

Proposals to reform AV Policy in Moldova

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**For growth in the AV sector to benefit the economic and social
development of the country**

Report 2 – Recommendations to amend the legal and
institutional framework

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Report 2 – Recommendations to amend the legal and institutional framework

This document is being prepared in the context of a technical assistance provided by the Council of Europe to help the Centre of National Cinematography (CNC) in Moldova accomplish its mission in the future. This work includes reviewing the missions of the institution, the legal framework related to audiovisual activities as well as the management of state funding for the audiovisual (AV) sector.

The objective is to support the reform of the Moldovan CNC to enable it to support the development of a strong local audiovisual industry and for the country to benefit from the boom in audiovisual investment largely driven by demand for cultural content (films, animation, documentary, short films, videogames) on digital platforms.

The reform is necessary with a view to help Moldova adapt its regulatory framework in line with EU acquis and to enable the CNC to address on-going operational problems not foreseen when it was established in 2016.

This document complements the Report 1 (The Diagnostic) dated 8 December 2021 which provides an assessment of the existing regulatory environment with a view to identify shortcomings preventing the CNC from operating efficiently and with transparency in the interest of the development of the local audio-visual industry.

The recommendations relate to:

- The legal framework, notably the law on cinematography (116/2014), the law on attracting foreign investment (154/2018) and the governmental decision (846/2015) on the implementation of the cinematography law.
- The set-up and functioning of the CNC notably in its mission to support the AV sector and process funding applications.

Hence the report is divided in two sections:

- Section 1 - Proposals to update the Cinematography Law and the law to attract foreign investment.
- Section 2 - Proposals to support the CNC's functioning

The report is focused on legislative and regulatory set up as it relates to the funding of AV activities. The proposals do not extend to the management of the national film archives and certification/registration processes. This would entail a separate analysis.

Section 1 - Legal Framework Update

1.1 Cinematography law (116/2014)

We propose the following amendments to the existing law on cinematography (116/2014) with a view to take into account digital and market development, the implementation of the EU acquis as well as to secure funding support for the local AV industry.

- **Enlarge the scope of the law to govern unequivocally all types of AV works (amend current Article 2).**

The definition of “audiovisual works” should be updated to include: feature and documentary films, experimental films, animation, short films, multimedia and transmedia works, television series and films, video games and any other audiovisual works regardless of the technology used, the medium they are fixed on and the way they are distributed.

The law should cover audiovisual activities which include the development, production, promotion and distribution of audiovisual works including the provision of audiovisual media services and audiovisual services on-demand.

Article 13 (2) should be amended as it is currently limiting the use of State funding exclusively to “feature films of all kinds”. Financing support should be granted to the various categories of works as defined by the law.

- **Update the following definitions** (amend current Article 2)

- a. Define an **AV work from Moldova** (a national film).

An AV work whose director and/or producer are citizens of the Republic of Moldova, or the producer is a legal entity established in the Republic of Moldova or when the production is made in the framework of international coproduction in which the Moldovan portion of financing is the most significant and for which the exploitation rights have been acquired by one or several legal entities established in Moldova.

The definition could also include an AV work produced in co-operation with foreign producers in accordance with international treaties to which the Republic of Moldova is a party.

- b. Define a **co-production** with minority financial support from the Republic of Moldova in accordance with the [new version of the Council of Europe Convention on Cinematographic Co-production \(ETS No 220\)](#). **It is very important that Moldova becomes a member of this important convention that facilitate European co-productions.**
- c. The law would also define what constitutes a **long feature AV work** – a work whose length is superior to one hour. This definition would be relevant with a view to distinguish various formats entitled for support.
- d. The law should also define what **constitutes a European AV work** with a view to comply with the EU acquis and ensure that works from other EU countries are not being discriminated against:

- works from other countries members of the EU which obey the following conditions:
 - made essentially with authors, artists, technicians from one or several Member States of the EU and
 - are produced by a company which is established in one of the EU member States whose management is a majority resident in such States;
 - or is financed in majority by contributions from co-producers established in the EU as long as the coproduction is not controlled by producers established outside such States.
 - or works coproduced in the frameworks of agreements between the EU and third countries.

The law should refer to the points' system that enables the determination of European elements to qualify as a European AV work.

The law could also define an **AV electronic media service**:

- A Service provided through electronic networks
- The provision of AV programmes created by users to inform, entertain or educate is an essential part of the service or represents an essential functionality of the service
- The service provider has no editorial responsibility on the content mentioned above.

The law could also define a **publisher of television and AV media on-demand**.

- **Enlarge the objectives of the law (current Article 1.3)** with a view to include the following:
 - Support to contemporary creation and authors of AV works, stimulating the development of local stories.
 - Support to the development of technical and service industries to provide a sustainable industry infrastructure as well as to support the professionalization of the sector.
 - Support the promotion and distribution of AV productions on national media, on national and international digital platforms, in cinema theatres and cultural centres.
 - Reflect and provide tax and financial incentives to support investment in the AV industry.
 - Education on moving images and the development of civil society.
 - The preservation and promotion of the cultural identity and minority languages pursuant to the principle of cultural diversity.
 - The protection of the right to free expression and of intellectual property rights.
 - The protection of minors, equality between genders among races and minorities.
 - Support the promotion and distribution of national productions abroad.
- Review **the definition of legal entities entitled to distribute films** and the conditions for distributing.

The law could stipulate the obligations to provide sub-titling when distributing a foreign language film (unless presented in a film festival or a promotional event).

- **Clarify the role of the CNC and its normative power alongside the Ministry of Culture (strategy, implementation)**

Chapter II of the current law states that the policy is carried out by the Ministry with the CNC acting as a public institution in charge of implementation. Only the Ministry has a power of initiative and is in charge of developing the strategy.

It is suggested to set up a more collaborative process in the development of policy. For instance the CNC and its director should be requested to propose a 4-year strategic vision, in consultation with local stakeholders, including priorities, activities as well as training programmes to the Ministry of Culture for adoption by the government. Based on this strategic programme the director of the CNC should propose an annual implementation plan setting out objectives and tasks. A report on the implementation of the annual plan should be submitted by the director of the CNC to the Ministry of Culture. Based on the Annual Plan public tenders will be announced, regulations adopted to implement the national programme and allocation of funds shall be made under the authority of the director of the CNC, under the supervision of the Ministry according to general administration practices.

- **Review the limit to the share of State support (Article 14 of the current law).** This would require the adoption of a definition for AV productions entitled to larger State support in accordance with EU State Aid rules.

It is proposed here to define AV works that should be entitled to a higher proportion of State support as permitted by EU Regulation¹ or to specific support because of their characteristics and the objective of promoting cultural diversity (distribution and exhibition). Those productions could be named “difficult productions” or “productions of special interests” or “art films” – they could be defined in relation to the following characteristics :

- work of high artistic quality (not necessarily viable commercially),
- work with high cultural value (on the history of the country or reflecting life in the country for instance),
- work reflecting life in countries whose productions are rarely showed in Moldova,
- first works (young director),
- low budget works, experimental and research works,
- works considered as part of the world cinematographic heritage.

This definition would enable the revision of Article 14.3 to increase the share of State participation in the financing of such productions from the Republic of Moldova (currently limited at 50%).

- **Chapter IV of the law deals with the financing of the AV sector and activities.** It distinguishes between different revenue sources: the state budget and the centre’s own revenues. Current funding levels are clearly insufficient. It is therefore proposed to establish additional revenue sources in addition to the State budget.

¹ The intensity of State Aid, as participation in the funding can be increased to up to 70 % or even 90 % of total production budget provided specific categories are established such as difficult or special cultural interest” films or “first” films for instance. Films may also be considered as difficult because the original language of the film stems from a country with a limited population, a restricted linguistic area and territory (EC Communication on State Aid of 14.11.2013 stating when aid are compatible with art 107.3 of the TFUE). At present the cinematography law limits aid to 50% of the production budget (Article 14.3)

- The film agency should be able to obtain grants, donations and sponsorships
 - It should collect a contribution from legal entities in the media sector notably public and commercial television, cable and satellite operators, digital media service providers. The contribution could be a percentage of the gross annual income/turnover of the year. For examples in comparable countries see Article 25 for the Croatian Law on AV activities (2018)² or article 12 of the Film Industry Law in North Macedonia – 2019³.
 - Public service broadcasters could be obliged to acquire a minimum number of local AV productions and contribute to the financing of such productions in collaboration with the film agency.
 - The law should also provide that the financial incentive fund (cash rebate) is to be secured by the State budget under the responsibility of the Ministry of Culture.
- Equipment required to organise the shooting of productions in Moldova (as provided in the Law in Romania) should be made exempt from importation taxes and VAT.
 - Introduce obligations to invest in local and European productions.

The law could stipulate what constitutes investment contributing to the development of local or European AV productions :

1. Acquisition of broadcasting/streaming rights before the end of shooting
 2. Investment as a producer;
 3. Acquisition of broadcasting/streaming rights or rebroadcasting;
 4. Financing of script and development;
 5. Contribution to the national fund supporting AV production.
- Introduce **obligations to invest** in local productions for TV and media services offered on-demand.

In conformity with the provision of the EU Directive 2018/1808 related to the AV media services (Digital Media Service Directive (AVMSD)⁴) Moldova has the opportunity to introduce a contribution paid by such services providing on-demand AV services (such as Netflix, Amazon, Disney+ or local operators), including those established outside of

² In Croatia – total annual gross income (National Public TV: 2%, national commercial TV : 0.8%; regional TV: 0.5%, provider of AV media services on demand : 2%; cinema operators :0.5%)).

³ In North Macedonia: a % of total income Public TV: 0.5%; national TV, regional TV, cable, internet media services: 0.1%, cinema exhibitors 5% and distributors 2%.

⁴ Article 13 of the current AVMSD provides the following:

"1. Member States shall ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30 % share of European works in their catalogues and ensure prominence of those works. 2. Where Member States require media service providers under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contribution to national funds, they may also require media service providers targeting audiences in their territories, but established in other Member States to make such financial contributions, which shall be proportionate and non-discriminatory. 3. In the case referred to in paragraph 2, the financial contribution shall be based only on the revenues earned in the targeted Member States. If the Member State where the provider is established imposes such a financial contribution, it shall take into account any financial contributions imposed by targeted Member States. Any financial contribution shall comply with Union law, in particular with State aid rules."

Moldova to support the financing of local productions. Contribution can be a percentage of the service turnover in the country that should go towards the financing of local and European productions. It could contribute to the national fund supporting AV production.

- Finally, the law should set **penalties** for failure to register, obtain necessary certifications, comply with auditing requirement or pay the contribution to support AV productions or fail to provide information enabling the establishment of the contribution. This is currently not provided. Financial sanctions could be an additional source of funding for the CNC.

1.2 Law to attract foreign investment (law 154/2018)

The law is a very useful instrument to attract foreign investment. It is currently not used. It is therefore suggested to give the management of such incentive to the CNC rather than the Investment Agency (Article 3). It will be in a better position to promote its usage in the local and international audiovisual communities.

Section 2 - Proposals to support the functioning of the CNC

2.1 Law 116/2014 and Regulations governing the CNC and State funding

The CNC is governed by the 2014 Cinematography law as well as the Government Decision of 14.12.2018 as amended.

Review the missions of the CNC (review existing article 6 of the law): the missions of the CNC should be reviewed to enable the organisation to play its full role. Its existing mission should be enlarged to enable the CNC to act more effectively. It should include the competence to:

- Prepare and implement the 4-year strategic plan and the annual programme in coordination with the Ministry of Culture.
- Collect and allocate funds (through public tenders) in accordance with the annual programme.
- Promote, manage and implement the cash rebate law to attract investment (instead of the Agency of Investment).

Its missions should be enlarged to include:

- Gathering statistical information and market trends to inform policy making.
- Organizing consultations with AV stakeholders on industry issues, drafting legislation, EU funding opportunities.
- Managing the EU Media Desk (provided Moldova is a beneficiary of the Creative Europe programme).
- Participating in the fight against piracy and counterfeiting (with the right to take legal action against infringers of intellectual property rights).

- Enforcing and collecting fines due for failure to comply with registration and certification obligations.
- Monitoring cultural diversity obligations as enshrined in the new cinematography law (monitor percentage of programming devoted to local production and implementation of investment obligations as provided by EU acquis).
- Encouraging foreign investment in AV production (develop promotional material in this respect highlighting film location opportunities and post-production facilities).
- Representing Moldova in international governmental organisations dealing with AV issues – notably Eurimages and the AV Observatory as well as the MEDIA Creative Europe programme.
- Contributing to the professional development of the sector beyond the development and production of cinematographic films including for instance support to:
 - o young professionals and creation,
 - o the technical sector (studio and post production facilities),
 - o the modernisation of exhibition facilities (notably investment in digital equipment),
 - o distributors of local films,
 - o professional training and capacity building,
 - o international promotion and cooperation,
 - o film literacy and culture.

Financial and human resources corresponding to the implementation of the above missions shall be secured from the State budget in accordance with the financial plan. The funds for the implementation of the annual programme shall be secured by the State budget and other funding sources as provided by law and regulation.

- Empower the CNC by granting legal and financial autonomy.

In this respect the Director of the CNC should have the following power:

- Take individual decisions to allocate financial support according to relevant application processes,
- Decide on acquisitions and expenditure in accordance with rules defined by the board of management,
- Represent the CNC before the court and to conclude transactions,
- Sign conventions on behalf of the CNC, it has the authority in the field of public tenders.

The CNC should be subject to rules and regulations governing public accounting rules. However, by derogation to these rules, investment expenditures, notably state funding to support productions, should be subject to exemption clauses and be identified in a specified budget line, considered for information only by the relevant bodies in charge of budget implementation and control.

2.2 Organisation of the CNC

The law currently does not specify the tasks of the Council (article 7(5)). They are however provided in the Decision of 2018. It is proposed to streamline the activities of the Council and allocate tasks for the Council to act rather as a management board responsible for supervising the activities of the

Centre, adopt its statutes, formally appoint and dismiss the director of the centre (nominated by the Minister of Culture for 4 years after an open call for applications – as provided in current law), adopt the financial plans and work programmes developed by the CNC, take funding decisions (not only on projects to be funded as provided today), report on the activities to the Ministry.

The rules on appointing members of the Council would remain as provided by Article 7 of the law. The term of office should be 4 years (to be amended as it is only 2 years now (see article 28 of the 2018 Decision)).

The law should also characterise the function of the head of the CNC. Its responsibilities should be spelled out in the law:

- Manage the CNC , its financial and human resources.
- Implement its activities.
- Represent and be the legal representative of the CNC (engaging in the organisation in litigation, in contracts etc).
- Propose the strategic plan (4 years).
- Propose the annual programme and relevant financial plan.
- Implement acts and decisions of the management board.
- Propose artistic and financial advisors to carry out professional evaluation of the projects subject to public tender.
- Dispose of the funds for the activities of the CNC as approved in the annual programme.
- Issue preliminary decisions on eligibility for financial incentives.

In addition, it is proposed that the head of the CNC set up an Audiovisual Council composed of representatives of the AV sectors (professionals from production, distribution, exhibition, broadcasting, authors, performers, rights management bodies...) to act as consultative body (draft legislation, annual programme, financial plan, draft public tenders). This will ensure appropriate representation and involvement of the sector in the decision-making process. It will contribute to establish trust and transparency strengthening the role of the CNC. This should lead to a better understanding of policy decisions and promote better implementation by all stakeholders. The Council could also be involved in the appointment of advisors reviewing applications for funding.

The law should provide rules to prevent conflict of interests for the director of the CNC as well as members of the management board and professional advisors. This will contribute to increase trust in the organisation and processes.

2.3 Review application process for funding to make the process more transparent

The applications for film funding from the Moldovan National Film Center (CNC) are made following a public competition that is organised at least once per year.

According to the latest draft regulation amending the Decision 846/2015 on the implementation of the Cinematography Law sent on 12.12.2021 there would be four bodies involved in the selection process:

- the competition commission (the Commission) to evaluate scripts (5 members),

- the technical secretariat (assessing the eligibility and the “technical file” – at least 3 members),
- the CNC council (the Council),
- an international jury (that will examine application in public sessions – 3 members).

The final decision would reside with the Council and the technical secretariat.

Each session of the competition is organised in two stages. In the first stage, the competition commission evaluates and selects the applications; in the second stage, a technical secretariat communicates to the Council only the files of the cinematographic projects chosen by the Commission. The files of the projects that were not taken to the second stage are returned without being opened. The Council then examines the applications and may accept or decline the projects chosen by the Competition Commission.

The draft regulation aims to streamline the application process. The proposals are much inspired by the system in place in Romania. The main proposed changes relate to:

- Granting a larger discretionary power to the Director of the CNC to nominate the Commission, the international jury, in “consultation with Unions and Associations” and the technical secretariat.
- The setting up of an international jury.
- The final decision granted to the technical secretariat and the Council (no longer the Commission).
- The Council would decide the budget available for each competition session and the amount of funding available for each category of AV works subject to the competition.

It is recommended to amend the overall law as this would permit the revision of the regulation to enable it to be more far reaching to cover more AV works (including TV services and videogames), increase the aid intensity in accordance with EU State Aid regulation, extend support mechanisms to exhibition and distribution for instance with a view to give exposure to films that are being supported.

It seems that the Commission, which gathers AV experts, giving its opinion on an application is limited to assess the value of the script and not the other artistic and production elements of an application. The process of evaluation is therefore not geared to favour creative parts of the project as winners are ultimately selected by a team essentially composed of administrators from the CNC and members of the Council (5 members) , appointed by the Government ministers (3) and by trade associations (2).

The role of the international jury, contracted by the CNC, in the selection process is to enable an AV project to reach the second stage of the evaluation process.

With a view to avoid undue political interference, we would recommend that the evaluation process and the final decision remains with professionals from the AV sectors according to criteria set up together with film professionals and their representatives (taking into account track record of talent and producers as well as the financial, distribution, and marketing plan of the project). The criteria by which points are awarded should be clearly defined and available in the law as is the case in Croatia or North Macedonia for instance⁵.

⁵ Rulebook On Procedure, Criteria and Deadlines for Implementation of the National Program for the Promotion of Audiovisual Creation, Croatia.

Rulebook on detailed criteria and measures for evaluation of the criteria for funding film projects of national interest in the film industry, Republic of Macedonia, adopted in 2014.

In this context the new regulation may consider the appointment of financial advisors to review the financial viability of projects and their market potential. Artistic advisors (the Commission) should be in a position to give an expert opinion on the allocation of funds (today it is reserved to the Council). There could be different advisors according to the type of AV works (long feature, short, documentary, animation).

The new regulation should also consider setting penalties for failure to implement audit and financial reporting. The regulation should also be dealing more clearly with conflict of interests in relation to the evaluation process.

We would also suggest that the competition takes place at least twice a year and that the competition be open to support beyond the support of production with a view to support the establishment of local AV ecosystem (support distribution, training, post production services etc). The CNC should publish a rulebook setting out the criteria and elements required to fill in an application with relevant standardized forms, that could be made available and filled in online.

The new regulation could also set out the rights of the CNC in the showing of AV works that are co-financed for free as long as the screenings are non-commercials and serve the interests of the audiovisual stakeholders, in agreement with the producer. The CNC should have the right as part of its promotional activities to use information on the film and film extracts or teasers.

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