must be met, regarding the number of coproducers involved, the amount of allowed contribution in case one of the coproducers is not established in a Party to the convention, etc. Nonetheless, the work must meet the criteria of the European cinematographic work (EU Convention on Cinematographic Coproduction).¹¹

¹⁰ UK Film Council – BFI, Coproduction: <http://industry.bfi.org.uk/coproduction> (May 27, 2012).

¹¹ EU Convention on Cinematographic Coproduction, Summary: <http://conventions.coe.int/Treaty/en/Summaries/Html/147.htm> (May 27, 2012).

2.2.2. Germany

The Germany's Test of Cultural Characteristics differs to some extent from the British one. It grants total 94 points to feature films through two categories: A1 - cultural content (total 30), A2 - creative talents (total 33) and B - production (total 31) (BKM 2009, 23-35).¹² A film must score at least 48 points across both categories (A and B), and it must comply with at least four criteria from the A1 block (Art.10, p.9). The German test differs somewhat from the British one, especially in the cultural content category. A film can obtain points from this category if it is shot in Germany or in a German cultural area, with distinctively German landmarks or landscapes, with a main character being German, a storyline being based upon German material¹³ or a final version being in German language.

The German test also awards additional points if the storyline is specifically based on literature, as well as if the plot deals with artists or cultural and artistic fields. Points are given if an artist from a field of art other than cinema significantly participates in the film. Interestingly, the German test allocates considerable number of points for the content related to the world's history and cultural heritage and contemporary social issues. Films that include landmarks or cultural content of other EEA states are also awarded (p.23-25). Arguably, such criteria reveal certain objectives of German cultural and film policies. Firstly, they are directed towards increasing excellence of national cinematography by supporting more films of higher artistic value, as opposed to commercial ones. Secondly, their goal is to promote arts, literary endeavours and social dialogue. Finally, by being open to global and European cultural heritage, German film can act as an instrument to enhance international relations and can reach wider audiences as well.

¹² Guideline of the Federal Government Commissioner for Culture and the Media – BKM

¹³ German-speaking author, German citizen or in any way relevant to Germany (BKM 2009, p.23).

The second category concerning artists and other participants in a film follows, of course, the same nationality principle. However, the German test awards considerable extra points if German or EEA renowned artists (“stars”) are cast in important roles (p.24). Finally, the Production section awards points for location or studio shooting in Germany, no less than 25% of digital effects and no less than 25% of special effects done in Germany, as well as 100% music recording, sound mixing, laboratory work, print editing and final editing done in Germany (p.25).

The German test, unlike the British one, requires that coproductions made under the European Convention on Cinematographic Coproduction (ETS No. 147) shall take the test (BKM 2009, Art.10/4 p.9). The Convention aims to support European film production by allowing facilitating frameworks for coproductions “*provided these promote European identity*” and it also admits as legitimate “*the concern of states to preserve their own culture.*”¹⁴ Therefore, to comply with the Treaty and ensure the aid is given to a cultural product, German incentive scheme insist that coproductions too pass the cultural test.

2.2.3. France

State aid for feature films production in France can be obtained through the new Tax Rebate for International Productions (TRIP) incentive that refunds 20% of the eligible costs, or through various support schemes provided by the French *Centre national du cinéma et de l'image animée* (CNC), which requires a non-French producer to establish an official coproduction in France and get their film qualified as “French”. The TRIP incentive is clearly intended for attracting foreign productions to shoot in France and to engage French professionals and sector infrastructure in their projects. As provided in the latest official film

¹⁴ EU Convention on Cinematographic Coproduction, Explanatory Report: <http://conventions.coe.int/treaty/en/Reports/Html/147.htm> (May 30, 2012).

incentive guide published by the French Film Commission - Film France, to benefit from the TRIP a foreign producer must contract a local company that is subject to corporate income tax in France. Such company would then act as Production Services Company, commissioned to manage the physical production of the film in France, and would not be eligible for receiving any other government's support or entering into official coproduction agreement (Film France 2012, 12-13). The other option is to qualify as a French film, where the filmmaker must be French or European, and it must be produced or coproduced by French film company. In case of bilateral agreement, a film must satisfy "national" elements of both countries. France has 49 bilateral coproduction agreements (p.30-31). Whether the film applies for State Aid through TRIP or coproduction agreement, it must satisfy certain conditions. Cultural test, in a way presented in the previous cases of Germany and the UK, is mandatory for the former.

The French test awards total 38 points through 3 categories and 20 individual criteria:

1. Dramatic Content – 18 points (Location – 7 points, Characters – 4 points, Plot and Story – 5 points, Languages – 2 points);
2. Nationality of practitioners – 12 points;
3. Production infrastructure – 8 points.

To be eligible for State Aid, a film must score at least 18 points, of which at least seven from the first category of Dramatic Content. Under the location subcategory, French cultural test awards the highest number of points if the majority of the story takes place in France. Points are awarded if the film takes place in France and in a European country. Interestingly, another legitimate option to score points under this test is if the story takes place in France and any francophone country. Points can also be obtained for at least two "typically French" sets/locations being the main setting. Points for the nationality of the main and secondary characters are awarded for French, francophone or European nationality, depending on their number (p.20). As for the content of the film – the plot and story – points are allocated if the

story deals with French artistic heritage or French history. In this section European dimension is awarded alongside with the French if the story deals with political or social contemporary issues. A story based on the existing work (film, literature, etc.) is awarded with points. It is not, however, specified whether it must be a French only or European work as well. A final film version shall be dubbed or subtitled in French (p.21).

Under the second category (Nationality of Creators and Creative Collaborators – practitioners) it is not clearly specified whether they are to be French, or French and/or European. However, having in mind examples from German and British tests and earlier mentioned definitions of the European work from the latest draft Communication, as well as provisions from the Treaty, it can be concluded that both French and European nationality are eligible. The third category, Production Infrastructure, grants points on the basis of number of days spent on shooting in France and the percentage of costs made in France for special effects, filming equipment, laboratory work, etc. (p.22).

Another way of receiving State Aid is by entering an official coproduction. In case of any coproduction model, a film must qualify as being sufficiently both European and French. French test on the “europeanness” for feature films is similar to those previously presented in this chapter, but it is expected that from 2013 such test will become uniformed in all EU countries (Draft Cinema Communication 2012, p.12). To obtain European ‘nationality’, a film must score at least 14 out of 18 points given in the test that is based on the French or European nationality of certain professions and other production requirements. Higher, authors, actors and members of the crew can also come from the countries with which France has signed coproduction agreements (Film France 2012, p.32-33). For coproductions made

under the Convention there is a separate test that has been required by the Convention.¹⁵ To prove to be French enough, the film must score at least 25 out of 100 points in a much more demanding test, which awards for creative, technical, administrative staff, as well as for locations and language, which is the highest awarded individual criteria. To gain as many points as possible (and increase automatic grants given for such works), a film must engage actors and crewmembers from France, European Union, European Council signatory state or foreigners in a possession of French citizenship (p.38). Same as in British case, no specific cultural test is required for coproductions made under the Convention agreement.

In examining state aid as a mean of pursuing specific cultural goals, it would be perhaps interesting to note that one of the numerous French aid models – National selective subsidy “Avance sur Recettes” is a refundable grant allocated to selected scripts on the basis of their cultural value. However, this aid is intended only for works to be filmed in France (in any of its recognised languages) and other francophone countries (p.45).

As shown above, French state support for film is complex and comprised of several possible models, offering numerous funding possibilities to those involved in filmmaking and production. Such state attitude towards supporting film cannot be attributed only to economic and sector development benefits, but also to the specifics of the national cultural policy.¹⁶ Even in the years of severe crisis, when for example the Arts Council of England faces its budget cut by about 23% to £249 million as of 2014, the French culture budget was increased in 2011 from £2000 million to £2700 million (Chrisafis, 2011).

¹⁵ Convention on Cinematographic Coproduction, Appendix II, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/147.htm> (May 30, 2012).

¹⁶ France is often being accused of heavily interventionist attitude in the cultural sphere. See for example David Looseeley's Cultural policy in France since 1959: Arm's length or 'up close and personal?' (2001), or Catherine Morel's "Will businesses ever become legitimate partners in the financing of the arts in France?" (2005).

When it comes to understanding reasons behind certain technical differences among the three tests, it is important to observe the broader context and specific characteristics of the three film industries. It is, for example, shown that the German test tries to promote “national stars” by giving additional points if they are given prominent roles. The lack of the same criterion in the British test is not surprising, having in mind that the UK is the third largest film market in the world¹⁷ with many of its “national stars” being globally renowned actors with often very high fees. It would be, therefore, unreasonable to impose such condition, as it would put low and middle-budget productions into immediate disadvantage.

Another issue worthy of attention is and analysis is the extent to which national tests succeed in complying with relevant European legal documents. It has been shown that German cultural test requires coproduction made under the Convention to take the test, but it also awards points for films that include cultural content from other EEA states (BKM 2009, p.23-25). It can, therefore, be argued that German incentive scheme in this matter successfully comply with both the Treaty and the Convention. In contrast, the UK cultural test does not award films unless they contribute to and/or represent British cultural heritage and content. It is, therefore, understandable that coproductions with other states are not conditioned to take the test. However, without a precise verifiable mechanism such as test it, it is hard to determine whether such spending would be compatible with the Treaty.

Except from where the European law binds them, cultural tests of all three presented countries also match in pursuing more specific cultural objectives, such as national literature in the case of German test, artistic heritage and strong promotion of the language in case of the French one, or innovation – promoted by the British test. All three countries try to create as much

¹⁷ UK Film Council – BFI: http://www.bfi.org.uk/about/media/releases/20110801_yearbook.pdf (May 30, 2012).

benefit as possible for national industries and professionals. However, since filmmaking projects bring also a considerable economic benefit (money spent on production, accommodation, salaries, taxes, etc.) each country designed comprehensive guides through the state aid system, showing in the same time what cultural, natural, technical and professional resources it has to offer. In many countries there are number of specialised private agencies that offer their help on this matter.

In the European Film Agencies Directors (EFADs) invited the Commission to reconsider 2001 Communication's provision, which requires that every state aid must be allocated to a cultural product. EFADs proposed that *"support measures covered by the new Cinema Communication under the cultural derogation should have an overall cultural objective or a cultural impact assessment by political decision makers in the member state [...]"*, in which case cultural test as they are today wouldn't be needed anymore (EFADs 2011, p.4). EFADs further suggested that important accompanying activities, such as distribution or promotion, should also enter into the scope of the Communication (EFADs, 2011:4-5). As for the remaining part of the test, which determines nationality of a film, EFADs advised the Commission to look up to the existing "schedule of European elements" (MEDIA Programme) or the test offered up by the Convention. The new Communication, agreed on the latter and the new mandatory form of the test for assessing a European audiovisual work was presented to start as of 2013. The scope of activities is also extended *"to include all aspects from story concept to delivery to the audience"* (Draft Cinema Communication 2012, p.3). Cultural tests and the criticised cultural exemption, however, remained as they were before.

It can be argued that without a test it would be hard to verify whether the aid was directed to a cultural product, or, taking into account EFADs' remark – to a cultural contribution and impact. To make sure that interests of all sides are met, without compromising the cultural quality and risking provisional decisions, a cultural test with verifiable criteria should be kept. However, certain aspects that cannot be assessed on the same base (such as given examples of distribution and promotion) should be considered for aid by different conditions.

The following chapter will analyse and critically discuss Serbian legal and policy frameworks for the film sector. The first section will focus on state aid provisions relevant for the sector, while the second section will discuss the new film incentive.

3. FILM INCENTIVES IN SERBIA: REGULATORY AND POLICY FRAMEWORKS

Previous chapters introduced the European legal framework for the state aid and models of cultural tests in three largest film industries in Europe. This chapter will portray the current legal framework related to the cinema sector in the Republic of Serbia, focusing on the relevant background and state aid in the first section and the newly introduced film incentive in the second one. The Serbian framework will be critically compared to the European. A number of key characteristics of Serbia's cultural policy will also be examined. Finally, the main shortcomings will be identified and analysed.

3.1. CULTURAL POLICY AND THE LAW ON STATE AID CONTROL

After the turbulent period under the rule of Slobodan Milosevic finally came to an end in late 2000, the new democratically established Serbian authorities faced numerous political, economical and structural problems inherited from the previous regime, as well as the immensely bad worldwide image of the country. Changing the political discourse and directing the country towards the EU became and remained the main goal set by the newly formed political establishment. Twelve years of reforms throughout all sectors brought Serbia the official status of a candidate country for European Union membership in March 2012. However, there is more to be done before obtaining full membership and legal reform is of particular importance in the process of European integration.¹⁸

Until the very end of 2011 the cinema sector was regulated in accordance with the old and out-dated Cinema Law from 1991. The new law was passed in December 2011 and it

¹⁸ On the importance of the legal reform in Serbia, its process, implementation and the results achieved so far, see: <http://www.legalreform.rs/index.php/en/legislative-process> (June 2, 2012).

represents the first step towards modernisation of the cinema sector in Serbia. Foreign professional audience immediately had its attention grabbed by the new provision on financial incentive for foreign producers and investors to shoot their films in Serbia, paying special notice to the lack of the cultural test (Goundry 2012, Roxborough 2012).

Before saying more about the new Cinema Law, it is useful to recall another two important legal documents, which preceded the new law – the Law on Culture, (Sluzbeni glasnik RS, 72/2009) and the Law on State Aid Control (Sluzbeni glasnik RS, 51/2009), both passed in 2009. The Law on Culture (Article 1) determines general cultural interest and how it is to be achieved, and determines cultural activities, rights, obligations and responsibilities of the State and its units, as well as conditions for acting in the field of culture by all cultural subjects. The law further recognises cinematography and audiovisual production as cultural activities (Article 8/7) and allows both domestic and foreign natural and legal persons to pursue cultural activities in the territory of Serbia (Article 9). Unlike the EU, where the cinema sector is significantly affected by and intertwined with the Competition Law, provision on the State Aid and cultural exemption, in Serbia this not yet the case. Under Article 10 the Law on Protection of Competition (Sluzbeni glasnik RS, 51/2009) forbids exactly the same five types of practices as the Treaty does under Article 101/1, and under Article 11 allows the very same exemptions as the Treaty does under Article 101/3. The Law on the State Aid Control was passed in 2009 as a separate document to complement and support the Law on Protection of Competition, where state aid is defined as:

“[...] any actual or potential public expenditure or realised decrease in public revenue which confers to state aid beneficiary a more favourable market position in respect to the competitors and as a result causes or threatens to cause distortion of the market competition,” (Article 2)

and the state aid recipient as:

“[...]any legal or natural person which, in their business operations concerning production and/or trade of goods and/or providing of services on the market, use state aid in any form whatsoever.” (Article 2)

Article 3 of the Law on Protection of Competition, just as Article 107/1 of the Treaty, forbids any form of state aid that distorts or threatens to distort market competition, unless provided differently by the Law. Article 4 on the allowed state aid, again, exactly follows Article 107/2 of the Treaty, except, of course, in the provision that refers to the aid granted to certain areas of the Federal Republic of Germany. However, Article 5 of the Serbian law on *the aid that might be considered to be allowed* differs slightly from its European exemplar – Article 107/3 of the Treaty. While the first three points remain the same as in the Treaty, the fourth possible exemption from the rules on the state aid, cultural derogation, differs. Where the Treaty allows the aid that promotes *“[...] culture and heritage conservation, where such aid does not affect trading condition and competition in the Union to an extent that is contrary to the common interest”* (Treaty, Article 107/3d), the Serbian law allows the aid for *“improvement of protection and preservation of cultural heritage”* (Article 5/4). It remains uncertain whether the requirement on not affecting trading condition and competition to an extent contrary to the common interest is omitted accidentally or deliberately, and, in the case of the latter, if the interest of preservation and protection of cultural heritage is seen as higher or equal to the common interest.

Second uncertainty is related to the very object of the provision. Where the Treaty allows the aid that promotes *“culture and heritage”* the Serbian law places *“protection and preservation of cultural heritage”*. By no means can these two definitions be taken as same or even similar, because the Serbian one leaves out all cultural activities except from the two very specific ones – protection and preservation, and exclusively of cultural heritage. Again, a

question arises as to whether the object of the provision was deliberately defined in such way, or a misinterpretation of the Treaty's provision took place in the translation process. It remains unclear, therefore, whether this definition is just a mistake or a deliberate expression of cultural priorities of the Republic of Serbia. The definition might also be conflicting with Article 10 of the Law on Culture, which states that the means for (co)financing cultural projects and programmes will be provided from the state budget. In any case, provision 4 of Article 5 of the Law on State Aid Control offers much room for discussion among sector's professionals, lawmakers and policy makers, in order to provide clear and precise provisions, as well as to examine and question cultural priorities of the State. Furthermore, Articles 19 and 20 of the Law on Culture provide that the National Assembly of the Republic of Serbia shall adopt Cultural Development Strategy of the Republic of Serbia, which shall, among others, contain goals of the cultural development, its priority fields and strategic directions and instruments. Even though the Law on Culture was passed in 2009, the Strategy has not been adopted to date.

3.2. THE FILM INCENTIVE AND THE CULTURAL TEST

One of the first priorities set in 2007 by the Ministry of Culture was to harmonise the cultural and media system with principles laid down by UNESCO, European Union and the Council of Europe (Dragicevic-Sesic, Brkic, Mikic 2012, 7). Even though the priorities were later generalised, the overall objective of modernising this sector remained. Until 2012 the cinema sector was regulated in accordance to the previously presented Law on Culture and the old Cinema Law from 1991 (Sluzbeni glasnik RS 46/91). The new Law was passed at the end of 2011 (Sluzbeni glasnik RS 99/11) and is to come into force in June 2012. Terms such as domestic film, coproduced film (including different amount of participation of the foreign and domestic producer, across multilateral or bilateral agreements) and foreign film were defined

for the first time (Articles 4-6). These are determined on the nationality principle. Nationality¹⁹ criteria are designed similarly to those of the European cultural tests. Domestic cinematographic work is determined by:

- Language (Serbian or some of the national minorities languages);
- Serbian citizenship of the majority of the creative crew (director, screenwriter, composer, director of photography, dramaturge and editor);
- Serbian citizenship of at least 90% of the film crew (actors and workers);
- Topic (must belong to the cultural space of the Republic of Serbia);
- Territory (it must be entirely or mostly filmed on the territory of the Republic of Serbia) (Article 4).

Before describing the other two forms of production, I would like to bring attention to the fourth criterion presented in the list above that refers to the cultural space of the Republic of Serbia. I would argue that such definition does not precisely reflect what is to be considered Serbia's cultural space, especially having in mind the history of the country, its cultural and historical relations to other neighbouring countries, large number of national minorities, as well as large number of ethnic Serbs and Serbian citizens living abroad. Defined as it is now, this criterion implies that the range of eligible topics is limited to the territory of the Republic of Serbia. If, however, inspiration for a film can be looked for anywhere, as long as it is related to Serbia, its culture and heritage, than the definition could be considered inappropriate or even politically incorrect. As shown in the second chapter under the analysis of the German test, the same criterion has been defined as "German cultural area", which leaves less space for misinterpretation, but might be still not clear enough. Instead, I would propose broader and a more descriptive definition: "Cultural area related to the Republic of Serbia". Having this criterion precisely defined would be useful when designing cultural test in the future. As it will be shown later, this is not the only vaguely provided definition within Serbian legal and policy documents.

¹⁹ Here, by "nationality" I refer to both nationality of practitioners and the "nationality" of the film, in terms of cultural elements it shows.

Coproduced cinematographic work is determined by one or more foreign investors participating in financing the film together with Serbian investor. Such a coproduction can be “major” (bilateral or multilateral) or “minor” (bilateral or multilateral), depending on the proportion of financial participation of each producer and on the number of producers involved (Article 5).

‘Foreign film’ means one which does not meet the requirements of Articles 4 and 5, and is entirely or partially produced in the Republic of Serbia, financed by foreign legal or natural persons, on the account of foreign legal or natural persons (foreign producer or domestic co-producer²⁰) (Article 6). However, the most interesting provision for the Serbian cinema sector is the one imposed by Article 7, concerning the incentive for foreign producers to make their films in Serbia:

“To encourage foreign producers to make foreign cinematographic works defined by Article 6 [...] or co-produced works defined by Article 5 [...], foreign producer shall be paid back up to 20% of the total investment they spent on filmmaking on the territory of Serbia, from the budget of the Republic of Serbia, in accordance to the amount provided in the budget, and in accordance with the special Government’s decree.” (Article 7)

Even though the Government’s special decree that should further define the incentive has not yet been passed, it would be useful to look at the similar provision made temporarily available for 2011 only, as it is the most recent relevant document and the first step towards officially adopting the incentive by the new Law in 2012. Nothing can be said though about how successful it was, as not a single foreign film received funding in 2011 due to the country’s unfavourable economic situation.

²⁰ As the foreign film can be made on the account of domestic co-producer, as long as other presented requirements are met, it means that co-production that does not meet criteria given by Article 5 in terms of the investment proportion will be considered a foreign film. That is, a co-production financed entirely by foreign natural or legal person, above the limits set by Article 5, will be considered a foreign film.

In February 2011 the Government passed a decree *On Measures Regarding the Development and Positioning of the National Brand of Serbia Through Foreign Film Production in the Republic of Serbia in 2011 Via Investments in Domestic Film Industry* (Sluzbeni glasnik RS, 05 No: 110-1359/2011-1). The decree saw the film incentive as an instrument that would strengthen and increase global visibility of the national brand of Serbia and improve the development of Serbian film production (Decree, Article 1). The total proposed budget for the achievement of these goals was supposed to be approximately €1,5m. The decree provided definitions for foreign film, production and production budget, but omitted to define the national brand.

Unlike other European film incentives or tax rebates, the 2011 Decree required no cultural test to be passed to qualify for the reimbursement of costs. Instead, it provided a simple set of qualifying criteria, which contains general legality principle and technical conditions concerning minimum spending and eligible form of the work:

- 1) *That the total amount of funds of foreign origin allocated to the purpose of production of a foreign film in the Republic of Serbia is equal to at least EUR 2,000,000;*
- 2) *That the foreign film has no content that is contrary to morality, public order and public interest of the Republic of Serbia, that it does not damage the reputation of the Republic of Serbia nor promote hate speech or violation of human rights, nor contain pornographic content;*
- 3) *That it is in one of the following formats: feature, documentary, animation or television film or television series.* (Article 4)

Proposed direct reimbursement was lower than that provided by the new law, and was divided between two categories of production costs made in the territory of Serbia: up to 12% of any personal income paid, and 15% of all other production costs (Article 5), provided that such expenses were incurred and paid to legal or natural persons on the territory of Serbia, and

excluding marketing costs and fees of participants and members of the production²¹ (Article 13). The incentive was to be allocated through competition, and valid applications were supposed to include information on synopsis, members of a creative and production team and films they previously participated in, budget, activity plan and the proof of foreign origin of the funds (Articles 6-8), implying that the eligible nationality is determined exclusively in accordance to the origin of the financial investment. The Decree did not provide any competition criteria, based on which applications were to be assessed, but stated that incentives were to be paid on the *first-comes, first-served* principle, that is “*in order of request submittal*” (Article 14). Finally, it was provided that in case of obtaining incentive, a film:

“[...] must contain the information that the Republic of Serbia has financially supported the production of the film, as well as a visual representation of the specific national brand of the Republic of Serbia, at the appropriate visible place [...]The Minister shall prescribe the form and method of displaying the specific national brand.” (Article 15)

Under such provision, it remains unclear what the national brand is or how it is supposed to be used. Internet portal ‘Serbia Brand’ of the Ministry of Agriculture, Trade, Forestry and Water Management offers a broad description that includes “*a wide range of activities and areas, and a rich system of values and intangible characteristics,*” from individual brands, to culture, arts, natural beauties, to even customs and morals and “*much else that makes a country unique.*” Such cultural or nationally distinctive elements, as shown in the previous chapter, belong to certain categories of European cultural tests that assess cultural content, heritage or contribution, for example. On the other side, Article published in 2011 on the official website of the Serbian Film Commission stated there was no cultural test imposed (Petkovic, 2011), while right after the new Law was passed international sector-oriented media listed the lack of the cultural test as one of the key characteristics of the new Law.

²¹ Article 2(2) of this Decree defines “*production as a legal entity or individual, or group of persons contractually bound to organize, finance and operate the production of films.*”

As any uncertainty in legal documents leaves space for different and possibly conflicting interpretations, especially with numerous stakeholders involved, the new Government's Decree on Article 7 of the new Cinema Law should provide precise and clear framework for understanding and successfully applying the film incentive provision. Moreover, the name of the Decree, its objectives and ways of achieving them should also be revised to express more precisely the aim of the provision, as was done in the previously shown examples of France and Germany. Even though the incentive is officially intended for foreign producers, its primary objective should be to induce a positive impact on the domestic film industry by fostering employment, exchange of knowledge and experiences, development of the infrastructure, country's promotion, etc. As such it must be fully understood and supported by domestic public, film industry and all stakeholders. If "the national brand" under this Decree is understood as described above, and in case its promotion of the national brand remains the key objective of the incentive provision, then the new Decree should also consider including a cultural test.

It should bear in mind, however, that from the perspective of foreign investors the lack of the cultural test might be seen as a positive and facilitating characteristic and Serbia's competitive advantage among neighbouring countries. It is also important to give an honest look at how appealing or inspirational Serbian culture may seem to them in order to find the right balance between pursuing national interest and becoming an attractive location for foreign producers and investors. Suggestions and policy recommendations on the basis of the above given analysis and comments will be offered in the following chapter.

4. FINDINGS AND RECOMMENDATIONS

The previous chapter analysed the regulatory framework of the Republic of Serbia related to the film sector, focusing on the new Cinema Law and its film incentive provision. The main shortcomings of the provision's design are identified. As the mentioned weaknesses were analysed within the framework of related laws and policies, in order to provide a comprehensive solution this chapter will propose two sets of recommendations:

1. General Recommendations: Providing clear definitions
2. Specific Recommendations:
 - a) Creating user-friendly promotional strategy
 - b) Benefiting from the EU accession period – Optional Cultural Test

These will be presented through two sections: Discussion of Recommendations and Policy Recommendations.

4.1. DISCUSSION OF RECOMMENDATIONS

Not yet being a member of the European Union, Serbia is still not obliged to comply with the EU law, meaning that it is still free to design and implement its film incentive system in accordance with its current laws. Therefore, it can benefit from the period of the EU admission process by implementing customised tests that do not necessarily have to meet the same requirements as those of the European countries. During this time Serbia should further proceed with the EU legal integration, while being able to examine through this period what kind of a model would meet its needs and objectives best. As it is, also, difficult to predict what provisions will be on force in the EU when Serbia becomes a full member, it would be wise to focus on the on-going accession period.

Prior to setting up any model, it is crucial that all related strategies (e.g. cultural, cinema, national branding...) be promptly but carefully designed with clearly stated objectives and results to be achieved. Once a member of the EU, as shown in the first chapter, Serbia will have to design a verifiable set of criteria for assessing cultural contribution of films prior to allocating them any aid, in accordance to national understanding of culture. With clearly defined objectives and using the experience and existing tests of member states that offer similar incentive, Serbia can design a cultural test that will best serve its interests. Additionally, all legal documents relevant for the sector must be free of any ambiguities or mutually conflicting provisions and must provide a clear and functional environment for all stakeholders (domestic or foreign natural or legal persons) to operate.

To pursue currently stated goal of improving country's image and positioning and promoting the national brand through the film incentive, Serbia should design a tailor-made cultural test, adopting only those categories that are relevant in the context of the new (current) law. The advantage of currently not being obliged to have the test is higher competitiveness against neighbouring EU countries that have it. Hence, the test should be optional. Here, a special attention should be given to certain limitations of the national culture, which is not being widely known or recognisable.

When designing a cultural test or the incentive strategy, policy makers should look into various existing national tests and strategies, while being careful to rely upon those whose models are applicable to the case of Serbia. Recommendations provided below are designed to overcome weaknesses identified and commented in the previous chapter, as per specific

needs of Serbia and based upon the analysis of the British, German and French cultural tests given in the second chapter.

4.2. POLICY RECOMMENDATIONS

1. General Recommendations

- Redefining cultural exception (Law on the State Aid Control, Article 5/4) to include culture and cultural heritage, instead of cultural heritage;
- Redefining “Cultural space of the Republic of Serbia” to Cultural area related to the Republic of Serbia” and precisely defining it (New Cinema Law, Sluzbeni glasnik RS 99/11, Article 4);
- Precisely defining what the national brand is and how it is to be used (Decree on the film incentive, Sluzbeni glasnik RS, 05 No: 110-1359/2011-1, Article 1);

2. Specific Recommendations

Creating user friendly promotional strategy

- Providing a comprehensive website and guideline that would offer information on all issues relevant for filmmakers (e.g. description of film funding in Serbia and existing incentives, guidelines for application, filming locations and other production and postproduction facilities available, info and contact details of Serbian stakeholders and professionals in the sector, info database of cultural content related to the Republic of Serbia, etc.);
- Providing an online info database of cultural content related to the Republic of Serbia, to introduce foreign filmmakers to unique elements of the national culture and cultural heritage that could be portrayed in films. For example:

- a) History of Serbia, including those of its national minorities, with highlights on events and persons important for a broader region or globally;
- b) Synopses of literal works written by authors from Serbia, or with a topic related to Serbia;
- c) Folklore heritage of Serbs and its national minorities that can be adapted for film (e.g. fairy-tales, epics, etc.) including Slavic mythology;
- d) Biographies of globally prominent persons from Serbia or related to Serbia (e.g. Nikola Tesla, Mileva Einstein-Maric, Marina Abramovic, etc.).

Benefiting from the EU accession period – Optional Cultural Test

- Designing an optional cultural test that would include the cultural content category;²²
- Designing two types of incentives for foreign films, where higher reimbursement percentage would be offered in case of taking the optional cultural test, as a motivation for foreign filmmakers to look for inspiration in Serbian culture and cultural heritage. Percentage increase to be determined proportionally to the percentage of the content related to Serbian culture, in accordance to the clear points system.

These would be useful initial steps towards familiarising with the usage of cultural tests and preparing for application of the European legal practice in this field. It would help in exploring possibilities for designing and managing different incentive schemes and qualifying criteria under the state aid rule. Moreover, policy makers would have a chance to examine potential and attractiveness of Serbian cultural content for foreign filmmakers, and design

²² At this point there would be no need for including other categories described earlier under European cultural tests. “Cultural hubs/Production” and “Practitioners/Creative talents” are already covered by the provision, since the reimbursement is given directly, on the basis of the overall eligible spending in the territory of Serbia, including payments of personal incomes.

most suitable points system in accordance.²³ Finally, Serbian culture would obtain a valuable promotional platform, while the national film industry would experience a long-term benefit from operating in new and improved framework.

²³ For example, whether the eligible content and contribution would be more national or both national and European.

CONCLUSION

The thesis addressed the issue of the lack of a cultural test for foreign feature films made in Serbia in accordance with the newly passed film incentive provision. The main aim was to identify crucial shortcomings of the current Serbian policy and legal regulatory framework, specifically focusing on the consequences of the lack of cultural tests, in order to provide a set of practical and easily applicable policy solutions. The analysis of the European legal and policy regulatory framework alongside individual national incentive systems and cultural tests of the United Kingdom, Germany and France, was conducted for the purpose of policy-learning process intended for Serbian sector-related law and policy-makers.

The Serbian regulatory framework related to the film industry was analysed and critically compared to those of the European union and assessed as per the same criteria - competition law and state aid provisions, while the specific focus was put upon the film incentive provisions, cultural tests and intertwining cultural objectives. It was shown that the Serbian legal framework, despite making evident progress towards complying with the EU law, still fails to provide reliable and consistent structure for stakeholders within the film and cultural policy. The main identified weaknesses refer to inadequate or ambiguous definitions of crucial concepts or laws and to the negative consequences of the lack of a cultural test, such as the lost opportunity to promote Serbian culture internationally and failing to use benefits of the EU accession period to practically examine what model would best serve country's interests.

The research revealed a complex problem of mutually unsupportive and conflicting objectives and provisions across intertwining policy fields. This could be a major obstacle for properly

applying and fully benefiting from specific instruments such is a cultural test. To create a functional environment for a cultural test to be applied, several urgent changes would be needed in the sectorial regulatory framework. It has, also, been shown that taking over a ready-made model of a cultural test from some of the European countries and applying it within current Serbian system, would not be possible or desirable at this moment. Beside from the problematic regulatory environment, specific characteristics of country's culture, such as not sufficient international recognition, would have to be taken into account.

To overcome these problems, a set of practical and immediately applicable customised policy recommendation has been proposed, including solutions intended for the general regulatory framework, and more specific solutions to be applied in relation to the new film incentive and a cultural test.

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