

An Insight into Selected Film Funding Systems

The following article:

Governance of Film Aid in South-East Europe

Legal basis, structural elements, aid criteria

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Foreword

Film aid is not only designed to promote creativity, but it can also be remarkably creative itself in terms of the way it is organised. This is presumably linked to the fact that the definition of common film aid objectives, such as the protection and promotion of cultural diversity and identity or state support for the national film industry, remains rather vague. What is culture? What is diversity? What is the basis of cultural identity? What exactly should and can state subsidies achieve? These questions are wrestled with first of all when the objectives of public film aid are defined. But they must also be answered whenever a decision on the distribution of national and European funding is taken on the basis of these objectives. The real challenge therefore lies in the need to lay down conditions for the granting of aid in advance, so that the decisions taken on that basis are at least practicable and help to achieve the objectives set out.

In order to identify possible or absolutely indispensable elements of such a system, it is useful to compare the different structures and aid criteria on which various aid mechanisms are based. How are film aid systems structured, how and according to what criteria are funded projects selected? Do they share any common characteristics? Do European mechanisms have any influence on the structure of national film aid? Are national systems bound by certain overriding rules?

We have already considered these questions in our IRIS *plus* “National Film Production Aid: Legislative Characteristics and Trends”, published in 2001. Then, as now, numerous different aspects were taken into account when deciding how funding should be distributed. These include not only the practical criteria used to select projects to be funded, but in particular the identity of the body responsible for distributing the aid, the decision-making procedure, and what exactly the aid is designed to achieve. Then, as now, compliance with the rules of the European Single Market played an important role in the structuring of national film aid. In the course of EU expansion, as well as the continuing increase in cooperation between the EU and certain South-East European states, the influence of EU film policy and EU competition law has gradually grown “geographically”. Until now, very little has been reported on this subject, which is why the aid systems in these countries have hardly been the focus of any attention at all. However, this gap has now been closed by the lead article of this IRIS *plus* and the additional overview provided by the Zoom section.

The fact that time does not stand still in other parts of Europe, and that aid systems continue to be important and debated regulatory instruments, is illustrated by the section of our report that draws attention to the relevant developments of recent months.

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Governance of Film Aid in South-East Europe

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I. Introduction

“In ... Europe, [film production] is like being in a zoo – you are kept in a cage but you have a roof over your head and someone feeds you every day; in the US, it is the jungle – you are free to go where you like but everyone is trying to kill you.”¹

This remarkable assessment by Milos Forman provides a wonderful introduction to the theme of this report – at least as far as the characteristics of film aid in Europe are concerned. The following questions are addressed: what does the roof consist of, how much food is there and how is it distributed? And, before all that: what constitutes the cage in which producers and other film professionals seem to think they are kept when they describe their protected existence?

The European Commission has noted that, as far as “audiovisual production” is concerned, cinematographic works are particularly important, firstly because of the high production costs and secondly on account of their cultural dimension. It considers that audiovisual media in general, and cinema in particular, play a vital role in developing the identity of European peoples in relation to both the common traits and the cultural diversity of countries, with their different traditions and history.² Films are, on the one hand, economic goods that generate considerable turnover in the European audiovisual market. This is demonstrated not least by the figure of around 961 million cinema admissions in Europe in 2010.³ On the other hand, however, films are also cultural goods that mirror and shape our society.

It is difficult for film producers to obtain all the funds they need to make a film from the market alone. As a result, EU member states, candidates and potential candidates for EU membership, and states linked to the EU through its Neighbourhood Policy support audiovisual production in their respective countries. Creators of cultural works should, to some extent, be exempt from the pressure to succeed commercially and be able to blossom in their creativity. Film aid programmes therefore exist in all European states, as well as at European level, to award grants to film projects

1) M. Forman, quoted in O. Castendyk, *Die deutsche Filmförderung*, Konstanz 2008, p. 11.

2) Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions of 26 September 2001 on certain legal aspects relating to cinematographic and other audiovisual works, COM(2001)534 final, OJ 2002, C 43, p. 3 (2001 Cinema Communication).

3) See European Audiovisual Observatory press release of 11 February 2011: “European cinema in 2010 – a year of mixed results”, available at: <http://www.obs.coe.int/about/oea/pr/berlinale2011pdf.pdf.en>

from funds that receive money from a variety of sources.⁴ National and European aid programmes complement each other insofar as they support different production phases or film categories. EU aid focuses on providing funding for the phases before and after the actual production (shooting), and the Council of Europe provides production, distribution and exhibition funding for European co-productions. In principle, there is nothing to prevent a combination of different aid mechanisms being applied at different levels.

It is therefore all the more beneficial for a producer to consider whether there are any common characteristics that make specific projects eligible for aid. In other words, are national film aid systems based on the same criteria and evaluation mechanisms as their European counterparts? The answer to this question also helps us to understand the level of consistency in our European understanding of culture.

Adopting some of the criteria and structures of European film aid programmes may be a (potentially useful) option for national film aid programmes. However, states are also obliged to comply with certain European provisions: for EU member states, the Commission's state aid decisions regularly refer to this obligation. The European Convention on Human Rights also contains some relevant principles. National film aid programmes must therefore be structured in such a way that they respect EU and Council of Europe rules. This certainly applies to EU or Council of Europe member states, as well as the candidate countries from South-East Europe, which need to implement EU law in order to become members themselves. Acceptance of the Community/Union *acquis* is also a condition of access to funds from EU film aid programmes.

This IRIS *plus* deals with both aspects: it investigates firstly the extent to which binding European legislation is embraced by national film aid programmes, and secondly, what selection criteria and structures are common to national and European film aid programmes. Of course, the latter aspect requires a detailed explanation of national film aid programmes in particular.

For this reason, we will examine different national film aid systems in nine South-East European states,⁵ putting them in the spotlight for the very first time.⁶ We begin by providing an overview of the relevant European regulatory framework and the most important EU and Council of Europe film aid programmes (II.). The film aid systems of various South-East European states are then described in detail, with particular attention paid to the existing legal basis, structural elements and aid criteria, as well as practical implementation of these mechanisms (III.). Conclusions are then drawn (IV.).

II. Film aid rules and trends in Europe

The structure of national film aid systems in Europe is shaped by certain binding rules laid down by the European Union and the Council of Europe. In some cases, it is also inspired by the structure of European aid programmes.

4) See K. Schaefer/J. Kreile/S. Gerlach, "Nationale Filmförderung: Einfluss und Grenzen des europäischen Rechts", *ZUM* 2002, p. 182. The European Audiovisual Observatory's KORDA database, available at <http://korda.obs.coe.int>, provides a good overview of aid mechanisms throughout Europe.

5) Our analysis is deliberately limited to direct financial aid for the film sector. National measures to support film-making projects through tax incentive schemes or other indirect support mechanisms are not covered by this report. For information about fiscal aspects of film aid, see also H. Bermek, "The Impact of EC Law on the Taxation of the European Audiovisual Industry", IRIS *plus* 2007-12, p. 2 *et seq.* (all quoted editions of IRIS *plus* are available at: http://www.obs.coe.int/oea_publ/iris/iris_plus/index.html).

6) The following publications from the IRIS *plus* series are among those that have dealt with film aid: F. Cabrera Blázquez, "Public Aid for Digital Cinema", IRIS *plus* 2010-2, p. 7 *et seq.*; A. Herold, "European Public Film Support within the WTO Framework", IRIS *plus* 2003-6, p. 44 *et seq.*; S. Nikoltchev/F. Cabrera Blázquez, "National Film Production Aid: Legislative Characteristics and Trends", IRIS *plus* 2001-4, p. 2 *et seq.*; see also European Audiovisual Observatory (ed.), *Broadcasters' Obligations to Invest in Cinematographic Production*, IRIS *Special*, Strasbourg 2006.

1. European Union

1.1. General

The European Union plays a dual role in relation to support for the film industry. On the one hand, it assists the film industry through its own programmes (MEDIA 2007 and MEDIA Mundus, see II.1.3). On the other, it controls national aid systems through state aid law and fundamental freedoms, ensuring they are compatible with European legislation (see II.1.2). The EU must fulfil both tasks in accordance with European cultural policy, which requires it to take cultural aspects into account when organising the European Single Market and, in view of the member states' primary responsibility for cultural activities, to exercise a certain restraint in its pursuit of cultural objectives.

Article 167 TFEU is important for cultural policy in its broader sense.⁷ Its object and purpose is to set out, as well as to limit, the Union's competence in the cultural field. Article 167(1) TFEU states that:

"The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore."

Article 167(4) TFEU requires the Union to take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures. The meaning of "cultural aspects" in this context is limited to the cultural areas mentioned in Article 167(2) TFEU. Under this provision, the EU particularly promotes and supports the member states in their activities linked to "artistic and literary creation, including in the audiovisual sector" (4th indent), and supplements these activities. EU measures also affect media that disseminate cultural content by audiovisual means;⁸ this particularly includes the film sector. According to Article 167(5) TFEU, however, the Union is not empowered to take measures that harmonise the laws and regulations of the member states. Article 167 TFEU therefore prevents the EU from interfering with the legal structure and organisation of national film aid programmes.

Meanwhile, the UNESCO Convention on Cultural Diversity⁹ is exerting a growing influence on EU cultural policy and, therefore, national film policy also. The Convention has been ratified by the EU and its member states, as well as all the other countries studied in this report. One of its main objectives is to reaffirm the member states' right to maintain measures required to protect and promote the diversity of cultural expressions (see Art. 1(h)). It covers "film aid", *inter alia*, in Article 6(2), although it does not explicitly mention it. In its various guises, film aid is nevertheless clearly part of the "measures aimed at protecting and promoting diversity of cultural expressions" (Art. 6(2)(a)), which each party may adopt within the framework of its cultural policies (Art. 6(1)). It is also obligatory to respect the Convention when taking measures at EU level. In a way the Convention concretises Article 167(4) TFEU which calls for consideration of cultural aspects. In this sense, it could be argued that all state measures listed in the Convention should be considered *prima facie* as legitimate and that the Commission should, in principle, not be able to reject them.¹⁰

7) For further information on this and EU competition policy in the audiovisual sector in general, see L. Mayer-Robitaille, "Application of EC Competition Policy regarding Agreements and State Aid in the Audiovisual Field", IRIS *plus* 2005-10, p. 2, 6; and (including in relation to tax incentives) J. Broche/O. Chatterjee/I. Orsich/N. Tosics, State aid for films – a policy in motion?, in: *European Commission, Competition Policy Newsletter 1/2007*, available at: http://ec.europa.eu/competition/publications/cpn/2007_1_44.pdf

8) See, for example, Decision No 1855/2006/EC of the European Parliament and of the Council of 12 December 2006 establishing the Culture Programme (2007 to 2013), OJ 2006, L 372, p. 1, which is based on the former Article 151 of the EC Treaty (now Art. 167 TFEU).

9) Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005. See also T. McGonagle, "New Convention on Diversity of Cultural Expressions", IRIS 2005-10/1 (all articles from IRIS – *Legal Observations of the European Audiovisual Observatory* can be found in the IRIS Merlin database: <http://merlin.obs.coe.int>). The Convention text is available at: <http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>

10) V. Wiedemann, "Ein Kyoto-Protokoll für die Kultur – Die UNESCO-Konvention zur kulturellen Vielfalt", *ARD-Jahrbuch* 2007, p. 23, 26. See also T. McGonagle, "The Promotion of Cultural Diversity via New Media Technologies: An Introduction to the Challenges of Operationalisation", IRIS *plus* 2008-6, p. 6 *et seq.*

1.2. EU law and national film aid

The compatibility of national aid systems with EU law is analysed firstly in relation to fundamental freedoms and, secondly, under the terms of European state aid law, which is interpreted in Commission decisions. In both cases, the aforementioned cultural aspects and the member states' responsibility for cultural affairs must be taken into account.

a) *Fundamental freedoms*

Depending on its structure, a national film aid programme can come into conflict with fundamental freedoms, particularly on the grounds of the aid criteria that are applied. The freedom to provide services (Art. 56 *et seq.* TFEU) or the freedom of establishment (Art. 49 *et seq.* TFEU) are affected, for example, if a member state stipulates that the main participants in a project (producer, director, principal actor, cameraman, etc.) must be citizens or residents of the state concerned. Residency requirements for others, who are often involved in the film-making process as employees rather than independently (actors in supporting roles, technicians, set designers and make-up artists), may restrict freedom of movement for workers (Art. 45 *et seq.* TFEU). The free movement of goods (Art. 28 *et seq.* TFEU) is affected if a film aid system requires goods used in a production (technical equipment, props) to be bought in the country concerned. The free movement of capital (Art. 63 *et seq.* TFEU) may also be restricted if a member state lays down rules governing financial instruments, such as securities to protect aid, or in relation to the origin or other characteristics of other funds that are required for the production.

However, the fact that protection of these fundamental freedoms is affected does not necessarily mean that such aid criteria are unlawful. Rather, it depends, in each individual case, whether there are sufficient grounds to justify such measures. If there are, the states are free to structure their film aid mechanisms as they choose. As well as the grounds for justification laid down in the TFEU Treaty (such as the protection of national cultural treasures in Article 36 TFEU in relation to the free movement of goods), EU case law indicates that fundamental freedoms may be restricted in order to serve overriding requirements relating to the public interest.¹¹ Restrictions must also comply with the proportionality principle, i.e. be suitable for the attainment of the objective which they pursue and not go beyond what is necessary in order to attain it.¹² For example, rules on the nationality of actors contained in national aid criteria could restrict the free movement of workers, but may still be justified if they pursue cultural policy objectives. With regard to the free movement of services or capital, a national rule requiring a certain proportion of the aid to be spent on national territory may be necessary in order to protect national cultural interests such as the preservation of the national cultural industry.¹³

Acceptable cultural policy reasons may also relate to linguistic aspects, e.g. the protection of a language other than the main language used in a country. In the *UTECA* case, the ECJ ruled that a Spanish regulation requiring television operators to invest 5% of their annual revenue in the pre-funding of European cinematographic films and films made for television (60% of which had to be invested in productions in an official language of Spain) represented a restriction of the free movement of people and capital. However, the Court ruled that this measure was admissible because it was justified by the aim of protecting and promoting one or more of Spain's official languages. It therefore did not infringe EU fundamental freedoms.¹⁴

11) See the ECJ's landmark judgment of 20 February 1979, case 120/78, *Cassis de Dijon*, ECR 1979, p. 649.

12) See ECJ judgment of 17 October 2002, case C-79/01, *Payroll Data Services*, ECR 2002, p. I-8923, para. 28.

13) The Commission also takes this into account in its Cinema Communication by accepting that a member state may require a producer to spend up to 80% of the aid granted on national territory (see below II.1.2 b)).

14) ECJ judgment of 5 March 2009, case C-222/07, *UTECA*, para. 21-40.

b) State aid control

Since film production is a field in which people demonstrate cultural creativity, it is undoubtedly part of the cultural sector.¹⁵ The economic provisions of the TFEU,¹⁶ including state aid rules, also apply to cultural matters.

The Commission regularly categorises national film aid systems as state aid in the sense of Article 107(1) TFEU.¹⁷ According to Article 107(3)(d) TFEU, it can authorise aid to promote culture and heritage conservation.¹⁸ Article 107(3)(c) TFEU allows aid to facilitate the development of certain economic areas, but excludes direct operational aid (for specific projects).¹⁹ For national film aid systems, this means that the Commission must check during the notification process whether the system's structure meets these requirements of Article 107(3) TFEU. The rules may serve as basis for the funding of specific projects provided that they are admissible.

In its "first" Cinema Communication of 2001, the Commission requires aid mechanisms to meet four specific criteria, as well as be compatible with general EU law (e.g. fundamental freedoms). These criteria must be cumulatively met for national film aid to comply with Article 107(3)(d) TFEU:²⁰

- "1. The aid is directed to a cultural product. Each Member State must ensure that the content of the aided production is cultural according to verifiable national criteria (in compliance with the application of the subsidiarity principle).
2. The producer must be free to spend at least 20% of the film budget in other Member States without suffering any reduction in the aid provided for under the scheme. In other words, the Commission accepted as an eligibility criteria territorialisation in terms of expenditure of up to 80% of the production budget of an aided film or TV work.
3. Aid intensity must in principle be limited to 50% of the production budget with a view to stimulating normal commercial initiatives inherent in a market economy and avoiding a bidding contest between Member States. Difficult and low budget films are excluded from this limit. The Commission considers that, under the subsidiarity principle, it is up to each Member State to establish a definition of difficult and low budget film according to national parameters.
4. Aid supplements for specific filmmaking activities (e.g. post-production) are not allowed in order to ensure that the aid has a neutral incentive effect and consequently that the protection/attraction of those specific activities in/to the Member State granting the aid is avoided."

15) G. Ress, "Die Zulässigkeit von Kulturbeihilfen in der Europäischen Union", in: Ranzelzhofer/Scholz/Wilke (ed.), *Gedächtnisschrift für Eberhard Grabitz*, Munich 1995, p. 622 *et seq.*

16) For discussion of this, see H. Geier, *Nationale Filmförderung und europäisches Beihilfenrecht*, Baden-Baden 2006, p. 26 *et seq.*

17) See, *inter alia*, the Commission's decisions of 16 July 2008, C(2008)3542, N 233/08 – Latvia, Latvian film support scheme, and 10 June 2008, C(2008)2608, N 214/08, United Kingdom, Second Extension of the Northern Ireland Film Production Fund.

18) Article 107(3)(d) TFEU is a practical expression of the need to take cultural aspects into account in the sense of Article 167(1) TFEU; see the Commission's 1st report on the consideration of cultural aspects in European Community action of 17 April 1996, COM(96)160 final, p. 2 *et seq.*

19) For example, financial incentives for the modernisation of film projection (such as in the form of projection or cinema equipment) are covered by Article 107(3)(c) TFEU, see Commission decision of 26 November 2008, NN 70/2006 – Finland, para. 87 *et seq.*

20) 2001 Cinema Communication, (footnote 2), para. 2.3.b). The Communication is based on a Commission decision of 3 June 1998, State aid N 3/98, concerning the French film aid scheme of the CNC in 1998. The validity of the Communication has been extended until 31 December 2012; see Commission press release IP/09/138 (2009 extension).

In the first criterion, the Commission recognises the member states' primary competence for cultural affairs and allows them to adopt their own definition of a "cultural product".²¹ In principle, it only verifies that the selection test used to check the cultural content of the aided film is free from any "manifest error".²² In order to meet this requirement, it is sufficient, for example, to examine the professional ability and reputation of the project's initiators and creative participants, and the film's potential contribution to national culture and creativity, during the selection process.²³ It is also sufficient if the national cultural value and the national artistic and creative input are taken into account when deciding which films to support²⁴ or if films are selected by a committee on the basis of predominantly cultural criteria.²⁵ The member states are also entitled to limit their film aid to certain types of film and audiovisual work. However, they may not include genres such as commercials and pornographic films.²⁶ They may also include aid criteria linked to the original language version of the film.²⁷

Territorial restrictions, as described in the second criterion of the Cinema Communication, are allowed, in principle, since they are likely to promote the development or preservation of the infrastructure, specialists and know-how necessary for film production in the country concerned. However, they may not go beyond what is necessary and proportional, as the support would otherwise no longer be categorised as cultural aid, but industrial aid.²⁸ Therefore, no more than 80% of production subsidies must be earmarked for use in the country concerned.

The Commission is currently examining whether the Communication needs to be adapted to the present situation.²⁹

1.3. EU film aid programmes

The MEDIA 2007 programme³⁰ is the main channel for EU support for audiovisual works. Its global objective is to enhance intercultural dialogue, mutual understanding and awareness of European cultures.³¹ In order to fulfil these tasks, the programme has a total budget of just under EUR 755 million for the whole seven-year period.

21) See 2001 Cinema Communication, (footnote 2), para. 2.3.b), (1).

22) Under the German *Filmförderungsgesetz* (Film Aid Act - FFG 2010), the following cultural criteria must be met if aid is to be granted to a feature-length film. In addition to the initial requirement of Article 15(1)(5), under which the film must have an artistic or historical theme, at least three of the eight criteria listed in Article 15(1)(6) must be fulfilled. Three of these criteria are designed to ensure that the original screenplay, subject-matter, storyline, the work on which the film is based, and the final version of the supported film has a cultural or specific connection with the German or European culture or language area (Art. 15(1)(6)(b), (c) and (d)). Another three criteria state that the storyline or work on which the film is based should be founded on a literary work or deal with minorities, scientific themes or natural phenomena, or that the film should tackle social, political or religious issues in society in a documentary way (Art. 15(1)(6)(e), (f) and (g)). The other two criteria concern the first screening in German and the production of an audio description (Art. 15(1)(6)(a) and (h)).

23) Commission decision of 18 August 1999, N 49/97 and N 357/99, Irish tax incentives for investments in film production, Section 35/481, para. 3.11.

24) Commission decision of 25 September 2000, N 237/2000, Irish film aid, p. 6.

25) Commission decision of 16 December 2003, N 513/2003, Austrian television film aid, para. 17.

26) Commission decision of 27 January 2010, N 587/2009, Spanish national film support scheme, para. 11 *et seq.*

27) See Commission decision of 27 January 2010, *op. cit.*, para. 11 and 39; the original version of the film must, in principle, be one of the official languages of Spain.

28) See 2001 Cinema Communication (footnote 2), para. 2.5. See also the final report on the territorialisation study (*Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audiovisual productions*), available at: http://ec.europa.eu/avpolicy/docs/library/studies/territ/final_rep.pdf; and M. D. Cole, "Klein, aber fein: Luxemburgs Filmförderung im Herzen Europas", in: Kleist/Roßnagel/Scheuer (ed.), *Europäisches und nationales Medienrecht im Dialog*, volume 40 of the *EMR-Schriftenreihe*, Baden-Baden 2010, p. 407, 422 *et seq.*, on the compatibility of Luxembourg's territoriality clause with European law.

29) At the seminar "From the AVMS Directive to the Cinema Communication: towards a global and coherent approach for European cinema", held from 4 to 6 July 2010 (http://www.audiovisuel.cfwb.be/index.php?id=avm_mons2010fr), the Minister of the French Community of Belgium, Fadila Laanan, speaking within the framework of the Belgian Presidency of the EU Council, suggested that the scope of the Cinema Communication should be extended to areas other than film production alone and that greater emphasis should be placed on the cultural aspects of film aid.

30) Decision No. 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007), OJ 2006, L 327, p. 12-29.

31) The actual objectives of MEDIA 2007 are listed in Article 1 of Decision No. 1718/2006/EC. A comprehensive overview is available on the information portal http://ec.europa.eu/culture/media/programme/overview/index_en.htm

Participation in MEDIA 2007 is open to a large number of European countries.³² Of the countries covered in this study, only Croatia, along with EU member states Bulgaria, Romania and Slovenia, is a full member of MEDIA 2007. For the other EU candidate country, Macedonia, access to the programme depends on the adaptation of national legislation to the Union *acquis*; the same more or less applies to the potential candidates Albania, Bosnia-Herzegovina and Serbia. Moldova, which cooperates with the EU in the framework of the European Neighbourhood Policy, needs to ratify the Council of Europe's Convention on Transfrontier Television³³ before it can participate.

Projects and productions eligible to receive funding include those that foster creativity and strengthen the structure of the European audiovisual sector (particularly SMEs). The detailed (formal) criteria and the number and weighting of points available in the different categories are published in the annual work programme.³⁴ The criteria particularly include the applicant's ability to produce at a European level, the quality of the project and of the development strategy, the quality of the financing and distribution strategy, the potential of the creative team and the potential for European and international distribution of the supported project.

The following rules for MEDIA 2007 are particularly significant because they correspond firstly with the aforementioned criteria of EU state aid law, and secondly – as we will see when we examine national systems in South-East Europe – with exclusion criteria adopted in those countries:³⁵

- Works that promote violence or with racist or pornographic content, live programmes, game and talk shows, so-called reality shows and “docu-soaps”, as well as documentaries promoting tourism, “making-of” programmes, animal programmes and news programmes are ineligible.
- All projects that are directly or indirectly at odds with the policies of the European Union, particularly if they are contrary to the interests of public health (e.g. with regard to alcohol, tobacco or drugs), human rights or freedom of expression, are also ineligible.
- The funds allocated by the MEDIA programme should not normally exceed 50% of the actual cost of the project.

Alongside this programme is the MEDIA Mundus programme, which was created in 2009³⁶ to increase cooperation between the European audiovisual industry and that in third countries. To this end, it promotes exchanges between European and third-country professionals,³⁷ as well as funding projects for international cooperation in the audiovisual sector.³⁸ In order to achieve these objectives, the programme provides EUR 15 million of aid over its three-year lifespan.

32) See Article 8 of Decision No. 1718/2006/EC.

33) European Convention on Transfrontier Television of 5 May 1989 (ETS No. 132), amended according to the provisions of the Protocol of 1 October 1998 (ETS No. 171). It is questionable whether ratification of this Convention, which is expressly mentioned in Article 8 of Decision No. 1718/2006/EC, can still, in practice, be required as a condition of participation in MEDIA 2007. Following the second amendment of the Television Without Frontiers Directive (now the AVMS Directive) at the end of 2007, and its extension to non-linear services, firstly the scope and regulatory content of the two instruments are no longer predominantly identical. Secondly, in the European Commission's view, the AVMS Directive prevents the EU member states from ratifying the revised version of the Convention (which was designed to be brought into line with the Directive), as *inter alia* expressed by Commissioner Kroes towards the Secretary General of the Council of Europe, see http://www.coe.int/t/dghl/standardsetting/media/t-tt/default_EN.asp

34) For 2011, see *Annual Work Programme 2011*, available at: http://ec.europa.eu/dgs/education_culture/calls/docs/c_2010_5756.pdf

35) Commission, Guidelines to the Call for Proposals EACEA 25/2010, Support for the Development of Single Projects, p. 8, available at: http://ec.europa.eu/culture/media/programme/producer/develop/single/docs/25_2010/25_10_guidelines_sp_en.pdf

36) Decision No. 1041/2009/EC of the European Parliament and of the Council of 21 October 2009 establishing an audiovisual cooperation programme with professionals from third countries (MEDIA Mundus), OJ 2009, L 288, p. 10-17.

37) According to the definition in Article 3(1) of Decision No. 1041/2009/EC, the concept of “European professional” includes not only nationals of EU member states, but also a host of other people from states linked to the EU in a variety of different ways.

38) The objectives of MEDIA Mundus are set out in Article 1 of Decision No. 1041/2009/EC.

Support is available for projects that are proposed and implemented jointly by European and third-country professionals. Of the countries covered by this article, Albania, Bosnia-Herzegovina, Macedonia, Moldova and Serbia are currently categorised as third countries for the purposes of the programme. The eligibility criteria for aid include the quality and experience of the applicant, a comprehensible methodology and the cost efficiency of the project. Submitted projects should also have short- and medium-term effects on the professionalism of the participants and lead to sustainable international network effects.

The funds allocated as part of the programme may not exceed 50% (80% in exceptional cases) of the actual costs of the project to be funded.

The Education, Audiovisual and Culture Executive Agency is responsible for launching individual calls for proposals for MEDIA 2007 and for formally evaluating submitted projects. From 2012, it will also be responsible for MEDIA Mundus aid. The Commission appoints individual experts to conduct a preliminary assessment of the projects. A Commission committee, which includes a representative of every member state, then normally decides whether to grant aid to the proposed projects.

Requirements with regard to the explanation of decisions on the granting of aid can be deduced from a judgment of the Court of First Instance (now General Court – EGC). Referring to a Commission decision refusing to grant financial support, the EGC ruled that the legality of a decision should be assessed not only in the light of its wording, but also of its context. If – as in this particular case – approximately 84% of a total of 577 applications were rejected, the Commission could not be expected to give detailed reasons for every individual decision. This would significantly slow down the process of awarding funds.³⁹

2. Council of Europe

2.1. General

The Council of Europe also supports the preservation and development of (audiovisual) culture. Primarily through recommendations and conventions, it influences member states' cultural policies and, therefore, the structure of national film aid mechanisms. "Cinematographic freedom", including the "freedom of film aid", is also protected under Article 10 of the European Convention on Human Rights. The Council of Europe also promotes audiovisual productions through funding from the *Eurimages* programme. Once again, our study begins by considering aspects of the political and regulatory instruments that have an impact on national film aid. We then investigate whether the Council of Europe's aid initiative is based on criteria that are relevant to the mechanisms in South-East Europe and that may therefore form part of those mechanisms.

2.2. Political and legal framework

In general, film production aid in European countries represents an important element of the Council of Europe's cultural policy. For example, Recommendation CM/Rec(2009)7 of the Committee of Ministers⁴⁰ encourages member states to adapt their national film policies to technological and cultural changes, to optimise the use of resources in order to strengthen distribution, and to improve public access to films. The appendix to the Recommendation contains seven proposals for the improvement of national film policies. These concern, for example, the development of a comprehensive approach to film policies, the consideration of film development and production, and transparency and accountability.

39) General Court of the European Union, judgment of 9 July 2002, in case T-333/00, *Rougemarine*, ECR 2002, p. II-2983, para. 43, 44.

40) Recommendation CM/Rec(2009)7 of the Committee of Ministers of 23 September 2009 on national film policies and the diversity of cultural expressions.

To date, the European Court of Human Rights (ECtHR) appears not to have taken any decisions on the (in)admissibility of European and national film aid programmes. However, in the *Wingrove* ruling, it decided that the ban on selling a blasphemous and sexually offensive film on video cassette was necessary and proportionate in a democratic society and therefore did not violate Article 10 of the European Convention on Human Rights.⁴¹ It can be concluded from this that Article 10 of the European Convention on Human Rights does not stand in the way of film aid programmes in which films with such content are ineligible to receive support.

It can also be noted that the ECtHR has found fault with a national procedure on the licensing of radio broadcasters.⁴² It ruled that the responsible authority had neglected its obligation to hold a public hearing and had kept its deliberations secret in the relevant licensing procedure. The authority had also merely stated that the applicant had failed to meet the necessary criteria, without explaining its decision any further. This represented a breach of Article 10 of the European Convention on Human Rights, which could not be justified under Article 10(2) of the Convention. The requirement set out in this judgment for transparent proceedings and for reasons to be given for administrative acts can also be applied to national procedures for the granting of film aid. Member states are obliged to ensure that their aid distribution procedures meet the demands of the Convention.

2.3. Film aid programme: Eurimages

The Council of Europe's main film aid programme is the *Eurimages* programme.⁴³ The purpose of this fund is to support the European film industry, particularly by strengthening film production and distribution. The programme currently has 35 members, including all the countries covered in this study with the exception of Moldova. In order to achieve its objectives, *Eurimages* supports co-productions by at least two producers from at least two member states, film distribution, the digitisation of works supported by *Eurimages*, and cinemas in general.⁴⁴ In previous years, the fund has distributed an average of around EUR 21 million of aid each year. The *Eurimages* Board of Management, in which every member state is represented, is responsible for organising the fund, laying down selection criteria and deciding which projects should be supported. It takes these decisions by a two-thirds majority of the votes cast, whereby this majority must represent at least half of the member states' contributions to the *Eurimages* fund. The Secretariat, which reports to the Secretary General of the Council of Europe, acts as secretary of the fund (preparing meetings, implementing decisions).

In terms of artistic criteria, the Board of Management assesses the quality of the screenplay and its potential, as well as the contribution of producers, authors and cast members, including their experience and track record. With regard to production, the project's potential to be distributed as widely as possible and to reach a large audience is crucial. Projects of a blatantly pornographic nature, advocating violence or inciting to a violation of human rights are ineligible.⁴⁵

41) ECtHR, judgment of 25 November 1996, *Wingrove v. UK*, No. 17419/90, para. 35 *et seq.*

42) ECtHR, judgment of 11 October 2007, *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, No. 14134/02, para. 50 *et seq.*; see also D. Voorhoof, "Case of Glas Nadezhda EOOD and Elenkov v. Bulgaria", IRIS 2008-1/1.

43) Committee of Ministers Resolution (88) 15 of 26 October 1988, Setting up a European Support Fund for the Co-Production and Distribution of Creative Cinematographic and Audiovisual Works ("Eurimages"), available at: http://www.coe.int/t/dg4/eurimages/Source/2003REVResolution8815amended_en.pdf

44) Just under 90% of the overall budget is used to support co-productions. For a detailed list of funds granted, see http://www.coe.int/t/dg4/eurimages/History/Coproduction/default_en.asp (regarding support for co-productions) and http://www.coe.int/t/dg4/eurimages/History/Distribution/default_en.asp (regarding distribution aid).

45) See also the current regulations on the granting of aid, available at: http://www.coe.int/t/dg4/eurimages/Source/Regulations/RegulationsCoprod2011_EN.pdf

III. Film aid in individual states

The national film aid systems of selected South-East European states are described below.

1. Albania

1.1. Legal basis

The legal basis for film aid in Albania⁴⁶ is the *Ligji për Kinematografinë* (1996 Cinematography Act no. 8096).⁴⁷ The Act establishes the basis and principles for the organisation, supervision and development of the film industry, including state financial support. In relation to this support, the Act defines the tasks and functions of the relevant authorities and sources of funding.

1.2. Structural elements

The *Qendra Kombëtare e Kinematografisë* (National Film Centre),⁴⁸ which reports to the Ministry of Tourism, Culture, Youth and Sport, is the body responsible for monitoring the application of the Act and for the development of the film industry.

The Centre comprises a director and three committees (for fiction, documentaries and animation). The professional associations of film-makers elect the members of each committee for a two-year term. They are responsible for examining and selecting projects to be funded. A finance committee investigates the financial aspects of each project that is submitted. There are also committees for the classification of audiovisual works (in accordance with youth protection laws).

The Centre's director is appointed for a four-year term by the Council of Ministers at the proposal of the Ministry of Culture. He is authorised to revoke the decisions of the committees.

The amount of funding available for film aid is determined annually together with the general state budget. Additional revenue is generated by the sale and distribution of supported works, as well as sponsorship and donations.

1.3. Criteria for the granting of aid

State funding should, in principle, be used to support the production of Albanian films. In order to guarantee this, essential elements of the production should be Albanian-owned; however, no precise criteria are laid down.

Applications may be submitted twice a year, before deadlines laid down by the National Film Centre. In principle, all film-makers are entitled to participate. However, production companies may only submit one (for the feature film category) or two projects (for short films, documentaries, animations and other categories) each time.

The National Film Centre statutes lay down the following funding criteria: at least two of the main originators of the project must be Albanian citizens, and filming should take place in Albania. Exceptions can be made in particular circumstances with regard to the location of filming, although these must be justified in the application. In addition, an Albanian-language version of the production must be available.

46) This description of film aid in Albania is based – unless otherwise indicated – on the Albanian national report by I. Londo (Albanian Media Institute) as part of the study *"The Media in South-East Europe – Comparative Media Law and Policy Study"*, EMR/FES (ed.) 2011 (to be published soon).

47) Details of the sources of information about national laws can be found in the Zoom section *"Overview of Available Film Aid Systems in South-East Europe"* of this IRIS *plus*.

48) The Centre's Albanian-language website is available at: <http://www.nationalfilmcenter.gov.al>

The statutes state that funding is not available for productions that threaten public security, promote violence, incite hatred or discrimination on grounds of race, or harm human dignity and honour.

1.4. Practical application

During its 14 years of existence, the Albanian film aid scheme has supported 29 feature films, 17 short films, 63 documentaries and 42 animations with a total sum of around EUR 5.8 million. Feature films received an average of EUR 145 000 each and documentaries EUR 10 000.

In the past, critics have complained about the lack of transparency in the application of the criteria and the Film Centre's failure to announce which projects have been selected. Following the appointment of a new director in 2010, the Film Centre now regularly publishes the titles of funded projects, as well as details of the amount of aid granted.⁴⁹

2. Bosnia-Herzegovina

2.1. Legal basis

Bosnia-Herzegovina⁵⁰ consists of two largely autonomous constituent states, the Federation of Bosnia-Herzegovina and the Republika Srpska. There is no joint national law on film aid.⁵¹

The Ministry of Culture and Sport of the Sarajevo canton of the Federation of Bosnia-Herzegovina founded the *Fondacija za kinematografiju Sarajevo* (Sarajevo Film Fund), which supports film production, in 2002.⁵²

2.2. Structural elements

The Sarajevo Film Fund is run by an award committee and a president. Aid is granted in the form of subsidies by means of a public tendering procedure and a 30-day competition. During this period, additional special committees meet to examine the applications and give their opinions. The award committee then takes the final decision on funding. The annual budget of the Sarajevo Film Fund is EUR 1 million.

2.3. Criteria for the granting of aid

The Sarajevo Film Fund supports the production and distribution of feature, short and documentary films and helps to finance institutions such as the film archives and association of film-makers.

In principle, any project that is submitted and implemented by a production company established in Bosnia-Herzegovina is entitled to participate in the tendering procedures. Film-makers from the Republika Srpska can also apply; however, no application has ever been received from this part of the country.

In qualitative terms, aid is available for projects with appropriate aesthetic and cultural value, which contribute to the development of the cultural diversity and identity of Bosnia-Herzegovina,

49) A detailed list, organised by genre, can be found at:

http://www.nationalfilmcenter.gov.al/index.php?option=com_content&view=category&layout=blog&id=36&Itemid=53

50) This description of film aid in Bosnia-Herzegovina is based – unless otherwise indicated – on information provided by E. Tataragic (Association of Film Producers of Bosnia-Herzegovina).

51) Since 2009, the Republika Srpska has had its own law on the film industry, the *Zakon o kinematografiji Republike Srpske*; the Sarajevo canton adopted the *Zakon o filmskoj djelatnosti* in 2001.

52) The Ministry of Culture and Education of the Republika Srpska founded the *Filmski Centar Republike Srpske* (Film Centre) in 2009. However, this has not yet begun to operate.

and whose original language is Bosnian, Croatian or Serbian. In addition, the financial contribution of producers from Bosnia-Herzegovina must comply with the regulations of the *Eurimages* programme (a minimum of 20% of the total film budget) if the project is to be considered “national”. The producer must have fulfilled any obligations derived from successful participation in previous Film Fund tendering procedures.

Furthermore, the amount of aid granted may not exceed 17% of the project’s total budget.

2.4. Practical application

Critics complain that the EUR 1 million of funding available can only make a small contribution to film production. Another problem, they argue, is that the competition for grants only takes place once a year. The association of film-makers is therefore trying to push through changes to the award procedure.

In 2010, two feature films (one with EUR 250 000 and the other with EUR 150 000), three animated films, four documentary films and two regional co-productions received financial support.

3. Bulgaria

3.1. Legal basis

Film aid in Bulgaria⁵³ is essentially based on the *Закон за филмовата индустрия* (Cinematography Act) of 19 November 2003.⁵⁴ The Act regulates the state film aid system and is designed to promote the recognition of cinematographic works as cultural treasures and to create incentives for the production, distribution and screening of films.

3.2. Structural elements

The *Национален Филмов Център* (National Film Centre),⁵⁵ which reports to the Ministry of Culture, is responsible for the administration of the state film aid scheme.

State aid covers the production of Bulgarian films and projects resulting from co-production agreements with other states or Bulgarian television operators. Support is also available for projects such as script-writing, etc.

The *годишния Закон за държавния бюджет* (Bulgarian Budget Act) determines the annual budget for the fund, most of which is provided by the Ministry of Culture. Other sources of income for the fund include fines, the exploitation of supported productions and donations. Under Article 17 of the Cinematography Act, the budget is calculated according to the previous year’s average budget for seven feature films, 14 documentaries and 160 minutes of animation. This is supplemented by Bulgaria’s membership contributions to international film-related organisations, funds and programmes, and an amount to cover the authority’s administration. According to these provisions, the National Film Centre calculates how much it needs and submits a corresponding application to the Ministry for approval. The Ministry of Culture has announced that the annual sum available between 2011 and 2013 will not exceed EUR 4.6 million.

The Film Centre’s Artistic Committee selects the projects to be funded. It comprises nine members, eight of whom are appointed for a one-year term by the relevant professional associations and government organisations, and one by the Film Centre itself. The Finance Committee proposes

53) This description of film aid in Bulgaria is based – unless otherwise indicated – on the Bulgarian national report by E. Nikolova (attorney at law) as part of the study “The Media in South-East Europe – Comparative Media Law and Policy Study”, *op. cit.* (footnote 46).

54) See O. Kirkorian-Tsonkova, “Copyright Protection in Media Regulation”, IRIS 2011-1/12.

55) The Centre’s website is available in Bulgarian and English at: <http://www.nfc.bg/>

the level of funding to be awarded. Four of its seven members are appointed by professional associations and non-governmental organisations, while the other three are chosen by the public broadcaster, the Ministry of Culture and the Film Centre itself. The final decision on funding is taken by the Film Centre's Chief Executive Officer.

3.3. Criteria for the granting of aid

Aid is available to producers who are listed in the relevant Film Centre register and who have no financial obligations towards the Centre itself or the state.

The Bulgarian fund supports feature, documentary and animation films. Funding is also available for films and reports on events and public holidays of national importance, and people who are famous at national level. Projects that incite violence or religious, racist or ethnic intolerance, as well as those which contain pornography, are ineligible.

Article 27 of the Cinematography Act lays down the eligibility criteria for aid. Decisive factors for a project to be accepted are its artistic potential in the context of European cultural diversity, its potential for international distribution and recognition, and the experience and track record of its producers and originators.

The fund provides a maximum of 50% of the budget of supported films, with the exception of feature films with a small production budget, of which up to 80% of the costs can be covered.

3.4. Practical application

The Film Centre supported a total of 99 feature films between 1992 and 2009. In 2009, EUR 2.57 million was granted to feature films, EUR 725 000 to documentary films and EUR 425 000 to animation films.

The heaviest criticism of the Bulgarian film aid scheme concerns the huge discrepancy between the sum requested by the Film Centre and the amount actually granted by the government. Between 2005 and 2009, this shortfall amounted to more than EUR 10 million. In 2010 alone, the Film Centre had to make do with EUR 5.5 million less than it had requested.⁵⁶

4. Croatia

4.1. Legal basis

The *Zakona o audiovizualnim djelatnostima* (Audiovisual Activities Act) of 13 July 2007 regulates the organisation and promotion of audiovisual works, the promotion of Croatian audiovisual culture and the protection of the cultural heritage.

4.2. Structural elements

The authority responsible for running the national programme for the promotion of audiovisual creativity and the related fund is the *Hrvatski audiovizualni centar* (Croatian Audiovisual Centre).⁵⁷ The Centre's organs are the Chief Executive Officer, the Board of Governors (which comprises four well-known representatives of the film industry and one representative of the Centre itself) and the Croatian Audiovisual Council, in which various film-makers' associations and organisations each have one representative.

56) B. Tomova/D. Andreeva, Cultural Industry Observatory, "The film industry in the light of changed market conditions", 2010, p. 2, available in Bulgarian at: http://ncf.bg/wp-content/film_industry_observatory.pdf

57) The Centre's website is available in Croatian and English at: http://www.havc.hr/index_h_box.php

The Centre's tasks include preparing and implementing the *Nacionalni program promicanja audiovizualnog stvaralaštva obavljane* (national programme for the promotion of audiovisual creativity), which is adopted by the Ministry of Culture at the Centre's proposal for a four-year period, and awarding financial aid from the associated fund. The Centre particularly supports and promotes the production of films by young authors and inexperienced professionals. It also fosters the participation of Croatian producers in European and international co-productions.

Part of the national programme's annual budget comes from the state budget. The remainder is made up of a share in the proceeds generated by television broadcasters and network operators from audiovisual services, as well as donations and taxes on the private use of audiovisual works.

4.3. Criteria for the granting of aid

The Centre lays down the conditions for the distribution of funded audiovisual works and announces the individual support measures in the national programme's annual implementation plan.

Aid is available to any natural or legal entity active in the audiovisual media sector wishing to carry out projects that contribute to the development of film scripts and audiovisual works and that promote creativity and related activities.

4.4. Practical application

According to the Centre, the following aid was granted from the fund in 2010: EUR 4.1 million for eight feature films, EUR 181 342 for three documentaries, EUR 295 925 for 15 short documentaries and EUR 438 356 for 14 animation films.

5. "The former Yugoslav Republic of Macedonia"

5.1. Legal basis

The Macedonian *Закон за култура* (Culture Act) of 10 October 2003 stresses that culture is a fundamental value of "The former Yugoslav Republic of Macedonia".⁵⁸ It creates the framework for cultural aid and the relevant requirements, particularly those for the creation of a film aid fund.

The *Закон за Филмски Фонд* (Film Aid Act) of 26 May 2006 establishes mechanisms for quality assurance and the safeguarding of sustainable film production. It lays down transparency rules and a liability regime.

5.2. Structural elements

Founded in 2006, the *Филмски Фонд* (Film Fund)⁵⁹ helps to provide film projects of national interest with the capital they need, in order to ensure the development of creativity in the film sector. To this end, the Film Fund draws up an annual programme, which must be approved by the Ministry of Culture. The Ministry of Culture provides state supervision of the fund.

The organs of the fund are the Management Board, consisting of the President and four other members, who are also representatives of the film industry, and the Director. The members of both organs are appointed by the government at the proposal of the Ministry of Culture. Twice a year (in May and September), the Management Board carries out public tendering procedures for projects requesting funding. It then decides which projects to support, on the basis of the Director's proposals.

58) This description of film aid in Macedonia is based – unless otherwise indicated – on the Macedonian national report by A. Skerlav-Cakar (Broadcasting Council) as part of the study "The Media in South-East Europe – Comparative Media Law and Policy Study", *op. cit.* (footnote 46).

59) The Film Fund website is available in Macedonian and English at: <http://www.filmfund.gov.mk/>

Most of the Film Fund's annual budget is provided by the state budget. It also includes proceeds from the exploitation of copyright, income from cooperation with international organisations and institutions, donations and compulsory taxes paid by broadcasters and cinemas. In 2008, the budget was EUR 2.2 million, although it fell in subsequent years to EUR 1.6 million (2009) and EUR 1.7 million (2010).

As well as traditional film production, the fund supports film distribution and cinema screenings, cultural activities related to audiovisual works, works by amateur film producers and projects by talented young actors.

5.3. Criteria for the granting of aid

Aid may be granted to any film producer (natural or legal entity) listed in the central register of "The former Yugoslav Republic of Macedonia" and contributing at least 7.5% of the project's budget. The *Правилник за критериумите за финансирање на проектите од филмската продукција* (Regulations on criteria for the financing of film productions) no. 125/07 list specific aid criteria and the elements that a project must include in order to be funded. The qualitative criteria include the need to take into account the multiculturalism of the country, the theme and format of the film, and the project team and equipment. In principle, at least 50% of the aid granted must be spent in Macedonia. A copy of the work must also be made available to the national film archive. Failure to meet this requirement will lead to the recipient being excluded from further funding for a five-year period. Another crucial condition is that funded projects must always be in the "national interest".

In 2011, the Film Fund can provide a maximum of 70% of the total budget of a project, up to a limit of EUR 492 585.

5.4. Practical application

In 2008, 2009 and 2010, the Film Fund gave financial support to a total of 79 film projects, comprising 27 feature, 20 short, 25 documentary and 7 animation films. The 2010 film "Mothers" received (still under the previous rules) EUR 916 208 of production aid.

6. Moldova

6.1. Legal basis

The legal basis for film aid in Moldova⁶⁰ is the *Legea cu privire la cinematografie* (Cinematography Act) no. 386-XV of 25 November 2004. The Act stipulates, *inter alia*, that the state must support the film industry with financial aid and that a national film fund will be set up.

6.2. Structural elements

The Ministry of Culture is the authority responsible for the film industry. Within the Ministry is the *Consiliul Artistic in domeniul cinematografiei* (Artistic Council for the Film Sector), a special body that decides which projects should be funded. The Council comprises nine members, who represent the Ministry, the creative professions and related institutions.

The budget of the *Fondul National de Cinematografie* (Film Fund), which is reviewed annually, depends on the level of funding available from the Ministry of Culture, which provides 25% of the total budget. The remaining 75% is composed of income generated from the exploitation of films, 3% of the rental income received by the Ministry of Culture for buildings made available for

60) This description of film aid in Moldova is based – unless otherwise indicated – on the Moldovan national report by N. Gogu (Independent Journalism Center) as part of the study "The Media in South-East Europe – Comparative Media Law and Policy Study", *op. cit.* (footnote 46).

film production, 25% of income from the sale of rights to films produced before 1992, 1% of the production budget of foreign films made in Moldova, etc. In 2010, a total of approximately EUR 100 000 was distributed.

6.3. Criteria for the granting of aid

Any natural or legal entity can apply for state aid for film projects, as long as they are listed in the Moldovan cinematography register and are the originators of the project to be funded. The call for proposals is issued at least 30 days before the application deadline.

In principle, the Film Fund supports feature films at least 80 minutes long, as well as short, documentary and animation films with a minimum length of 20 minutes.

The decision on which projects to support depends on (1) the public interest of the project and its contribution to society, (2) the originality of the theme, (3) the quality of the screenplay, (4) visual elements, (5) the potential to represent Moldova on the international stage, and (6) existing marketing possibilities.

Film projects that disparage the state, incite violence or hatred on grounds of nationality, race or religion, or discrimination on ethnic, religious or sexual grounds, or that call for territorial division are ineligible. The same is true of films that defame other people, cause social disintegration or represent political and religious propaganda. Finally, any project that runs counter to moral principles cannot receive funding.

6.4. Practical application

A total of around EUR 150 000 of funding was granted in 2009. In 2010, applications for 20 projects were received, of which three feature films and one documentary film were classified as eligible for support by the Artistic Council. However, the Moldova Film Studio received the whole amount of around EUR 100 000. Independent film producers subsequently complained that they had, in effect, been denied access to the national Film Fund. They argued that the total budget was hardly sufficient to offer meaningful support to even a single feature film and was often (as in 2010) granted exclusively to the Moldova Film Studio.

7. Romania

7.1. Legal basis

Film aid in Romania⁶¹ is based on the *Legea privind cinematografia* (Cinematography Act) no. 303 of 3 December 2008.⁶²

7.2. Structural elements

The *Centrul Național al Cinematografiei* (National Cinematography Centre – CNC) is the authority responsible for implementing film regulations. It reports to the Ministry of Culture and grants public aid for Romanian film production. The CNC's members are appointed at the proposal of the professional film-makers' associations. Projects to be funded are selected by a jury, in which film-makers are represented.

61) This description of film aid in Romania is based – unless otherwise indicated – on the Romanian national report by M. Preoteasa (University of Bucharest) as part of the study “The Media in South-East Europe – Comparative Media Law and Policy Study”, *op. cit.* (footnote 46).

62) Through its decision of 14 December 2010 in case number N303/2010, the Commission approved the EUR 80.68 million Romanian film aid scheme. The Commission found the measure, which is valid until 2014, to be in line with its Cinema Communication, since it supports a cultural objective without excessively distorting competition; see also E. Cojocariu, “Romanian Film Support Scheme Approved”, IRIS 2011-2/5.

In addition to state funding, the Film Fund receives, *inter alia*, the following financial contributions: 3% of income from the sale and rental of VHS cassettes, DVDs and other media carriers, 4% of the value of advertising broadcast on a contractual basis by television companies (this represents around half of the total budget of the fund), 3% of the price of advertising contractually agreed by cable TV providers, 4% of revenue from public film screenings, 1% of monthly income from cable and satellite television broadcasts⁶³ and 20% of income from state property in the film industry. Licence fee payers can also support the film industry directly with up to half of their broadcasting licence fee payments. The provision that a proportion of income generated by games of chance should be paid into the Film Fund was abolished in 2009. This resulted in a 40% drop in the fund's income in 2010 compared with 2009.

The procedure for granting aid is laid down in *Ordin* (Decree) no. 39/2005 of 14 July 2005 (last amended by *Ordin* (Decree) no. 2520 of 17 December 2009). Projects are selected for funding twice a year. Applications must be sent to the CNC secretariat, which checks that they are complete. No selection competitions were held in 2009.

7.3. Criteria for the granting of aid

The CNC supports feature, documentary and animation films. Eligibility criteria include the originality of the theme and screenplay, as well as the project's potential to reach national and international audiences. Projects that promote violence or contain pornography are ineligible.

The CNC provides a maximum of 50% of the production costs of funded projects. Exceptions apply to feature films with low production costs and "ambitious" projects.

Aid recipients must pay 40% of the amount they are granted back to the CNC within 10 years. If this condition is not met, the CNC acquires all exploitation rights for the work.

7.4. Practical application

State aid provided by the CNC in 2009 totalled EUR 755 000. Ten film projects were supported by the CNC in 2010. Two of them received EUR 380 000 each. The CNC launched a new selection procedure for the granting of film aid in December 2010. Applications had to be submitted by 31 January 2011.⁶⁴ The total amount of funding available is EUR 2.331 million, including EUR 396 300 for feature films, EUR 163 200 for short films, EUR 233 100 each for documentary and animated films, EUR 1.282 million for fictional full-length films and EUR 23 300 for the development of film projects.⁶⁵

Film-makers complain that the CNC selection procedure is irregular and subjective, and that it favours certain film projects. Until 2009, the CNC Board members had been appointed by the Ministry of Culture and National Heritage (*Ministerul Culturii și Patrimoniului Național* – MCPN). Although the current system for appointing CNC members had led to greater independence, there was also a danger of conflicts of interest. In addition, the CNC members were pressurised and blackmailed.⁶⁶ The granting procedure was also too complicated and obscure.⁶⁷

63) See also M. Stoican, "Amendment to the Film Law", IRIS 2009-1/106.

64) See E. Cojocariu, "Subsidies for Film Events in the Period from July to December 2010", IRIS 2010-7/34.

65) See E. Cojocariu, "Film Subsidies Contest and Eurimages Support", IRIS 2011-2/34.

66) See C. Mungiu, Open Letter to the Minister of Culture, Teodor Paleologu, 2009, available at:

<http://www.mobrafilms.ro/files/scrisoare/scrisoare-deschisa--domnului-ministru-Theodor-Paleologu.pdf>

67) C. Popescu, interview with Răzvan Georgescu, CNC - the rules of the game, *Dilema veche*, 2-8 September 2010.

8. Serbia

8.1. Legal basis

The film industry in Serbia⁶⁸ is essentially regulated by the *Zakon o kulturi* (Culture Act) of 31 August 2009 and the *Zakon o kinematografiji* (Cinematography Act) of 1 October 1991.

The Culture Act classifies cinematography as a cultural activity and stipulates that funding for such activities should be provided from the state budget, as well as funds and foundations. The Cinematography Act includes, under the term "cinematography", the production, rental, loan and public screening of films. The Ministry of Culture is planning to revise the Cinematography Act, partly in order to improve the distinction between domestic (national) films, co-productions and foreign films. Another change concerns the (re)definition of the "public interest" (e.g. protection of the continuity, freedom and diversity of the cinematographic heritage, introduction of new technologies, modernisation of the film industry or the preservation of the cultural uniqueness of national minorities).

8.2. Structural elements

The Ministry of Culture is the highest authority responsible for the film industry. The *Sektor za savremeno stvaralaštvo i kreativne industrije* (Department for contemporary art and creative industry) is a specialist department within the Ministry of Culture. In addition, the *Nacionalni savet za kulturu* (National Cultural Council), whose members include representatives of the interests of authors, producers and actors, plays an advisory role.

Aid is granted in accordance with tendering procedures launched by the Ministry of Culture or the relevant bodies of the autonomous provinces or units of local self-government. The deadline for applications to be submitted to the aforementioned authorities is always 1 October of the year concerned. Funds are distributed under the terms of aid agreements between the awarding body and the successful applicants. In addition, the Ministry of Culture, autonomous provinces or units of local self-government can, independently of any public tendering process, give financial support to projects, as long as they are of particular importance and could not be submitted in time for comprehensible reasons. The relevant authority may not use more than 25% of the total annual aid budget for such cases.

According to the Culture Act, some of the funds made available for film aid come from the budget of the Republic of Serbia, the autonomous provinces and the municipalities. The remainder comprises income generated through the implementation of cultural activities, fees paid for the use of cultural services, the exploitation of copyright and related rights, sponsorship, etc. The annual budget is approximately EUR 1.5 to 2 million.

The government has also created the *Filmski centar Srbije* (Serbian Film Centre),⁶⁹ which grants additional aid for certain categories of film. Its executive body consists of nine members, appointed by the government at the proposal of the Ministry of Culture. Members include well-known film industry experts. Under the current bill to amend the Cinematography Act, the Centre will be established through a parliamentary act in order to give it greater independence and stability.

The Serbian Film Centre recently published the *Pravilnik o postupku sprovođenja konkursa za sufinsiranje projekata iz oblasti filmskog stvaralaštva* (Regulations for procedures concerning the submission of proposals for co-financing of cinematographic projects – procedural regulations).⁷⁰ It forms and appoints different ad hoc committees for different types of film (e.g. committee

68) This description of film aid in Serbia is based – unless otherwise indicated – on the Serbian national report by S. Kremenjak (attorney at law) as part of the study "The Media in South-East Europe – Comparative Media Law and Policy Study", *op. cit.* (footnote 46).

69) The Centre's website is available in Serbian and English at: <http://www.fcs.rs/>

70) The regulations were adopted by the Serbian Film Centre on 20 December 2010 and published in the Serbian Official Gazette no. 3/09, 91/10, available at: <http://www.fcs.rs/app/01pravilnik.pdf>

for national feature films – *Komisija za domaće dugometražne Filmové*, committee for film co-productions on the theme of “minorities” – *Komisija za manjinske koprodukcije*, etc.). These committees, whose members include film industry experts, evaluate the projects and decide which ones should be funded within a 40-day period. The Serbian Film Centre takes the final decision on the granting of funds. Its decisions may be appealed.

8.3. Criteria for the granting of aid

Eligibility criteria can vary, depending on the granting authority (Ministry of Culture, relevant body of an autonomous province or unit of local self-government).

The Ministry of Culture’s *Pravilnik o načinu, kriterijumima i merilima za izbor projekata u kulturi koji se finansiraju i sufinansiraju iz budžeta Republike Srbije* (Regulations for the method, criteria and measures for the selection of film projects to be funded by the state budget of the Republic of Serbia) set out, *inter alia*, the following aid criteria: the film must contribute to the cultural and historical identity of the Republic of Serbia or convey unusual cultural and artistic values. The Ministry of Culture regulations do not stipulate what types of project are ineligible for support.

The Film Centre’s procedural regulations contain the following aid criteria: the submitted project must originate in Serbia and must have artistic, contemporary and visionary potential; it must also contribute to the development of Serbian film culture and serve the public interest. Projects that contain pornographic material, promote violence or spread hate are ineligible.

8.4. Practical application

Between around five and seven feature films are produced in Serbia each year. The relevant authority in the city of Belgrade, for example, in 2010 granted around EUR 357 000 for a total of 22 films (feature, short, documentary, animation and children’s films). The Serbian Film Centre granted around EUR 280 000 for the financing of 14 documentary, four short and five animation films in 2010, plus a further EUR 1.28 million for five feature films and EUR 350 000 for six productions dealing specifically with minorities.

9. Slovenia

9.1. Legal basis

Film aid in Slovenia⁷¹ is essentially based on the *Zakon o uresničevanju javnega interesa na področju culture* (Implementing Act for the public interest in the cultural field) of 5 November 2002. The *Zakon o slovenskem filmskem centru, javni agenciji* (Slovenian Film Centre Act) of 23 September 2010 established the Slovenian Film Centre.⁷²

9.2. Structural elements

The *Slovenski filmski center* (Slovenian Film Centre)⁷³ is responsible for distributing film aid. It was founded on 19 January 2011 and replaced the *Filmski sklad Slovenije* (Slovenian Film Fund). The Film Centre has an annual budget of approximately EUR 6.5 million, which is provided on a contractual basis by the Ministry of Culture. The Centre is also funded through cooperation with international organisations, donations and sponsorship. The organs of the Film Centre are the Director and the Board, which comprises eight members appointed by the government. The Ministry of Culture proposes four of these members on the basis of recommendations by relevant

71) This description of film aid in Slovenia is based – unless otherwise indicated – on information provided by D. Miklavčič (Conference of associations of freelance cultural and media professionals, SUKI).

72) The Commission decision of 16 November 2010, N 325/2010, approving the Slovenian film aid scheme, is available at: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N325_2010

73) The Centre’s website is available in Slovenian and English at: <http://www.film-center.si/>

groups (including the state television broadcaster and the state film studio *Viba Film*); professional associations in the audiovisual sector and the associations of independent producers each propose two members. The Board also appoints three-member commissions at the Director's proposal, each containing audiovisual experts.

The Director decides which projects should be supported after consulting the expert commissions. Any opinion that differs from that of the commissions must be justified to the Board.

9.3. Criteria for the granting of aid

The Film Centre supports cinema and feature films, series, documentary and animation films. Applications must describe the content and artistic aspects of the project, either in writing or audiovisually, and include comments by the director and/or producer. Otherwise, there are no defined criteria regarding content-related and/or artistic requirements that the project must meet.

Films that contain violence, pornography or inflammatory appeals are ineligible. The Film Centre does not accept requests from applicants that owe it money.

The Film Centre provides a maximum of 50% of the project's costs. This can rise to 80% for children's and youth films and particularly ambitious projects.

Projects must be completed within two years of the aid agreement being signed.

9.4. Practical application

Every year, around five or six feature films are produced in Slovenia, with an average budget of EUR 1.3 million to date. Unfortunately, while production costs have risen (approx. EUR 2.7 million per film in 2010), the Film Fund that has now been replaced by the Film Centre has only been able to grant a total of around EUR 4.5 million per year. In addition, despite the relatively small size of the film market in Slovenia, competition for funding is fierce and there is a risk of lobbying organisations influencing the granting procedure.

In 2010, the Film Fund supported six feature films with a total of EUR 3.1 million, three short films with a total of EUR 280 000, two animation films with a total of EUR 232 000 and five documentary films with a total of EUR 418 000.

IV. Conclusions

As mentioned at the outset, this report investigates, firstly, whether any common characteristics are shared by national film aid systems and programmes at European level. Secondly, it seeks to explain whether – and, if so, to what extent – individual states base their own aid schemes on these programmes or on EU legislative provisions.

One particularly common thread is the general ineligibility of certain types of film. The states with a so-called exclusion list (which include all those covered in this article except Bosnia-Herzegovina, Croatia and Macedonia), in line with the European programmes and EU state aid rules, do not allow funding for projects with pornographic content, for example, or content that promotes violence or threatens public security.

There is much greater diversity between the positive assessment criteria laid down by law or statute in all the countries featured here, except Slovenia. This is linked to the fact that the different programmes have different objectives. Whereas EU and Council of Europe aid is geared more to pre- and post-production (MEDIA programmes) on the one hand and to co-productions (*Eurimages*) on the other, national programmes focus more strongly on support for the production of national films. However, it is clear that individual countries follow EU state aid provisions when structuring their film aid programmes by always requiring supported projects to have an artistic or cultural element, which is often defined in some detail.

A comparison of the national measures taken to support film production shows that film aid systems in South-East Europe are extremely varied.

Nevertheless, one area of uniformity is the legal basis of film aid, formed by means of parliamentary legislation. In order to implement their aid programmes (funds), most of the countries studied here have set up their own film centre, whose organs generally contain representatives of the film and creative industries and are involved in the decision-making process. Most film centres have special committees (Bosnia-Herzegovina, Romania and Serbia) which assess and (pre-)select submitted projects, although in some cases the final decision rests with the Director or CEO, who either selects projects from of a pre-selected list (Bulgaria and Slovenia) or can revoke committee decisions (Albania). In the case of the Macedonian Film Fund, the Management Board decides on the Director's proposal.

There are significant differences between the amount of aid made available each year. Compared with average income per capita in the various countries, Albania and Moldova provide by far the lowest level of funding, whereas Bulgaria and Serbia, followed by Croatia, Macedonia and Slovenia, offer much higher levels of aid for national film productions.

In all countries, the state provides a certain amount of the funding. In addition, some aid systems oblige broadcasters and/or cinema operators to contribute financially to the film fund. The vast majority of the film aid schemes studied here also have other sources of income, such as donations or proceeds from the exploitation of rights.

Overall, it is clear that individual countries pay very close attention to EU legislative provisions when structuring their film aid mechanisms. It does not appear that these mechanisms seriously conflict with EU law or Council of Europe provisions.