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## **FILM INCENTIVE SCHEME IN THE REPUBLIC OF BULGARIA**

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**Abstract.** This study aims to present and summarize the requirements and processes that a production service provider or producer must meet and go through in order to receive state aid in the form of a tax rebate of a certain percentage of the costs incurred for the production of an audiovisual work on the territory of the Republic of Bulgaria. The legal provisions that determine the terms and conditions for application and the process for initial submission of the project to the National Film Projects Evaluation Commission on Rebate on Costs have been examined. An analysis of the required documents has been made, and guidelines for their completion have been given. Recommendations have been made to improve the processes for applicants who do not speak Bulgarian but want to familiarize themselves in more detail with the requirements of the law and the regulations for its implementation.

*Keywords:* audiovisual work; film; industry; tax incentive; rebate

### **Introduction**

The Bulgarian film industry has always been the focus of public attention, from the creation of the first Bulgarian film (Grozev 2021) and the development of the industry through the years of the communist regime to the dawn of democracy and the modern development of the industry. Each of these periods has added value to the development of the industry in the Republic of Bulgaria, but now, perhaps more than ever, it is essential that the role of the state and the various tools it provides to support the industry be more targeted and effective. The Bulgarian film industry, since 1944 (this date is conditional since that was the beginning of the communist regime), has always been supported. In the period 1944 – 1989, the state was at the heart of the creation of films and other audiovisual works due to the regime's need for constant control of content and, of course, the lack of private ownership and initiative. After the end of this period, Bulgarian cinema went through difficult years, which were marked by the lack of state support for the sector and reduced production. The end of this period came with the passing of the Film Industry Act (FIA)<sup>1</sup> in 2003, which once again assigned an important role to the state in the

creation of Bulgarian cinema. In the last few years (since 2021), the most important step taken by the state in the direction of supporting the creators of films and other audiovisual works was passing the amendments and supplements to the FIA, which put Bulgaria on the European map of attractive filmmaking destinations by countries with large production capabilities such as the USA, Great Britain, Germany, and others. Before passing the amendments in FIA, Bulgaria relied mainly on:

- Cheap labor;
- Natural resources;
- Concentration of professionals and studios in a relatively small region;
- Lower logistics costs – thanks to concentration;
- Low prices for goods and services essential to the film industry.

At a certain stage of the industry's development, these, some of which are subjective factors, are not enough due to the fact that other European countries have taken steps to turn the above factors from relevant to absolutely irrelevant by including tax incentives for production in the “equation”. This way, and also thanks to some other national factors such as a progressive increase in the minimum wage, political instability (especially in the last few years), an increase in the price of goods and services needed by the film industry (mainly due to inflation, high electricity prices for businesses, etc.), Bulgaria was no longer an attractive destination for filming high-budget foreign productions. The importance of making such products in the Republic of Bulgaria is dictated by their potential economic and social role, like:

- Ensuring employment and improving qualifications;
- Presentation of national natural and cultural resources to the world;
- Increasing consumption of industry-related products and services – from transportation services to accommodation by region;
- Adding value to tourism.

Driven by the desire to maintain our competitive advantages, filmmakers and the Bulgarian state have embarked on a course towards passing the necessary changes in legislation and the inclusion of tax incentives for filming in Bulgaria. The cost reimbursement measure is necessary to attract more foreign productions that will contribute to the development of the film industry, and add value to the economy as a whole. For example, in Serbia in 2018, for every euro spent, 9.6 euros returned to the economy.<sup>2</sup>

The subject of this article is the measure for reimbursement of costs for the production of audiovisual works, which operates in the Republic of Bulgaria. It aims to summarize the requirements and processes that a provider of production services or producer must meet and go through in order to benefit from the provided incentives.

The author sets a limitation – the application process is limited only to the first stage – application before the National Film Projects Evaluation Commission on Rebate on Costs.

### **1. Nature of the cost reimbursement measure and eligibility for application**

There are two essential documents that determine the order, manner, and amount of state aid in the direction of cost rebates: the Film Industry Act and Regulations for the Implementation of the Film Industry Act (RIFIA)<sup>3</sup>. The cost reimbursement measure itself provides for the reimbursement of eligible costs incurred on the territory of the Republic of Bulgaria, with the amount of the reimbursed funds not exceeding 2 million leva (Art. 60a, para. 3 of RIFIA), and the amount is calculated as a percentage (25%) of the eligible costs.

For the purposes of implementing the FIA, an Executive Agency “National Film Center” (NFC) is established under the Minister of Culture of the Republic of Bulgaria, as part of its obligations are to implement the FIA (Art. 6, para. 1, item 14). This assigns a central role to the NFC in the processes of application, absorption and reporting of funds for any measure provided in the law. It is additionally important to note that the NFC maintains registers that are relevant to the cost reimbursement measure:

- independent producers;
- film production service providers;
- film distributors;
- persons screening films on the territory of the country;
- movie theaters;
- film productions carried out by foreign producers on the territory of the Republic of Bulgaria, including co-productions with Bulgarian producers (Art. 19, para. 1, items 1 – 6)

There are a number of specifics regarding the application that must be taken into account, namely:

- According to the provision of Article 26a of the Film Industry Act, to apply under the schemes provided in the law, the person applying must be registered either in the register of independent producers or in the register of film production service providers.

First, this limits entry into the register of persons who are citizens of third countries and/or of companies registered in third countries. By third countries, here and in the FIA is meant outside the EU, the Agreement on the European Economic Area, and the Swiss Confederation. The restriction is necessary to provide a competitive advantage to national and European independent producers and support companies whose main activity is film production and are registered in the relevant register. This practically means that, for example, an American producer, who wishes to shoot his film in Bulgaria and, at the same time, wishes to benefit from the cost reimbursement scheme cannot do so independently but must use the services of a Bulgarian entity registered in the relevant register, and who will apply with the project to the NFC (Art. 35f, para. 8). The law, of course, also allows third-party beneficiaries to benefit from the scheme, but only if they have been registered two

years prior to the date of submission of the application for reimbursement. This raises certain questions about the existence of a contradiction, but this is not the subject of this study.

– The types of works that can be applied for are: a feature film with a duration of over 70 minutes; a documentary film with a duration of over 60 minutes or a documentary series with a duration of each episode of over 40 minutes; an animated film or animated series with a total duration of over 24 minutes; a film intended for broadcast on television or on platforms, with a duration of over 70 minutes or a series with a duration of each episode of over 40 minutes (Art. 35e, para. 2, item 1, letters a – d).

Here, producers must consider the type of their work and whether it is into any of the categories that are eligible for application for a cost reimbursement measure.

– The work applied for must be a cultural product, according to the so-called cultural test, which is an appendix to the RIFIA (Appendix No. 5 to Art. 42, para. 1, item 6 of the RIFIA). The so-called cultural test itself is a document with 8 points, on which the candidate self-assesses.

The eight points represent information about the project, starting from what events the script is based on; is it an adaptation of a literary work; is the author of the script is a citizen of the Republic of Bulgaria or of the EU; does the script contains a Bulgarian or European cultural, architectural or other landmark; is the final version of the work in Bulgarian or in one of the official EU languages; does the script reflect any of the values significant for Bulgaria and the EU. When answering these questions, the applicant sets his own score based on the maximums provided in the form itself, which then goes to an artistic committee, which sets its own score based on the provided script. In order to qualify for the next stage, the project must collect a minimum of 14 out of a total of 36. Here it is worth paying attention that all documents attached to the application must be translated into Bulgarian.

– The scheme can only be applied for with a script for which the rights have been settled/acquired by the producer/co-producer, and a film production service provider who has a contract with a producer or co-producer who has acquired the rights to the script can also apply.

Again, it should be borne in mind that if the contracts and the script do not have a translation into Bulgarian, then one must be provided, and in the case of the contracts, they must be translated by a sworn translator. The acquisition of the rights is an expense for which reimbursement of costs cannot be requested.

– Other requirements for the applicant are to produce products that are described in the section on the types of works that can be applied for; to be entered in the register of independent producers or in the register of film production service providers

– One of the requirements, which could potentially become an obstacle for debutants, is that the candidate must have produced at least one work from the above, which has been distributed.

When formulating this requirement, the legislator took into account, to a certain extent, the provision of access to this measure for debutants by stipulating that if no such work has been distributed, then, at least in the last 10 years, if we are talking about an association/company, its executive director or manager must have participated in the creation of at least 1 of the works mentioned.

An additional condition for candidates is provided for in para. 9 of art. 35f, which states that only an independent producer, within the meaning of the FIA, can be a candidate under the scheme. The law considers an independent producer to be a person who is not in any way dependent on a provider of linear and non-linear media services. *Linear services are those that are provided to users on the basis of a program schedule, and non-linear services are used by users at an individually chosen moment* (Papagalska 2019).

## **2. Eligible and ineligible costs**

Like any scheme involving public funds, there are also eligible and ineligible costs when reimbursing film production costs.

Eligible costs are all those costs for which the applicant has the right to request a percentage reimbursement from the state, and ineligible are all those costs for which, although incurred on the territory of Bulgaria, a percentage reimbursement cannot be sought.

### **Eligible costs (Annex No. 16c to Art. 60a, para. 1 of the RIFIA):**

Generally speaking, all costs for goods and services carried out on the territory of the Republic of Bulgaria and are directly related to the project's preparation, production, and post-production are eligible. Annex 16c of the RIFIA describes in detail the eligible costs and the method of calculating the eligible amount (RIFIA p. 301).

Other eligible costs are those cast fees of film production service providers, as well as of persons who are employed under an employment contract, and it can be proven that their work is related to the work related to the film for which the application is being made.

From the further exposition of Annex 16c of the RIFIA, it becomes clear that the legislator has covered almost all costs above and below the line in the film budget, and the crews are also listed for the avoidance of doubt. The information provided on the method of calculating the eligible costs and the detailed list of types also makes an extremely good impression.

### **Non-deductible expenses (Annex No. 16c to Art. 60a, para. 1 of the RIFIA)**

Generally speaking, all costs not directly related to the project's preparation, production, and post-production are ineligible. It should be noted that the RIFIA is categorical that all costs incurred before the application submission date are also ineligible. Expenses related to land acquisition, buildings, and fixed and non-current assets are also not allowed.

As mentioned above, when considering the requirements for applicants, it is indicated here that the costs of creating the plot and acquiring intellectual property

rights in relation to the plot are not eligible. This emphasizes the need to settle the rights with the relevant rights holders (authors of the script, authors of works on which the script is based, and the like) in advance. The costs of remuneration of individuals who will not be subject to final tax under Bulgarian law are also ineligible. Of course, all those costs for which funding has already been received also remain outside the requested reimbursement amount.

**Note:** The law does not state that a project and its costs are eligible for application under the scheme only if all costs (meaning the film's overall budget) will be incurred on the territory of Bulgaria. It only states that reimbursement of costs can be requested only for those who are eligible and incurred on the territory of the Republic of Bulgaria.

### 3. Application procedure

The application procedure, first of all, goes through a verification of the eligibility of the candidate, as described in point one of this study, if the candidate is eligible, then he proceeds to filling out the documents. In case the candidate is a third-country national who has not been registered two years before the date on which he will apply, then:

– From the NFC website and the published registers, a film production services provider must be selected to carry out the activities on the territory of the Republic of Bulgaria and be a candidate under the cost reimbursement scheme.

After selecting an entity that will apply under the scheme, the process proceeds to filling out the necessary application documents, which is carried out in two main stages - the first stage, which is related to an assessment of eligibility and cultural content, which is carried out before the National Commission for the Evaluation of Cost Reimbursement Projects, and the second stage, which is carried out before the Second Financial Commission and **will not** be considered in this study.

The following documentation is prepared **for the first stage:**

– Appendix No. 5b to Art. 42, para. 1, item 6 of the RIFIA, which represents the application itself.

I conditionally divide the application form into two parts - the first part is general information, and the second part is the so-called cultural test.

The first part of Annex 5b provides information on the name of the project, the applicant's details; is the application is submitted personally or through an authorized person (it is permissible through a proxy, with a power of attorney); whether the production is in the conditions of co-production or is a product of a sole producer, or a provider of film production services is applying; type of enterprise applying – small or medium-sized enterprise, or large enterprise; type of audiovisual work with which the application is made; completion period; place of project head office; the amount of total estimated budget; amount of estimated total budget for the Republic of Bulgaria, as well as type and amount of requested

state aid. Within this application, it is necessary to declare whether the applicant is applying for the first or second time with this project, that he has not undertaken work on the project, and that he is an independent producer within the meaning of the FIA.

In the cultural test, which is the second part of Annex 5b, the applicant must answer 8 questions that will determine whether his project will be admitted for consideration by the second composition of the financial committee. As written above in the study, it is of essential importance here whether the project professes the basic values of the Republic of Bulgaria and the EU and what nationality the main creative persons in the project are.

The following documents must be attached to the application:

- Script in Bulgarian;
- A list of the project's costs on the territory of Bulgaria – this is a general estimated budget, not a detailed one – in cinema it is called a top sheet;
- Declaration of Confidential Information – while the previous two documents are in a format that the producer and the industry in general work with, such a declaration does not exist as a form in the NFC database. It must be prepared by the production's lawyer, and it is especially important to state in it that all documents – budget, script, etc. should be considered confidential information and are not subject to disclosure by the NFC;
- Evidence that the applicant has distributed audiovisual products – again, there is no form, but links and printouts from imbd.com, copies of contracts, printouts and links from distributor sites, and the like can be provided;
- Several sample declarations that have been uploaded to the NFC website;
- Power of attorney for submitting the documents if they will not be submitted by the applicant.

All documents must be prepared in electronic and paper format. It is especially important when compiling the paper format that it must contain an inventory of the documents, as well as that the documents themselves must be chronologically arranged (according to the inventory) *and must be permanently attached to a folder/file* (NFC).

### **Conclusions and recommendations**

The existing Bulgarian scheme for reimbursing costs for filming audiovisual works is relatively new (dating back to 2021), and it would be difficult to assess its effectiveness as it has not completed a five-year period. However, the first stage of application examined in this paper gives a good perspective on how administratively easy it is. It should be noted that the measure is fully compliant with Regulation (EU) No. 651/2014, and this makes it fully compliant with the EU state aid rules, which gives hope that it will be sustainable over time and will do its job – to attract more and more foreign productions to Bulgaria. The law and the

regulations have clearly outlined the requirements for applicants and their projects, what is impressive is:

- The procedure and documents are available only in Bulgarian – there is a short guide in English, but it only outlines the general framework of things and does not provide detailed information;

- Applying for the measure takes place on-site and on paper, along with the electronic medium;

- The NFC website has an English version, but it again only leads to the brochure and not to detailed information. The normative acts in a foreign language are limited to the FIA, but the more important document RIFIA is not available in a foreign language;

- The so-called cultural test contains a number of discussion questions that would cast doubt on its objectivity;

In connection with the above, I make the following recommendations:

- To create a full English version of the NFC website, as this is the main way of presenting the agency on the Internet to its potential users, and *the Internet is the newest media in the media space and is the media of the information society* (Strijlev 2019).

- All documents relating to the application for the cost reimbursement measure must have an English version;

- To eliminate the requirement for paper documents when submitting documents;

- To develop its own online platform for submitting documents, which is different from the Secure Electronic Service System, which would assist in the overall digital transformation of the NFC, but one that would be *subordinate to a clear strategy based on a thorough analysis of the needs of the beneficiaries* (Stoyanova 2022).

- Refine the cultural test by removing some of the discussion points or reformulating them.

Overall, it should be noted that the current director of the NFC and the entire administration are making efforts to ensure that the NFC operates in a new and modern way, despite its heavy legacy and resource (mainly lack of human resources) constraints. *Conditions for predictability are being created, which, together with the integrity of the work processes, guarantee greater competitiveness* (Krushkov 2020) of the NFC and the Bulgarian film industry.

## NOTES

1. Film Industry Act, Promulgated, State Gazette No. 105/2.12.2003.

2. <https://www.kinstellar.com>.

3. Regulations for the implementation of the Film Industry Act, in force since 05.12.2018.

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