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List of abbreviations

ALM	Artists Labels Music
BBC	British Broadcasting Corporation
CCP	Common Commercial Policy
CELF	French Book Export Centre (Centre d'exportation du livre français)
DW	Deutsche Welle
EACEA	Education, Audiovisual and Culture Executive Agency
EC	European Commission
EC Treaty	Treaty Establishing the European Community
ECJ	European Court of Justice
EEA	European Economic Area
EEC	European Economic Community
EP	European Parliament
ERICard	European Institute for Comparative Cultural Research
EU	European Union
FAS	Federal Antimonopoly Service of the Russian Federation
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GDR	German Democratic Republic
IMI	Internal Market Information System
IP	Intellectual Property
KHM	Art History Museum (Kunsthistorisches Museum)
MS, MSs	Member-State, Member-States
SIDE	International Distribution and Publishing Company (Société internationale de diffusion et d'édition)
SSU	Security Service of Ukraine
TD	Member of Parliament in Ireland (Teachta Dála)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership
TV	Television
UNESCO	United Nations Educational, Scientific and Cultural Organization
WTO	World Trade Organization

Introduction

Reasoning for research. Art and culture have always possessed a special place in peoples' mind. Philosophers consider the culture to be a kind of alternative, artificial reality, fully created by human being and what distinguishes us from other animals. Common people like culture because of its variety, role as a platform to express yourself, function to unite people and point out diversities at the same time. States like culture for its influence and, obviously, eager to regulate it. Culture is suitable for market relations: one creates a song, play, movie, book and sell and others buy and enjoy. Or not. Key word is 'buy'.

If to look back in past, we can't really say that the culture was entirely local phenomena: generally, nations and civilizations absorbed elements of foreign cultures, which smoothly mixed and connected with local, especially when we talk about one continent. Moreover, cultural absorptions and mixes 'gave birth' to new cultures and nations! However, it is another very exciting topic for other field of study, not law. Even through manifest hostility between European states art and culture moved freely through the continent and, sooner, beyond. And it is no sense to explain something about nowadays globalization when we explore more and more about each other. Alongside with waging wars.

Applicability of the topic. Despite abovementioned states today try to protect and promote their national culture and art not only abroad, but among own citizens. They use usual for trade and economy measures as quotas and restrictions: the most common variants are quotas for foreign movies in cinemas and national music on radio. Such measures are justified with protection of national identity, encourage and support national artists, make sure that they can be heard, watched, seen anywhere. The state can also finance art and culture (especially cinema). It sounds logical bearing in mind that some cultures are, well, more successful in 'expansion', without negative connotation. Returning to globalization, it is a trend for states to form various kinds of free-trade areas or customs unions. The most outstanding among them is the European Union. It is definitely something more than anything, listed in the GATT. 28 MSs have not only common tariffs towards third states: internal market and its freedoms, competition policy, currency (not all), foreign and security policy etc. Some areas are governed exclusively by the supranational EU bodies (art. 3 TFEU).¹ Article 4 defines spheres where the competence of EU bodies and Member-States is shared.² According to subpar. (c) art. 6 of TFEU, cultural sphere is governed by Member-States with Union competence 'to carry out actions to support, coordinate or supplement the actions of Member-States'.³ So, we can make a conclusion, that the EU states are almost free in

¹ Nigel Foster (ed) *Blackstone's Statutes EU Treaties & Legislation 2016-2017* (27th edn, Oxford University Press 2016) 22.

² *ibid* 22-23.

³ *ibid* 23.

cultural policy exercising. ECJ's case *Commission v. Italy* is really prominent for two points: firstly, the definition of 'goods' was formulated, and secondly, there was defined that art is subject of trade relations – it means, it can be sold and bought.⁴ Logically, within the EU art trade shall abide competition rules in order to maintain harmonized flow and development of the internal market. And it is easy to assume that state aid and state subsidizing to art cause competition distortion. On the one hand, unfair. On the other – protection of national identity, defense against foreign culture expansion, make citizens familiar with national art (not only folk).

Goals of the research paper. I consider this topic to be really exciting and not so 'trite' for scholars' community. After all, culture was, is and will be something close to everyone: all of us like to watch good movies, read good books and listen good music. So, each of us has a right to choose which kind of culture to enjoy and not be 'grasped' within the frames of own state. In my research paper I will try to answer following questions after analyzing various books, articles, statistics, legislation, ECJ case law and web-sources:

1. Do EU MSs apply restrictive measures on import and trade of works of art?
2. If yes, are this measures fully justified? After making some researches of relevant statistics and media market, do such measures really fully exercise their tasks?
3. How extensively states and the EU control economic aspects of culture and art and shall it be so?
4. Does this control violate the principles and freedoms of the EU Internal Market?
5. Does state aid in a field of culture disturb competition within the EU?
6. What is the approach of the EU's cultural policy and art trade towards third states?
7. On the other hand, what is the approach of non-EU states? How it differs and in which way?

Structure description. The paper is separated into 7 parts. In part 1 I work with EU legislation and analyze rules concerning culture. Part 2 is devoted mostly to EC activities – communications, regulatory frameworks, rules etc. Also I set out prominent EC case *Fine Art Auction Houses*. In part 3 I describe some ECJ cases concerning art and culture following this scheme: facts, questions raised, decision and answers and, finally, opinion of Advocate-General, if it is present. In part 4 I provide information on some cultural policy aspects of EU states with, so to say, knowable 'cultural markers' and depend on my linguistic abilities. Part 5 is about WTO activity. A comparative element, where I discover cultural policy aspects in non-EU states is in part 6. And final part contains different statistic information on consumers' tastes I was able to find and calculate and some other art trade details.

⁴ Case 7/68 *Commission of the European Communities v Italian Republic* [1968] ECR 423, 428.

For the purposes of this Master Thesis it is important to identify the definition of culture. Merriam-Webster Dictionary contains 6 different variations to answer the question: ‘What is culture?’. I will build my work on following: ‘the characteristic features of everyday existence (such as diversions or a way of life) shared by people in a place or time’, ‘enlightenment and excellence of taste acquired by intellectual and aesthetic training’ and ‘acquaintance with and taste in fine arts, humanities ... as distinguished from vocational and technical skills’.⁵ However, I also found useful brief, but exact Cambridge Dictionary definitions: ‘the way of life, especially the general customs and beliefs, of a particular group of people at a particular time’ and ‘music, art, theatre, literature, etc.’.⁶ Developing the collocation ‘everyday existence’, I would like to emphasize an attention, together with common EU cultural and trade framework, on music, movies and cultural property of states analysed. I consider music and movies to be the most popular types of entertainment and, subsequently, a subject of increased governmental attention. And, generally, it is always interesting to talk about it – culture has a unique uniting, friend-obtaining and solitude-overcoming features. So, from time to time I will insert such appropriate references for slightly better understanding and establishing some sort of communication. Cultural property and cultural heritage have always been subject of debates about any kinds of trade liberalization and are always parts of exclusion clauses.

In this paper I don’t consider issues of history, museums, libraries and festivals organization, theatres and language.

State of research and selected bibliography. Such topics as EU Internal Market law, CCP, state aid, competition law and IP law in general are the most popular among scholars. The issue about the place of culture and art in trade relations is not so much examined by scholars, but there is a huge variety of legal instruments done by state, EU and other international institutions. Also such topics are raised by press. To sum up, I worked with documents and media considerably more than with doctrine. Here I would like to point out some of the most important sources in my preparation.

Free Trade and Culture. A Study of Relevant WTO Rules and Constrains on National Cultural Policy Measures by Peter van de Bossche is a comprehensive study on WTO principles on culture and also general principles of WTO structure functioning.

European Commission web-page was really fundamental base for my research. This institution provides various kinds of documents directly related to art and culture, budget statistics

⁵ ‘Culture’ (Merriam-Webster, 15 July 2018) <www.merriam-webster.com/dictionary/culture> assessed 27 July 2018.

⁶ ‘Culture’ (Cambridge Dictionary) <dictionary.cambridge.org/dictionary/english/culture> assessed 27 July 2018.

and information, a huge competition and state aid decisions database for me to prepare own statistical analysis in respective parts.

Treaty on the Functioning of the European Union is vital and crucial document, ‘the Founding Father’ of entire EU.

Compendium. Cultural Policies and Trends in Europe is web-portal governed by the Council of Europe and ERICard. Here you can find various information about cultural matters in Europe: countries’ profiles, statistics, analytics etc.

To sum up aforementioned, I have chosen the topic ‘EU Internal Market Freedoms and State Aid in Culture and Art’ for two reasons: firstly, its relative novelty, and, secondly, this is something very close for everyone – each one has favourite singer, favourite movie or favourite book, isn’t it?

1. Cultural policy and art trade and Internal Market law rules. Cultural relations and art trade with third states through Common Commercial Policy

1.1. Culture policy and art trade and Internal Market harmonized functioning

The EU may be fairly called unique formation: from purely economic entity for six states it turned into mighty political and economic power for 28 states and those who eager to join it. Like a caterpillar which becomes a butterfly. Today the EU is something more than just an economic or customs union – something that goes beyond definitions of ‘state’ or ‘federation’.

And how all this is relevant to culture? Well, let’s look at par. 3 Article 3 of TEU:

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced.⁷

As it is seen, another EU’s purposes are to promote ‘Pan-European’ culture together with preserving each MS culture. Even ‘place culture at the heart of European integration’.⁸

Before analysing legal EU’s legal framework, it is important to briefly describe the competence relations between EU and MS. TFEU provides us three types of competence: exclusive (only EU is eligible to make decisions) (Article 3), shared (in case EU hasn’t regulated some sphere of share competence, the MS can make decisions) (Article 4) and competence to support, coordinate or supplement (where EU and MS work together) (Article 6). Here we should know that CCP belongs to EU exclusive competence, the Union shares competence in internal market law and also eligible to support, coordinate and supplement MSs’ culture.⁹

In order to speak about place of culture in particularly internal market, a general EU legal acts, programmes and budget expenses on culture should be outlined. Major is, of course, Title XIII ‘Culture’ of TFEU where the main principles of cultural development are embodied - respect national diversity and cherish ‘common cultural heritage’.¹⁰ Paragraph 2 of article 167 describes cultural spheres where the EU shall ‘encourage cooperation’.¹¹ In fact, paragraph 4 states extremely interesting provision, ‘The Union shall take cultural aspects into account in its action under other provisions of the Treaties...’¹², which proves a special place of cultural affairs in EU activities. We will see it sooner. And, finally, paragraph 5 of article 167 lists responsible

⁷ Foster (n 1) 2.

⁸ Council Resolution of 21 January 2002 on the role of culture in the development of the European Union [2002] OJ C 32/02, para. A.

⁹ Foster (n 1) 22-23.

¹⁰ *ibid* 64-65.

¹¹ *ibid* 64.

¹² *ibid* 65.

institutions for culture affairs recommendations: the EP, the Council, the Committee of Regions and the EC.¹³ Another key point in this paragraph, that 'any harmonization of the laws and regulation of the Member States'¹⁴ is excluded from EU institutions competence. Only Council's recommendations.

For aforementioned purposes the EU adopted numerous programmes and action plans: Council's Work Plan for Culture (2015-2018): four priority areas were defined and developed targets within these areas – 'Accessible and inclusive culture' (increase cultural awareness, improve access to culture by digital means, help culture to make its contribution in other social spheres), 'Cultural heritage' (governance participation, promote skills and professions related to cultural heritage, cultural heritage protection from different devastating factors), 'Cultural and creative sectors: Creative economy and innovation' (financing, develop an 'economic' side of culture alongside with creative, cultural tourism promotion) and 'Promotion of cultural diversity, culture in the EU external relations and mobility' (implementation of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions 2005, foster culture in EU's foreign policy, intercultural communication);¹⁵

Europeana: a web-portal supported by the EU where more than 50 million different cultural artefacts are placed and may be easily accessed – music, history, art, fashion etc. – from more than 3000 museums, exhibitions and other places art is preserved;¹⁶

European Capital of Culture: part of Creative Europe, this program dedicated to promotion and improvement by means of culture and art of different European cities and these are not only states' capitals. Each year 2 European cities become Capital of Culture and a list of cities is adopted by the EC for 6 years (the cities are named until 2022). Now the Culture Capitals of this year are Leeuwarden-Friesland (the Netherlands) and Valetta (Malta);¹⁷

Creative Europe 2014-2020: the biggest EU's cultural programme aimed to promote art and creativity in various sectors. As it provided by Creative Europe itself, the programme's aims are 'Development of European films, TV programmes and games; Distribution and promotion of European films, festivals, cinema networks; Training for cultural and creative professionals/artists; Literary translations; Cross-border cooperation'. Creative Europe Programme consists of three sub-programmes: Media Sub-Programme, Culture Sub-

¹³ *ibid* 65.

¹⁴ *ibid* 65.

¹⁵ Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on a Work Plan for Culture (2015-2018) [2014] OJ C 463/02, 8-13.

¹⁶ see Europeana Collections <www.europeana.eu/portal/en> assessed 24 March 2018.

¹⁷ 'European Capitals of Culture' (*Creative Europe*) <https://ec.europa.eu/programmes/creative-europe/actions/capitals-culture_en> assessed 12 March 2018.

Programme, Cross-sectoral Strand, Transnational policy cooperation and Creative Europe Desks.¹⁸ As stated in Article 24 of Regulation 1295/2013 establishing Creative Europe Program on financial provisions, the biggest support receives Media Sub-Programme, then 31% of budget goes to Culture Sub-Programme, 13% shall be granted to Cross-sectoral Strand and last 4% are to be divided by Transnational policy cooperation and Creative Europe Desks.¹⁹

And a couple of words about EU's budget for culture. General EU budget is estimated over 1 trillion EUR and it is planned to grant near 17,7 mil. EUR in 'Security and citizenship' sector, which includes culture, and it is 2% of general budget.²⁰ Among all the EU's cultural programs Creative Europe receives the biggest funding and each year the Union gives more and more money on it, as we can see in adopted 2018 Budget and 2019 Draft Budget²¹: in 2017 63 509 222 EUR were granted and in 2018 70 974 985 EUR.²² Overall, for 2014-2020 Creative Europe was granted 1,46 billion EUR²³.

As we see, culture possesses a special place in the EU. And what about internal market? In *Commission v Italy* the Court, alongside with developing the definition of 'goods', declared works of art 'goods' which can be bought or sold.²⁴ So, the rules of 'area without internal frontiers in which the free movement of goods, persons, services and capital is ensured...' ²⁵ shall be applied on artistic objects. And, in conformity with Articles 34 and 35 TFEU, there shall be no quantitative restrictions or measures having equivalent effect on import and export.²⁶ Yes, it is true, but there is an exclusion listed in article 36 TFEU:

The provisions of Articles 34 and 35 shall not preclude prohibition or restrictions on imports, exports or goods in transit justified on ground of ... the protection of national treasures

¹⁸ 'What's in it for the Europe's cultural and creative sectors' (*Creative Europe*)

<https://ec.europa.eu/programmes/creative-europe/sites/creative-europe/files/library/creative-europe-presentation_en.pdf> assessed 12 March 2018.

¹⁹ Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC [2013] OJ 347/221, 233.

²⁰ 'EU Budget for the future' (*European Commission*, 14 February 2018)

<https://ec.europa.eu/commission/sites/beta-political/files/where-does-the-money-go_en.pdf> assessed 12 March 2018.

²¹ 'Statement of estimates of the European Commission for the financial year 2019' (*European Commission*)

<<http://ec.europa.eu/budget/library/biblio/documents/2019/SoE2019%20with%20covers.pdf>> assessed 1 May 2018, 144.

²² Budgets Definitive Adoption (EU, Euratom) 2018/251 of the European Union's general budget for the financial year 2018 [2018] OJ L 57/1, 927.

²³ EU Budget for the future (n 20) <https://ec.europa.eu/commission/sites/beta-political/files/where-does-the-money-go_en.pdf> assessed 12 March 2018.

²⁴ Case 7/68 (n 4) 428.

²⁵ Foster (n 1) 27.

²⁶ *ibid* 28.

possessing artistic, historic or archaeological value ... Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.²⁷

Well, a point of ambiguity: what shall be defined as ‘national treasure’? Mainly the EU delegated this issue to MSs, warning them about ‘arbitrary discrimination’. And, bearing in mind aforementioned about EU’s competence in culture, that sounds logical. When TFEU was adopted, national treasure issue was a real challenge. ‘Northern’ and ‘southern’ MSs had opposite positions about it: northern states, especially the UK, wished no regulation as it can disturb holding auctions of art and antiquity and also an art trade business. Southern states, among which was Italy, were worried that in case of free market all their artistic treasures may be bought by art dealers and be disseminated around the world.²⁸ Both positions are justified: on the one hand, rely solely MSs to regulate where is national treasure or not is dangerous, because the state can call each picture or each written piece of text ‘national treasure’, require billions of documents and licences for every action with piece of art and throw around refusals. On the other hand, such liberalization may cause really an enormous flow of pieces of art in someone’s private hidden collections. Of course, a compromise was urgent and Council Regulation (EEC) 3911/92 on the export of cultural goods and Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State were adopted and these were main documents on EU level until recently. Cultural objects were divided into 14 categories depending on age (in art objects not older than 10 years are considered as new, between 10-50 years are vintage and older than 50 years are antiquity) and value in euro (from 0 to 150 000 EUR) and they were subject to licensing. The EC in its report on Council Regulation (EEC) 3911/92 and Council Directive 93/7/EEC implementation provided a list of general amount of export licenses granted by states: unconditional leader was the UK with over 38 000 licenses. Next was France with more than 8 000 licenses.²⁹ Despite France holds huge amounts of various art auctions and French auction house Drouot is one of the biggest in the world, France always supports restrictions on cultural goods free movement

However, these acts were amended by Council Regulation 116/2009 on the export of cultural goods. The export licensing system remains and MSs are also obliged to inform EC about

²⁷ *ibid* 28.

²⁸ Christopher G Jernigan ‘*Protecting National Treasures in a Single-Market EC*’ (1994) 17 B.C. Int’l & Comp. L. Rev. 153 <<http://lawdigitalcommons.bc.edu/iclr/vol17/iss1/9>> assessed 29 March 2018, 156-157.

²⁹ *ibid* 157-160.

the list of bodies authorized to issue export licenses.³⁰ The Annex I with the list of cultural goods was separated into parts A and B. Part A lists categories of goods shall be licensed. Comparing with the Regulation 3911/92, which had 14 categories, new one also includes antic items.³¹ Part B is devoted to value of cultural goods subject to licensing: threshold sums have not changed and new category (antiquity) listed in 50 000 EUR threshold.³²

The new Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State calls MSs to create national legislative framework for unlawfully removed cultural object return and mostly deal with this process by their own providing only IMI Internet-module.³³ In 2017 the EC presented its proposal to amend Directive 2014/60/EU.³⁴ This draft introduces new, extended definition for ‘cultural goods’³⁵, presents new types of licences and confirmation documents to ensure that cultural object transported legally³⁶ and changes objects division into categories only by age principle.³⁷

And despite seemed lack of competence except for just supporting activity the EU recently introduced 30% quotas for EU states produced films and TV products. This was done for the defence against American massive cultural influence also through the media. Now in order to enter on the EU market, a huge American streaming companies as Netflix and Amazon shall offer not less than 30% of EU produced content. Netflix assures that in 2018 it launches several products, done in Italy, France, Germany, Spain and the UK.³⁸

In conclusion, the situation with culture in the EU is debatable. Without any doubts, EU contributes a lot in numerous cultural programs, encourage not only MSs, but also third states in participation etc., so, aside internal market issues the work done is wonderful. Internal market regulation in culture is potentially restrained, because too much depends on states. Yes, today auctions are functioning, you can buy a picture in art gallery or some old book in antiquity store easily. But tomorrow it may change because of ‘protecting national treasure’, ‘huge historic value’

³⁰ Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (Codified version) [2008] OJ L 39/1, 1-2.

³¹ *ibid* 4-5.

³² *ibid* 5-6.

³³ Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast) [2014] OJ L 159/1, 5.

³⁴ Proposal for Regulation of the European Parliament and of the Council on the import of cultural goods 2017/0158 (COD), 2.

³⁵ ‘Import of Cultural Goods into the EU’ (*European Commission*)

<https://ec.europa.eu/taxation_customs/business/customs-controls/cultural-goods_en> assessed 2 April 2018.

³⁶ Proposal for Regulation 2017/0158 (n 34), 16-17.

³⁷ ‘Import of Cultural Goods into the EU’ (n 35) <https://ec.europa.eu/taxation_customs/business/customs-controls/cultural-goods_en> assessed 2 April 2018.

³⁸ Todd Spangler ‘Netflix, Amazon Would Be Forced to Maintain 30% European Content Quotas Under Proposed EU Law’ (*Variety*, 26 April 2018) <<https://variety.com/2018/digital/global/netflix-amazon-european-content-quota-30-percent-law-1202788631/>> assessed 30 May 2018.

and bla-bla-bla. In my opinion, a recommendation by Council or guideline by EC should be developed for citizens and states themselves understand where is 100% something like Mona Lisa and where is a picture of house and sun done by 2nd grade schoolboy and why latter is definitely not ‘national treasure’.

1.2. The European Union’s culture policy and art trade approach towards third states

Scholars Craig and de Búrca, while describing evolution of CCP principles, point out a strengthen EU’s exclusive competence after Lisbon Treaty by dissolving different types of trade in services for CCP to ‘cover trade in services as a whole’.³⁹ However, at the same time paragraph 4 Article 207 TFEU complicates Council’s activity in CCP: agreements and negotiations with third countries in most spheres require majority votes, but ‘The Council shall also act unanimously for the negotiation and conclusion of agreements: (a) in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union’s cultural and linguistic diversity...’.⁴⁰

Main purpose of CCP is contribution ‘in the common interest, to the harmonious development of world trade’.⁴¹ As for me, culture and art are the best ways to reach harmony. And not only economic. EU understands it and not only defend trade aspects of IP rights on international level⁴², but also gives room for other states to take part in cultural programmes and make plans of cross-border cooperation in this sphere.

Work Plan for Culture 2015-2018 contains a separate plan for external cultural economic relations. There are four main topics of cooperation where MSs and the EC are engaged to take part. First one is “UNESCO convention on the protection and promotion of the diversity of cultural expression” and major aim here is implementation of the UNESCO Convention on the protection and promotion of the diversity of cultural expressions 2005 and analysing its influence on EU’s internal market and CCP. Second is ‘Culture in EU external relations’ which general target is to strengthen cultural factor in relations with third states by various instruments – organizing meetings, studying, negotiations etc. Third topic devoted to ‘Intercultural dialogue and mobility’ and mainly about movement of artistic workers and illegal transfer of works of art. Last and, maybe, the most important for citizens is ‘Cinema: improving circulation of European films’ as nowadays people mainly prefer watching movies or TV-series to other kinds of culture. Two main

³⁹ Paul Craig and Gráine de Búrca *EU Law Text, Cases and Materials* (6th edn, Oxford University Press 2015), 336.

⁴⁰ Foster (n 1) 75.

⁴¹ *ibid* 75.

⁴² *ibid* 75.

purposes here are to foster MSs to develop legislative and financial environment for successful movies creation and promote European cinematograph not only within EU, but also outside⁴³.

Not really commercial, but nevertheless cultural external policy initiative worth mentioning: in 2016 the Cultural Diplomacy Platform was launched. Federica Mogherini, High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the EC, placed culture ‘at the core of our foreign policy ... the development of a strategic approach to international cultural relations is one of our priorities’.⁴⁴ Its main objectives are fostering of further cultural relations, support of cultural dialogue and enhance cultural communities.⁴⁵ Cultural Diplomacy Platform is an initiative based on ‘predecessor’ – Preparatory Action ‘Culture in EU External Relations’ – and Joint Communication to the European Parliament and the Council ‘Towards an EU strategy for international cultural relations’ which is another guideline about how the EU should use culture in its external relations.⁴⁶

Creative Europe gives a possibility to third states to take part in cultural affairs. Article 8 of Regulation 1295/2013 establishing Creative Europe Program outlines the categories of states which may participate and defines rules of cooperation with states which are not parties and international organizations active in cultural sphere⁴⁷. Exact list of non-EU participants is issued by the EC regularly and last update was on 22 March 2018.⁴⁸ The states are admitted to participate in Culture Sub-Programme and Media Sub-Programme. There are 13 states in last update (Iceland, Norway, Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Montenegro, Republic of Serbia, Georgia, Moldova, Ukraine, Tunisia, Armenia and Kosovo)⁴⁹: all of them are fully eligible to participation in Culture Sub-Programme, only 7 are allowed to take part fully in Media Sub-Programme (Iceland, Norway, Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Montenegro, Republic of Serbia), 4 may participate partially (Georgia, Moldova, Ukraine, Tunisia), which means that only limited options of Programme are available – Training, Festivals, Film Education and Market Access. Armenia and Kosovo do not participate in Media Sub-Programme at all.⁵⁰

⁴³ Work Plan for Culture (n 15) 11-13.

⁴⁴ ‘About us’ (*Cultural Diplomacy Platform*) <www.cultureinexternalrelations.eu/about-us/> assessed 27 May 2018.

⁴⁵ ‘About us’ (n 44) <www.cultureinexternalrelations.eu/about-us/> assessed 27 May 2018.

⁴⁶ Joint Communication to the European Parliament and the Council Towards an EU strategy for international cultural relations JOIN (2016) 29 final, 2-5.

⁴⁷ Regulation 1295/2013 (n 19) 227.

⁴⁸ ‘Eligibility of organisations from non-EU countries’ (*European Commission*, 22 March 2018) <https://eacea.ec.europa.eu/sites/eacea-site/files/22032018-eligible-countries_en.pdf> assessed 25 March 2018.

⁴⁹ ‘Eligibility’ (n 48) <https://eacea.ec.europa.eu/sites/eacea-site/files/22032018-eligible-countries_en.pdf> assessed 25 March 2018.

⁵⁰ ‘Eligibility’ (n 48) <https://eacea.ec.europa.eu/sites/eacea-site/files/22032018-eligible-countries_en.pdf> assessed 25 March 2018.

To sum up, the EU tries to extend factor of culture even in its economic relations as much as it can because of lack of competence to make own decisions at full strength. Meanwhile many MSs worry about preservation of national cultures against internal market and CCP, the EU at least gets rest of the world acquainted with Pan-European culture, elements common for most European states history as many things are built on Roman bones. Well, better than arms race or nuclear bombs, isn't it?

2. State aid for culture policy and effect on competition within the European Union

2.1. The European Union's approach on state aid in cultural policy

Article 107 TFEU puts culture in a list of following issues:

may be considered to be compatible with the internal market: ... (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest.⁵¹

So, it means culture possesses some sort of 'preferential' status. Article 108 TFEU contains rules on EC on state aid notification in order for latter to check in for conformity with internal market and competition requirements.⁵² It is high time we looked closer at some EU updated legislation.

EC Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union raises an important issue – which cultural practices are of commercial nature and which are not.⁵³ Such explanation could help to define whether some cultural activity is state aid or not and its influence or absence of it on EU's internal market. The EC considers that certain cultural actions available for people free of charge are purely social, non-commercial nature and, thereof, possible to considered as not state aid. However, 'free access' factor is not a sufficient indicator – access to certain cultural activity may require small money donations from people (e.g., tickets state-owned museums), but it still may be considered as social and state funding here can be classified as not state aid, because of extremely tiny or no influence on EU's internal market. Also key factor of classification is 'non-substitutability' – some unique

⁵¹ Foster (n 1) 46.

⁵² *ibid* 47.

⁵³ Commission Notice on the notion of state aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union [2016] OJ C 262/1, 8.

cultural artefact or feature which exists only in one state. Really commercial nature, in EC's opinion, are cultural activities financed considerably with spectators and private sponsors.⁵⁴

The EC in 'Infrastructure analytical grid for culture, heritage and national conservation' reaffirms that 'public funding of cultural infrastructure is in principle not subject to State aid rules'⁵⁵ and describes various variants of state funding which probably not serve as state aid: no commercial exploitation of cultural action, combination of commercial and non-commercial methods, only local impact etc.⁵⁶

GBER 2014 includes a separate sector for culture, heritage conservation and audiovisual schemes (Articles 53 and 54).⁵⁷ In 2017 Commission Regulation (EU) 2017/1084 amended some provisions of GBER concerning culture. Revised GBER lists the scope, types of aid (investment and operative aid for culture and heritage conservation; production aid, pre-production and distribution aid for audiovisual service) and rules for applying each type of aid. Article 4 of GBER embodies 'notification thresholds' (state aid schemes that shall be notified to the EC) and exclusion from GBER scope of application: '(z) for investment aid for culture and heritage conservation: EUR 150 million per project; operating aid for culture and heritage conservation: EUR 75 million per undertaking per year'⁵⁸ and '(aa) for aid schemes for audiovisual works: EUR 50 million per scheme per year'.⁵⁹

In 2014 the EC introduced State Aid evaluation system. Main idea of this system is MSs evaluate their own state aid schemes before proceeding them to the EC. It should help to evaluate impact on internal market and facilitate improvements, if needed.⁶⁰ As it was said, GBER excludes state aid for culture from evaluation and notification requirements if it has not reached notification threshold. EC's Regulation 1407/2013 on de minimis aid established 'total amount of de minimis aid granted per Member State to a single undertaking shall not exceed EUR 200 000 over any period of three fiscal years'.⁶¹

⁵⁴ *ibid* 9.

⁵⁵ 'Infrastructure analytical grid for culture, heritage and nature conservation' (*European Commission*) <http://ec.europa.eu/competition/state_aid/modernisation/grid_culture_en.pdf> assessed 3 March 2018, 1.

⁵⁶ *ibid* 1-5.

⁵⁷ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty [2014] OJ L 187, 79-80.

⁵⁸ Commission Regulation (EU) 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs [2017] OJ L 156/1, 7.

⁵⁹ *ibid* 7.

⁶⁰ European Commission, 'You can't improve what you can't measure: State aid evaluation' (2014) Issue 7 Competition policy brief <http://ec.europa.eu/competition/publications/cpb/2014/007_en.pdf> assessed 15 March 2018, 1-2.

⁶¹ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid [2013] OJ L 352/1, 5.

The EC pays special attention to state aid for audiovisual sector, especially cinema. In its Communication on State aid for films and other audiovisual works (2013/C 332/01) an ‘important role in shaping European identity’⁶² was attached to films and other audiovisual works. So much attention to this field is justified by necessity to be competitive with US audiovisual production and it makes sense: in 2013, when this Communication was delivered, statistic demonstrated near 63% of US movies presence on EU market.⁶³ This Communication outlines stages of film production which may be granted state aid (script-writing, production, distribution and many others), reduces percentage of obligatory territorial production activity from 80% to 50% in order to ensure mobility, introduces ‘cultural test’ which allows to check that granted aid is used only for the purpose of culture and declared new aid intensity levels (maximum aid for big movie – 50% of production budget, no limits for ‘small’ and arthouse movies) in order to prevent internal market disturbance.⁶⁴ While discussing Communication a question of big movie production raised: many EU states claimed that it is important to establish big movie studios in Europe which can act as competitors to US Hollywood studios and, at the same time, attract investments from third states and required a possibility for tax facilitations as a kind of state aid. Due to the potential problems with further classifications, the EC decided not to arise this issue now. One more interesting detail: video games are excluded from Communication’s scope, because the EC thinks that this industry is extremely fast developing, costs a lot and Europe has enough video games studios both original and subsidiaries⁶⁵ (e.g., THQ-Nordic in Austria, Ubisoft subsidiaries thorough the Europe, Rovio Entertainment in Finlans etc.).

The best way to illustrate ‘privileged’ position of culture in state aid system is to look through EC’s decisions for last years. In a process of examining state aid and culture relations, I became excited with amount of positive decisions delivered by the EC on state aid for culture and a general amount of notifications for last 5 years, so, I addressed to EC’s State Aid Database.

During 2016-2018 the EC received 26 notifications on state aid for various cultural actions: cultural centres establishment, national movies tax facilitations, cultural heritage preservation etc. Two out of 26 notifications had been considered as not state aid (SA.47448 Promotion of the Basque language in digital news media, Spain, direct grant – no effect on internal market because of narrow target market; SA.45512 Aid to support the Valencian language in the press, Spain, direct grant – the same reason as in previous decision). And there was only one investigation

⁶² Communication from the Commission on State aid for films and other audiovisual works [2013] OJ C 332/1, 1.

⁶³ European Commission, ‘State aid rules for films and other audiovisual works’ (2014) Issue 13 Competition policy brief <http://ec.europa.eu/competition/publications/cpb/2014/013_en.pdf> assessed 15 March 2018, 2.

⁶⁴ Communication of state aid for films (n 62) 4-8.

⁶⁵ ‘State aid rules for films and other audiovisual works’ (n 63) 4.

procedure with positive resolution (SA.38418 German film fund, Germany, direct grant – doubts concerning internal market effect as EU legislation may be affected).⁶⁶

Within a period 2013-2019 the EC received 119 notifications and the biggest amount was from France (23), Spain (15) and Germany (10). Out of overall 119 notifications 8 were declared as not state aid and only two investigations were done by the EC with positive result for both.⁶⁷

Finally, it seems that state aid is very convenient way for culture promotion. State aid mechanism is like a Klondike for culture, so to say. EU legislation provides many facilitations for culture and states can grant considerable amount of money without notifying the EC. But, in case conditions of state aid require EC approval, it is not a great problem: the EC approves almost all state aid schemes.

2.2. Culture and competition disturbance

As we already know, the EU institutions provide many facilitations and exclusions for culture and art on internal market. Meanwhile separate rules for state aid on culture are developed, it seems that competition law is one of the few fields of EU law that creates no special conditions on culture.

Paragraph 1 Article 101 TFEU lists prohibited within competition law measures and paragraph 3 provides some exceptions for entities which ‘contributes to improving the production or distribution of goods or to promoting technical or economic progress...’.⁶⁸ De minimis Notice declares that not every agreement between undertakings causes effect on EU trade: in case market share of undertakings-competitors which concluded some sort of agreement does not exceed 10% of overall relevant market or each undertakings-non-competitors which concluded some sort of agreement possess less than 15% market shares on relevant market, such actions are excluded from scope of Article 101.⁶⁹ In addition, Protocol on the Internal Market and Competition due to ensure non-disturbance of competition, authorized the EU to, if case of necessity, ‘take actions under the provisions of Treaties’⁷⁰, also under Article 352, which states that if it is appeared that the EU has not enough power to attain some of the Union targets, the Council acting unanimously after EC’s

⁶⁶ Case search. State Aid Cases. Competition. European Commission <http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3 > assessed 19 June 2018.

⁶⁷ Case Search (n 66) <http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3 > assessed 19 June 2018.

⁶⁸ Foster (n 1) 44.

⁶⁹ Communication from the Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (De Minimis Notice) [2014] OJ C291/1, 2.

⁷⁰ Protocol 27 on the Internal Market and Competition [2008] OJ C 155/309, para 1.

proposal and EP consent shall adopt necessary measures for obtaining power and targets fulfilment.⁷¹

In 2000-2002 the EC had to deal with competition law violations from world famous auction houses Christie's and Sotheby's. They were accused in long-termed concerned practices (1993-2002), where they not only fixed prices, but set up other obstacles which put a spoke in sellers and buyers' wheels. They created a cartel, simply put.⁷²

Both Christie's and Sotheby's were established in London, UK, but later Sotheby's headquarters moved to New York, USA. Auctions have numerous sale houses thorough the world. They also hold auctions in Zurich, Geneva, Amsterdam. Both auctions characterized as luxury for wealthy buyers.⁷³

They established numerous conditions for vendors (such as new non-negotiable 'sliding scale' for vendor's commission per deal, no guarantees of minimum price, minimum interest rate for loans etc.) and buyers (limit credit terms to 90 days), together with agreement to 'limit their marketing efforts' like not to claim a 'leadership' on fine art market. Finally, parties agreed to exchange with information by telephone or while meetings.⁷⁴

In each competition case the EC analyses relevant market. Fine arts auctions sell different artistic things of any age, from something new from antiquity, and any theme. There are no binding rules on kinds of goods to be sold, evaluation and selling thresholds. Auctions play role of agents between good owners and buyers and receive commission for their services.⁷⁵

After Christie's revealed concerned practise scheme after 7 years of its existing, the EC stated EU competition rules violation, encompassed in Article 101 TFEU, and own investigation which confirmed the accusations and auction house's confess, the fines were imposed and calculated in several stages. Basic fines for both undertakings were 41,58 million EUR, because of nature of infringement (concerned practices and fixing prices under Article 101 TFEU), long duration and big geographic market (EU, EEA and entire world). However, these sums weren't final and 10% turnover limit was applied: it gave Sotheby's reduce to 34,05 million EUR, because undertaking's turnover exceeded 10% worldwide. But it also wasn't ultimate! When investigation started, both Christie's and Sotheby's applied for leniency, because first revealed the violation and latter cooperated with the EC actively while case. Leniency Notice 1996 provided possibility for immunity by grand fine reduction or even... fine cancellation!⁷⁶

⁷¹ *ibid* para 1-2.

⁷² *Fine Art Auction Houses* (Case COMP/E-2/37.784) Commission Decision C(2002) 4283 OJ L 200, 5.

⁷³ *ibid* 5-7.

⁷⁴ *ibid* 23-24.

⁷⁵ *ibid* 7-16.

⁷⁶ *ibid* 55.

As a result, Christie's was granted 100% reduction, so, no fine at all, and Sotheby's reduction was 40% and, respectively, 20,4 million EUR fine.⁷⁷

3. The Court of Justice in the European Union's practice

3.1. Case 7/68 Commission v. Italy [1968]

This case, related to art topic, is prominent for EU internal market development. It, so to say, the foundation of EU internal market law.

Facts. Italy has the Law on the protection of articles of artistic and historic interest dated 8 august 1939, which earlier stated several severe prohibitions on works of art trade and export: possibility to ban export, license requirement, right of pre-emption by state and imposing of progressive tax depending of article's value.

The Commission of European Communities (hereinafter – the Commission) in 1960 asked Italy to abolish progressive tax before 1 January 1962, because after this date it shall be considered as having equivalent effect to customs duty on exportation. Italy tried to provide justifications that this tax is not for all goods and objects of art are national treasures, but the Commission wasn't satisfied. After failing to fulfil obligations by Italy, the Commission granted two extra months, but sooner time-limit for dealing with this progressive tax was extended until 31 December 1965 as Italy notified that the committee to tackle this issue was established by the Parliament. The draft of amendments was approved by Senate and Chamber of Deputies in 1967, but... on March 1968 the Parliament was dissolved, so, the amendments weren't ratified and didn't become operative. Evidently, the Commission brought the case before ECJ.⁷⁸

Questions. The Commission (hereinafter – the Applicant) required to declare Italy's (hereinafter – the Defendant) failure in abolishing the progressive tax for works of art. Italy stated that claim of the Applicant shall be dismissed by ECJ.⁷⁹

The judgement of the Court. ECJ had to deal with two big issues: admissibility and case's substance.

The Defendant claimed that the Applicant had no right to lodge application, because it done it some days before dissolution of the Parliament and the Applicant knew about upcoming situation. The Applicant violated Article 2 of EEC Treaty, which states about harmony in economic activities development as aim of the EEC, so, the difficulties which Italy faced at that moment weren't regarded. The Applicant justified its action with Article 169, which grants the

⁷⁷ *ibid* 57-58.

⁷⁸ Case 7/68 (n 4) 425.

⁷⁹ *ibid* 425-426.

right to Commission to define fulfilment of obligations by state, provide reasonable opinion and, in case dispute can't be solved on Commission-MS level, bring the case before the Court. In this question ECJ was on the side of the Applicant, also pointing out a long period of dialog between parties and numerous extensions granted to the Defendant.⁸⁰

The Defendant highlights that the debatable progressive tax applies only to certain specific kinds of goods – works of art – which are not consumed on everyday basis like ‘2 kilos of potatoes, one bottle of milk and 8x3 cm. of Botticelli’ and this measure has good intention: protection Italian historic, archaeological and cultural heritage. And, in general, ‘the tax is in no way of a fiscal nature; in any event its contribution to the budget is insignificant’.⁸¹ Italian party qualified this tax as quantitative restriction and Article 36 of EEC Treaty allows such aimed to protect ‘national treasures of artistic, historical or archaeological value’. The Applicant states that, firstly, if goods are marked as works of art, they are subject to commercial transactions and EEC Treaty. Secondly, due to tax imposing only on exported goods, it is tax having equivalent effect to customs duties. And, lastly, Article 36 can't be applied by analogy on taxes having equivalent effect to customs duty.⁸²

While defining scope of Italian progressive tax on works of art export, the Court relied on Article 9 of EEC Treaty and gave the definition of ‘goods’ which is still used: ‘there must be understood products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions’⁸³. That means that Italian works of art are goods regulated by EEC Treaty provisions. Next, the Court fully took a stance of the Applicant and noted that this tax is having equivalent effect to customs duties, because it is applied only for export. The last point: due to aforementioned, Article 36 doesn't regulate this tax and Article 16 obliges all EEC MSs ‘abolish as between themselves, not later than at the end of the first stage, the customs duties on exportation and charges with equivalent effect’.⁸⁴

So, the Courts final decision: Commission's application is admissible, Italy failed to fulfil its obligation to abolish progressive tax on works of art export and Italy as unsuccessful party shall bear all the costs for the process.⁸⁵

Opinion of Advocate-General. Mr. Joseph Gand's opinion had a huge influence on Court's decision. In general, his position is fully matches with Court's, however, there is an interesting point. While discussing the nature of Italian progressive tax on works of art export, he

⁸⁰ *ibid* 428.

⁸¹ *ibid* 429.

⁸² *ibid* 427.

⁸³ *ibid* 428.

⁸⁴ *ibid* 429.

⁸⁵ *ibid* 431.

states that it is definitely under the scope of Article 16 and, replying to Italy's objections, writes that the non-fiscal purpose of tax has no importance in current case.⁸⁶ He said, 'What distinguishes customs duties on exports is not that they protect the national industry but that they increase the price of goods and thus end to hinder their exportation and, without prohibiting trade in the goods, to make it more difficult'.⁸⁷

3.2. Case C-199/06 CELF and Ministre de la Culture and de la Communication v. SIDE [2008]

This is the preliminary ruling of ECJ by request of French Council of State about interpreting Article 88 (3) EC Treaty (now it is Article 108 TFEU) due to the following proceedings.

Facts. CELF is a company-export agent, which sent printing materials abroad and to French overseas territories in order to promote French culture. The company performed wide range of orders, even those which couldn't generate much profit or unprofitable at all. CELF concluded a contract with the Ministry of Culture and Communication and between 1980 and 2002 received state aid for small orders from booksellers-individuals. SIDE in 1992 submitted a request to the Commission to clarify whether the Ministry had notified the Commission about state aid in conformity with Article 88 (3) EC Treaty. The Commission confirmed state aid fact and notification absence and soon issued the decision NN/127/92 "Aid to exporters of French books" where justified state aid to CELF because of culture promotion purpose under Article 87 (3) (d) EC Treaty. CELF brought a case before the Court of First Instance and by Case T-49/93 SIDE v Commission [1994] ECR II-2501 this decision was annulled. Also the Commission had to undertake deep investigation of the situation. After its investigation the Commission issued new decision 1999/133/EC with two main positions: on the one hand, failure to notify Commission about state aid is unlawful, but on the other hand – "the aid compatible with the common market on the ground that it satisfied the conditions for derogation under Article 92(3)(d) of the Treaty". A new decision caused two more cases: Case C-332/98 France v. Commission [2000] ECR I-4833 on failure by the Commission to apply Article 86 (2) EC Treaty, which was dismissed, and Case T-155/98 SIDE v. Commission [2002] ECR II-1179, which annulled Commission's decision once again because of wrong definition of relevant market. However, the Commission was very

⁸⁶ Case 7-68 *Commission of the European Communities v Italian Republic* [1968] ECR 423, Opinion of AG Gand, 434.

⁸⁷ *ibid* 434.

persistent and in 2004 issued a new decision 2005/262/EC justifying French state aid to CELF. Evidently, SIDE brought another case (Case T-348/04).⁸⁸

Meanwhile EC-level proceedings, SIDE also sued on national level. Due to Case T-49/93 *SIDE v Commission* [1994] ECR II-2501, SIDE requested the Ministry for Culture and Communication to stop subsidize CELF and repay sums already paid, but it brought no result and was rejected. Next, SIDE brought a successful case before the Administrative Court in Paris to annul rejection decision. After that the Ministry and CELF appealed to the Paris Administrative Court of Appeal, but it brought no result. Finally, the case ended up with the Council of State. Having in mind that the case is about EU law, the Council referred some questions to ECJ.⁸⁹

Questions. The Council of State provided following issues for preliminary ruling:

1. Shall the state obligatory, in conformity with Article 88 EC Treaty, in case of third parties complied and the Commission declared state aid unlawful because of failure to notify about it as it stated in Article 88 (3), recover aid granted and shall national courts order it?
2. If yes, should periods after the Commission declared state aid unlawful and before its annul by court be added into recover calculations?⁹⁰

The judgement of the Court. While replying first question, the Court defined general interpretation of Article 88 (3) EC. Firstly, this article obliges MSs to notify the Commission about an intention to grant state aid. Before the decision of the Commission the MS shall not apply such measures. Secondly, due to the role of national courts, the Court emphasizes following:

... national courts do no more than preserve, until the final decision of the Commission, the rights of individuals faced with a possible breach by State authorities of the prohibition laid down by Article 88(3) EC ... important to protect parties affected by the distortion of competition caused by the grant of the unlawful aid.⁹¹

Next, the Court states that generally national courts must issue recover aid orders as it goes in line with common market principles. However, the Court also recognizes the possibility that “unlawful” aid due to some circumstances may turn into ‘lawful’, eg if the aid was granted before the Commission’s decision and this decision is positive (as we have with CELF). But nevertheless all these actions require ECJ’s preliminary rulings. Finally, the Court identifies that the role of

⁸⁸ Case C-199/06 *Centre d’exportation du livre français (CELF), Ministre de la Culture et de la Communication v Société internationale de diffusion et d’édition (SIDE)* [2008] ECR I-469, para 1, 3-21

⁸⁹ *ibid* para 22-30.

⁹⁰ *ibid* para 31.

⁹¹ *ibid* para 38.

national court is to ‘fix’ by their judgements the violation of Community’s rules and make sure parties understood it. Due to this, it is not really important for national courts to award state’s aid compensation.⁹²

To reply to the second question, the Court referred to principle that any act of EU institution is presumed to be lawful, which means that it shall be operative until being annulled, withdrawn or declared invalid, and Article 263 TFEU (former Article 231 EC Treaty) which prescribes the ECJ to declare act fully or partly void in case it is ‘well founded’. So, ‘aid implemented after the Commission’s positive decision is presumed lawful until the Community court decides to annul that decision’.⁹³ The answer on second question is interrelated with the answer on first question and the Court also points out special circumstances due to the case.⁹⁴

And the Courts final decision is: firstly, national court is not bounded to award unlawful state aid compensation, and, secondly, ‘the period between a decision of the Commission of the European Communities declaring the aid to be compatible with the common market and the annulment of that decision by the Community court’⁹⁵ shall be saved for special circumstances.

Opinion of Advocate-General. Advocate-General Ján Mázák had different opinion about the decision. Meanwhile the Court allows national courts not to award compensation, Advocate-General leaves no room for any ‘mitigation’. Main issue of this case is the violation of Article 88 (3) EC Treaty by France by failure to notify the Commission and even a further positive decision by the latter shall not provide any excuse. Moreover, according to the common market rules and in order to preserve a balance in EU competition policy and market, national courts must award unlawful state aid compensation, including the period prior to the Commission’s final positive decision⁹⁶.

3.3. Case T-464/09 European Commission v. New Acoustic Music Association, Anna Hildur Hildibrandsdottir [2011]

Facts. Ms. Anna Hildur Hildibrandsdottir, who represents New Acoustic Music Association (hereinafter – New Acoustic), and the EC in 2003 concluded a contract, according to which the New Acoustic shall promote young acoustic artists’ live performances within the ‘European Music Roadwork’, part of ‘Culture 2000’ Framework Programme, on a base of the EC finances. At first stage New Acoustic received 70% of total amount (104 860 EUR of 149 800) as

⁹² *ibid* para 32-55.

⁹³ *ibid* para 63.

⁹⁴ *ibid* para 56-69.

⁹⁵ *ibid* para 70.

⁹⁶ Case C-199/06 *Centre d’exportation du livre français (CELF), Ministre de la Culture et de la Communication v Société internationale de diffusion et d’édition (SIDE)* [2008] ECR I-469, Opinion of AG Mázák, para 31-37, 47-48.

it was stated by contract. In 2004, in accordance with the contract, New Acoustic had to present a financial report and on this base the EC could calculate eligible costs and define further funding. However, the EC received report in 2006 and some important invoices and details were missing, so, it requested to provide this information. In November the EC reconsidered the amount of financing and reduced to 71 398,41 EUR, so, New Acoustic had to repay the difference between new sum and already granted: $104\ 860 - 71\ 398,41 = 33\ 461,59$ EUR. Sooner, after several requests from New Acoustics to reconsider the sum and notifications that due to some unpredictable circumstances the company was unable to perform its obligation within 'European Music Roadwork' and new details about expenses, the EC minimized claimed amount to 31 136,23 EUR. But nevertheless, New Acoustic intended to debate this sum. Moreover, after communication with solicitors, it appeared that latter received instructions only from Ms. Hildibrandsdottir who was authorized to represent company in negotiations and nothing from three other partners.⁹⁷

Questions. The EC, as a claimant, asked Court to judge New Acoustic to pay 31 136,23 EUR with 7, 7% interest for each year, starting from 14 January 2008 until the day of final payment.⁹⁸

The judgement of the Court. Main documents of this case are the Contract No 2003-1895/001-001, concluded between the European Commission and New Acoustic Music Association, represented by Ms. Anna Hildur Hildibrandsdottir, and governed by Belgian law, correspondence between New Acoustic and the EC and Partnership Act 1890 of the UK (as New Acoustic was established in the UK). It is also worth to note that Article I.8 of the Contract allows the Court of Justice to solve any dispute concerning contract fulfillment or interpretation.⁹⁹

The EC stated two points: firstly, New Acoustic failed to fulfil its contractual obligations, and, secondly, it appeared from the reports that real expenses were lower than expected, so, it was requested, in conformity with Contract provisions and Belgian law, to repay the balance of granted and spent amounts. New Acoustic didn't provide activity reports on time, they were not full and, moreover, in 2004 company's activity was ceased. The calculations were done by the EC in accordance with New Acoustic's activity reports.¹⁰⁰

While own findings, the Court also emphasized that Ms. Hildibrandsdottir provided reports untimely and not full, in some cases asked more time to complete it, pointing out that she tries to 'do her best' to provide any possible information. Moreover, some invoices, included to the report, were unpaid and it was also taken into account by the EC in its calculations. Besides, Ms.

⁹⁷ Case T-464/09 *European Commission v New Acoustic Music Association and Anna Hildur Hildibrandsdottir* [2011] ECR II-133, para 14-29.

⁹⁸ *ibid* para 33.

⁹⁹ *ibid* para 36, 39.

¹⁰⁰ *ibid* para 54-57.

Hildibrandsdottir's lawyer in his letter mentioned that really a fact of repayment is challenged, not calculation methods or sum, and asked to consider company's complicated situation (as I have already mentioned, in 2004 New Acoustics stopped any activity. Now the company does not exist) and write off this debt. Although, this information was not mentioned by Ms. Hildibrandsdottir neither in correspondence nor in reports (she mentioned only 'unpredictable circumstance' which disturbed company to fulfil its obligations). Also in conformity with the UK's corporate law on partnership, Ms. Anna Hildur Hildibrandsdottir was considered only responsible for repayment.¹⁰¹

So, due to aforementioned, the Court has decided following: Ms. Anna Hildur Hildibrandsdottir had to repay 31 136,23 EUR to the EC with 7, 7% interest for each year by her own¹⁰².

3.4. Case T-676/13 Italian International Film Srl v. EACEA [2016]

Facts. Within the MEDIA 2007 Programme (the EU's initiative on audiovisual sector support) EACEA in 2012 published the call for proposals for support European films distribution EACEA/21/12 MEDIA 2007 'Selective scheme' and Permanent Guidelines for MEDIA 2007 (Guidelines). Italian International Film Srl (Italian Film) applied for a grant for distribution of the French film 'Only God Forgives' with Ryan Gosling, in Italy. After first consideration EACEA representatives required additional documents. After obtaining of all documents, the Committee responsible for evaluation of application found out that the film was distributed not by Italian Film, but by another company (01 Distribution), which means that the application is incompatible to Guidelines as the applicant shall be the distributor, so, the application had been declined. Italian Film tried to appeal negative decision on a ground that EACEA's Committee was misled: Italian Film was indeed distributor and due to marketing reasons subcontracting company's logo '01 Distribution' was put as a main. However, this appeal was rejected, because, as Guidelines provisions state, subcontracting is allowed in case such relations were disclosed to EACEA, proved by invoices and done in conformity with another Guidance's paragraphs. Italian Film didn't disclose agreement with 01 Distribution. It is important to define a time window of appeal process: on 2 August 2013 the negative decision was made and on 7 August proceeded to the applicant. On 4 September 2013 Italian Film appealed the decision and received another negative decision on 8 October 2013.¹⁰³

¹⁰¹ *ibid* para 58-68.

¹⁰² *ibid* para 76.

¹⁰³ Case T-676/13 *Italian International Film Srl v Education, Audiovisual and Culture Executive Agency (EACEA)* [2016] ECLI:EU:T:2016:62, para 1-2, 6-14.

Questions. Italian Film as an applicant claims that the Court shall annul EACEA's negative decision.¹⁰⁴

The judgement of the Court. As it was mentioned before, Italian Film claims that EACEA made wrong conclusions in this case. Moreover, applicant doubted the authority of EACEA to issue such decisions. As for the letter, the Court states that the EACEA is generally eligible to make such decision as the Commission by its Decision C (2009) 3355 dated 6 May 2009 delegates EACEA this function, alongside with application consideration and managing granted funds.¹⁰⁵

EACEA states that Italian Film's claim is inadmissible because the process was initiated too late and concerning the wrong date: applicant tried to challenge the decision of 8 October 2013, date of negative reply on appeal receipt, but not 2 August 2013 as a day of decision delivery, which, according to the EACEA, is correct date. Although, it was late to challenge the decision. The Court fully disagreed with this position: reply from 8 October consisted all the details and positions and no deadline for appeal was provided by EACEA or any other document.¹⁰⁶

While examining negative decision's substance, the Court analyzed Guidelines and parties' correspondence. During the pleadings the Court also provided extended interpretation of Guidelines rules on distributors and subcontractors, which were violated by Italian Film. Agreements between distributor and subcontractor were divided into three groups:

corresponding respectively to subcontracting agreements, agreements for sharing distribution activities between several operators, and agreements for the use for specific services of "physical distributors", who are not eligible for grants.¹⁰⁷

All these categories of agreements shall be disclosed to EACEA while applying for a grant, because in all cases, except for last one, this grant also concerns subcontractors for some extent. In this part the Court agreed with EACEA arguments and stated that decision's substance was correct.¹⁰⁸

But nevertheless, it is hard to say that one party won this case. The Court found both violation in application procedure from Italian Films and misleading about dates from EACEA.

Finally, the Court ordered to dismiss this action and both parties shall cover their own costs.¹⁰⁹

¹⁰⁴ *ibid* para 20-21.

¹⁰⁵ *ibid* para 25, 26-37.

¹⁰⁶ *ibid* para 38-57.

¹⁰⁷ *ibid* para 59.

¹⁰⁸ *ibid* para 62-63.

¹⁰⁹ *ibid* para 72.

4. The European Union Member-States' cultural police and art trade

4.1. Austria

Near a century ago Austria was a centre of a huge and powerful Habsburg Empire, part of which were various European nations. Today we know Austria as a wealthy state and a “haven” of classical music. Well-educated international lawyer or diplomat should mention at least Vienna Convention on the Law of Treaties 1969, Vienna Convention on Diplomatic Relations 1961 and Vienna Congress 1814-1815. Do commoners confuse Austria with Germany or Switzerland or others? I don't believe. However, each souvenir shop has something with ‘No kangaroos in Austria’ on shelves...

Cultural matters in Austria are regulated on three levels: federal, provincial and local levels. The Federal Minister for Arts and Culture, Constitution and Media is a main body of culture policy in entire Austria and its key tasks, alongside with legislator functions, are to promote contemporary Austrian culture and increase Austrian creators' presence internationally. Also important field of Minister's work are numerous establishment to promote Austrian culture (e.g., cultural forums, libraries, institutes etc.). 9 Austrian provinces have own cultural departments within own governments and each province adopted own Cultural Promotion Acts. These administrative bodies support entire cultural life in province, from implementing cultural programmes to organizing and financing festivals. Local level authorities are responsible for Austrian cities and town and usually responsible for education, sport, science or tourism, too. Main aim of local institutions is to support cultural establishments, facilities, organizations.¹¹⁰

Experts Ratzenböck and Lungstraß in their report to “Compendium” indicate cultural policy goals for Austria, among which are securing of culture and art, financial encouraging of creators, promote cultural education, protection of cultural heritage etc.¹¹¹ I would like to point out two I consider the most important. First one is ‘raise Austria's visibility internationally as a country of art and culture’¹¹², where it is planned to increase artists' mobility within the EU and not only, develop strategy and unite all the resources to represent Austria as a ‘country of art and culture’. As an example of Austrian external actions in field of culture and art trade it is worth to mention ‘Austrian Music Export’ initiative. Main aims of the initiative are dissemination of information about musicians of any genres and even languages from Austria, their support with international

¹¹⁰ Veronika Ratzenböck and Anja Lungstraß ‘Country Profile Austria’ (2016) 17th edn Compendium Cultural Policies and Trends in Europe <www.culturalpolicies.net/download/austria_012016.pdf> assessed 13 June 2018, 5-8.

¹¹¹ *ibid* 16-17.

¹¹² *ibid* 17.

festivals or private concerts.¹¹³ As Austrian Music Export characterizes itself, ‘develops measures to strengthen international exploitation of Austrian repertoire by acting as a catalyst for export-oriented Austrian labels, agencies and artists’.¹¹⁴ Activity report of 2017 states that Austrian musicians were broadly presented on such big international festivals as 31st Eurosonic Noorderslag Festival (Groeningen, the Netherlands), Sziget (Hungary), Loopalooza Berlin etc. Moreover, there is ‘Focus Acts’ within the ‘Austrian Music Export’ initiative, dedicated to support financially Austrian musicians converts internationally and in 2017 six of them were granted with 5 000 EUR.¹¹⁵ Another example – Austrians’ performance and presence on last year Venice Biennale. This is one of the oldest and the most influential culture exhibitions in Europe and world which consists of several departments: architecture, art, theatre, cinema, dance. music and historical archives. Austria has its own pavilion in Art Department and in 2017 it was represented by Brigitte Kowanz, Erwin Wurm and ‘Matinee’ installations of Peter Weibel and Baron Brock.¹¹⁶ Also Biennale 2017 was relatively successful for Austrian movies: Austria and Israel drama ‘The Testament’ was presented during the Biennale¹¹⁷ and documentary ‘Fugue’, produced by Czech Republic, France, Argentina and Austria, supported by Venice Gap-Financing Market’s grant for production, will be presented alongside with other 45 works.¹¹⁸

Another key goal of Austrian cultural agenda is promoting Austrian contemporary art.¹¹⁹ As for me, for public worldwide Austria is known only for its ‘classical’ art – classical paintings, classical music. 95% of those you ask about association with ‘culture in Austria’ will probably reply ‘Mozart’. Some may add ‘Strauss’, ‘Klimt’. ‘Schwarzenegger’ at least. But I deeply believe that not many people would say ‘Inspector Rex’ without involving Internet. If to ask Google about ‘capital city of contemporary art’ and look at first links with lists indicated, only some of them contain Vienna. Today, for instance, Vienna’s the most influential and biggest art museums have numerous contemporary art exhibitions of Austrian artists: Günter Brus, Jörg Schlick, Peter Baum and Ines Doujak in Belvedere¹²⁰; Florentina Pakosta, Alfred Seiland and featured “Contemporary

¹¹³ ‘Austrian Music Export Highlights 2017’ (*Austrian Music Export*, 21 December 2017) <www.musicexport.at/austrian-music-export-highlights-2017/> assessed 17 June 2018.

¹¹⁴ ‘Highlights 2017’ (n 113) <www.musicexport.at/austrian-music-export-highlights-2017/> assessed 17 June 2018.

¹¹⁵ ‘Highlights 2017’ (n 113) <www.musicexport.at/austrian-music-export-highlights-2017/> assessed 17 June 2018.

¹¹⁶ ‘Matinee – Austrian Pavilion’ (*La Biennale di Venezia*) <www.labiennale.org/en/agenda/matinee-austrian-pavilion> assessed 3 July 2018.

¹¹⁷ ‘Aminchain Greenberd – Ha’edut (*The Testament*)’ (*La Biennale di Venezia*) <www.labiennale.org/en/cinema/2017/program-cinema-2017/amichai-greenberg-ha%E2%80%99edut-testament> assessed 25 June 2018.

¹¹⁸ ‘46 Projects selected for the Venice Gap-Financing Market’ (*La Biennale di Venezia*, 29 June 2018) <www.labiennale.org/en/news/46-projects-selected-venice-gap-financing-market>. assessed 1 July 2018.

¹¹⁹ Ratzenböck and Lungstraß (n 110) 16.

¹²⁰ see Belvedere <www.belvedere.at/exhibitions> assessed 1 July 2016.

Art” exhibition in Albertina¹²¹; MUMOK, which is fully devoted to contemporary art; extremely exciting exposition ‘Shape of Time’ in KHM, where absolutely classical paintings, usual for this museum, are combined with the works of such world famous contemporary artists as Mark Rothko, Maria Lassing, Felix Gonzalez-Torres etc.¹²²

The most interesting and relevant aim, as for me, is to ‘develop Austria as a film and music location’¹²³, because nowadays these are the most popular and the most profitable kinds of art. Austrian movies are well-known mostly either among real cinema connoisseurs or regular festivals spectators. Such organization as Austria Film Commission is responsible for Austrian movies worldwide presentation and distribution, ‘it advises Austrian producers and film professionals on promotional and sales strategies and handles all festival arrangements’.¹²⁴ Austria has developed wide institutional backing for all stages of film production: actors, directors, script writers etc.

Music quotas on radio issue has always been a subject for hot debates. As an outcome of this discussion between representatives of Austrian radio industry, a ‘voluntary’ quota for 30% of Austrian songs was proposed as a sort of experiment. As a result, the biggest radio station Ö3 claimed that introducing of Austrian music reduced the percent of listeners.¹²⁵ Today both public and private radios are free to choose which music to broadcast. And whose royalties to purchase, of course.¹²⁶ As a listener of Radio Arabella, I spot there German-speaking songs very seldom.

As it was mentioned in previous parts, due to culture exception clause MSs may decide what shall be defined as cultural heritage and what can be exported to third states with export license or can’t be exported anyway. Austrian legislator marked following goods as cultural heritage subjects to licensing:

Archaeological objects and of archaeological or scientific importance older than 100 years;

parts of monuments of artistic and historical significance or religious monuments older than 100 years;

Pictures and paintings valued over 150 000 EUR., watercolours, gouaches and pastels valued over 30 000 EUR, mosaics, engravings, lithographs, photos, films and negatives valued over 15 000 EUR, sculptures valued over 50 000 EUR and older than 50 years;

¹²¹ see Albertina <www.albertina.at/en/exhibitions/> assessed 1 July 2018.

¹²² see Art History Museum Vienna <<http://theshapeoftime.khm.at/en/>> assessed 29 June 2018.

¹²³ Ratzböck and Lungstraß (n 110) 16.

¹²⁴ ‘About AFC’ (*Austrian Film Commission*) <www.austrianfilms.com/about_afc/mission_statement_partners> assessed 1 June 2018.

¹²⁵ ‘Ö3: Price for Music Quotas in Austria’ (*DerStandard*, 5 February 2016) <<https://derstandard.at/2000030439666/Oe3Oesterreich-Musik-kostet-Quote>> assessed 19 June 2018.

¹²⁶ Stefan Niederwieser ‘Market Report: Austria’ (*Europavox*, 28 September 2017) <www.europavox.com/news/market-report-austria/> assessed 1 June 2018.

All kinds of manuscripts;
All kinds of archives and archive documents older than 50 years;
Books older than 100 years and valued over 50 000 EUR;
Maps older than 200 years valued over 15 000 EUR;
Works of artists dead for more than 20 years;
Antiquity older than 50 years.¹²⁷

As a conclusion, Austria decided not to impose any kinds of restrictions or quotas for promoting own culture, but to involve all possible administrative resources on national and European to support creators at all stages, especially on distribution level. I think that it is wise tactic, because it is impossible to make citizens enjoy national production by prohibiting any others, and inducing curiosity by frequent demonstrations or disseminating information can incite consumers to look for more and more and one day find something Austrian he or she will appreciate.

4.2. Germany

It is so much to say about Germany and its culture! But I will be brief.

The Federal Republic of Germany has 16 states (Bundesländer) with rather broad autonomy. Moreover, for a considerable period of time of modern history this country was separated in two parts – Western and Eastern Germany. Nowadays cultural issues are regulated globally on federal and state level. Parliamentary Committee on Cultural and Media Affairs and Federal Commissioner for Cultural and Media Affairs analyse bills on potential influence on cultural matters, define budget estimates and foreign cultural affairs. Institutions on state and municipality levels deal with ‘everyday’ cultural activities as financing organizations or organizing events. Each state is free to nominate bodies responsible for culture: in most cases on state level these are mainly specialized committees or ministerial departments, in Berlin it is Office of the Prime Minister (Staatskanzlei) and on municipality level there are Cultural Commissioners (Kulturdezernenten).¹²⁸

Which things come first into mind when we hear ‘Germany’? Wealthiness, modernity, order, multiculturalism and at least two generations torn apart by Berlin Wall. And a dark Nazi history – let’s face it. Especially these stereotypes are seen while reading main aims of country’s

¹²⁷ ‘Information about state: Austria’ (*Federal Ministry of Culture and the Media*) <www.kulturgutschutz-deutschland.de/DE/Staateninformation/Europa/Oesterreich/oesterreich_staateninfo.html> assessed 5 June 2018.

¹²⁸ Ulrike Blumenreich, ‘Country Profile Germany’ (2016) 17th edn. *Compendium Cultural Policies and Trends in Europe* <www.culturalpolicies.net/down/germany_012016.pdf> assessed 3 June 2018, 7-9.

cultural policy. First thing is to extend federal authorities competence in the sphere¹²⁹, which is now a highly controversial issue because of, as for me, strong ‘independence’ traditions among German states. Researcher Blumenreich points out scrupulous work with legislation: not only copyright and film support laws, but also separate provision supporting studying of German culture in Eastern and Central Europe (Federal Expellees Act), take care of memorials to the victims of cruel Nazi regime, support of libraries on state level and many others. Another crucial aspect of German cultural policy is co-operation with various ethnic groups – government support their activity and these groups establish cultural exchange and integration relations.¹³⁰

Certain attention was also paid on acclaimed TTIP Agreement which made a big fuss in Europe. Both culture administrative bodies and culture representatives gave this Agreement a hostile reception, claiming that the ‘equal treatment of cultural and regular economic goods, since it does not take into account satisfactorily the dual nature of the concept of culture’¹³¹ and, given that TTIP also covers arbitration issues, German financing of culture may be interpreted as a distortion of free trade. Sooner, after active anti-TTIP movement in Germany and the EU, Chancellor Angela Merkel ensured that Agreement’s provisions will not ‘entail restrictions to the diversity of culture and media in Germany.’¹³²

Another debatable issue in German cultural policy and trade is selling of artistic goods belong to states. It was initiated after North Rhine-Westphalia owned casino sold two works of world famous artist Andy Warhol while auction in order to improve casino’s financial situation. After some time, another state-owned casino planned so sell own collection of art, but didn’t do that. Federal Commission for Culture and Media decried an idea to stitch budget holes by states’ artistic goods.¹³³ In 2016 Germany amended its Protection of Cultural Property Act where export licences for specific category of goods were introduced also for EU MSs – before such licenses were obligatory only for export in third states. Age and value thresholds are based on EU Regulation 116/2009, however, for Single Market they are increased for avoiding much troubles with export and paperwork. Export licenses are issued by states authorities depending on cultural good origins.¹³⁴

Germany seems to be a country with many cultural debates. This time its music quotas on radio, resulting in conflict between radios and musicians and their representatives. Government has not expressed official position yet and encourage all interested and concerned parties to

¹²⁹ *ibid* 16.

¹³⁰ *ibid* 17-20.

¹³¹ *ibid* 20.

¹³² *ibid* 21.

¹³³ *ibid* 21.

¹³⁴ Cultural Property Protection Act of 31 July 2016 (Federal Law Gazette [BGBl.]).

discussion which will influence Germany's final decision. Generally, musicians claim that there is a big misrepresentation of German-speaking songs contrary to English-speaking on radios and require some percentage of them on radios. On the other hand, radios oppose as much as they can, because, they state, German music is not as popular as English-speaking. 'We wish we had the material to present to our listeners when they say they want more'¹³⁵, – quoted DW Konrad Kuhnt, Radio Fritz (Berlin) chief-editor. However, German music export director Björn Akstinat complains in the article that declared classic formula from economy course 'where there's demand, there's supply' doesn't really work and in order to substantiate this thesis the story of Michael Rhein and his band "In Extremo" is given: despite their song was Number 3 in charts, they had to make many efforts to persuade radio editors let them on air.¹³⁶ And, finally, over 500 German pop-singers addressed a plea to government to deal with a problem of underrepresentation on radio.¹³⁷

Journalist Thorsten Glotzmann accentuates on big ambiguity of quotas issue. In 1990s German singer Heinz Rudolf Kunze, who admired his foreign English-speaking colleagues on radios, changed his mind as 'the flood of foreign music, and indeed foreign trash'¹³⁸ left no chance to young German musicians. However, young artist didn't support their elder colleague and stated that introducing quotas means a reverse to GDR dictatorship times when 60% of music had to be German and excessive state control. As Tocotronic rock band witty said, 'petty nostalgic sentimentalism'. In 2015 Franz-Robert Liskow, conservative politician and passionate schlagers fan, proposed a voluntary quota of 30-35% for German music and especially schlagers, like in Austria, but it was rejected by radio editors and owners – schlagers are not very popular nowadays.¹³⁹

Like Austria, Germany also pays much attention to cinema. Except for two world famous film festivals, Berlinale and Munich Festival, Germany grants formidable financing and encourage investments. Until 2006 German tax law had one unique feature which was grandly abused by some film makers. There is one cunning German director named Uwe Boll, who is known by critics as one of the worst directors ever and ardently hated by video gamers for his horrible movies based on popular video games. Uwe Boll considered to be a kind of phenomenon: many of his movies failed at box office around the world. For example, the budget of film 'Bloodrain' (based on the game of a same name) was \$25 million against earnings in just \$3,6 million – only 14% of

¹³⁵ 'German Radio Quota Debate Goes Live' (*DW*, 30 September 2004) <www.dw.com/en/german-radio-quota-debate-goes-live/a-1343529> assessed 15 May 2018.

¹³⁶ 'German Radio Quota Debate' (n 135) <www.dw.com/en/german-radio-quota-debate-goes-live/a-1343529> assessed 15 May 2018.

¹³⁷ 'German Radio Quota Debate' (n 135) <www.dw.com/en/german-radio-quota-debate-goes-live/a-1343529> assessed 15 May 2018.

¹³⁸ Thorsten Glotzmann "'German Quota" on the Radio. The Endless Debate' (*Goethe-Institut*, November 2016) <www.goethe.de/en/kul/med/20867119.html> assessed 5 June 2018.

¹³⁹ Glotzman (n 138) <www.goethe.de/en/kul/med/20867119.html> assessed 5 June 2018.

costs!¹⁴⁰ And this is normal situation for all his films between 2000-2006. So, who gave him money, who were those idealistic investors funding him and patiently waiting for a masterpiece? Later in his interviews Uwe Boll revealed the secret of his ‘success’: German tax law. Briefly, investor invests big sum in German cinema production company (Uwe Boll’s company ‘BALL KG’ is the tax resident in Germany), mention that production costs are very high (in Boll’s film starring such famous in past actors like Kristanna Loken from *Terminator 3*, Michael Madson from *Reservoir Dogs*, Billy Zane from *Back to the Future* and *Titanic*, so, it is supposed to have big production costs) and receive, firstly, huge tax reductions and, secondly, in case film earns nothing, as in aforementioned example, Germany returns from 50% to entire sum of investments.¹⁴¹ So... well, Mr. Uwe Boll is so-so director, but a good businessman, as it appears.

The gate from this ‘tax Paradise’ was closed and immured in 2006. Modern German tax law gives no special incentives to investors, only producers have them from federal and state authorities in a form of film levies paid by theatres and broadcasters.¹⁴² Germany, as well as Austria, relies on state subsidizing of movies alongside with commonly known and applied private investments and advertisings, mainly product placement. There are two main schemes of governmental film funding through German Federal Film Fund. First one is a loan of near 60 million EUR or to cover 20% of production costs. Second one is a post-production grant for already successful and well known directors which can be invested in other movie.¹⁴³ In 2017 federal budget for movies was increased to 150 million EUR.¹⁴⁴

In conclusion, Germany tries to devote due attention to all possible fields of culture. Such measures require substantial financing and well-organized governmental mechanism to react properly and on time together with private efforts.

4.3. Ireland

Ireland is not as big as Germany, France, Italy or UK by size, but it equally boosted world culture with Irish representatives in many fields: Oscar Wilde, George Bernard Shaw, Bram

¹⁴⁰ ‘BloodRayne’ (*Box Office Mojo*, 6 January 2006) <www.boxofficemojo.com/movies/?id=bloodrayne.htm> assessed 16 May 2018.

¹⁴¹ Stuart Wood ‘Uwe Boll: Money for Nothing’ (CinemaBlend, 2006) <www.cinemablend.com/features/Uwe-Boll-Money-Nothing-209.html> assessed 28 May 2018.

¹⁴² KPMG ‘Film Financing and Television Programming Taxation Guide’ (2012) 6th edn KPMG <<https://home.kpmg.com/content/dam/kpmg/pdf/2015/03/Film%20financing%20and%20television%20programmig-%20germany.pdf>> assessed 17 June 2018, 204-205.

¹⁴³ Pia Vagt ‘What Sources of Film Funding Are There?’ (*Goethe-Institut*, January 2012) <www.goethe.de/en/kul/film/20363545.html> assessed 2 June 2018.

¹⁴⁴ Ed Meza ‘Germany Increases Film Funding by 55% to \$161 Million’ (*Variety*, 16 March 2017) <<https://variety.com/2017/film/global/germany-film-funding-1202010093/>> assessed 22 June 2018.

Stoker, Bono, Enya, Gary Moore and many others. Despite huge British influence throughout the centuries, Irish culture is distinctive, amusing and inspiring.

Unlike in Austria and Germany, culture regulation in Ireland is significantly centralized. Local authorities are fully governed by Department of Arts, Heritage and the Gaeltacht (name of Irish language), Art Council and sub-committee of Art, Heritage and Gaeltacht within the Select Committee on Environment, Transport, Culture and the Gaeltacht, which are all parliament bodies. Meanwhile Department of Arts, Heritage and the Gaeltacht and sub-committee are majorly carry out legislative and representative functions, Art Council is cultural executive body – if continue to draw a parallel between Irish institution system and Austrian or German, Art Council have same authority and obligation as Austrian or German local and municipality organs.¹⁴⁵

We all know about, well, harsh relations between Ireland and the UK and that Ireland obtained its independence more recently. Therefore, it's not hard to find out that establishment of national identity and world recognition is main aim of modern Irish cultural policy. However, it is global goal. Draft 'Culture 2025. A Framework Policy to 2025' by Department of Arts, Heritage and the Gaeltacht defines more specific. First of all, it is bureaucracy reframe: define all existing, analyse their authority and activity and consider about their quantity. Another goal is to develop funding sources, which means not only increase state funding, but encourage private sector and investments.¹⁴⁶

The Department of Arts, Heritage and the Gaeltacht has "Culture Ireland" funding programme within, which is responsible for Irish funding worldwide. Its budget for 2017 is 3,5 million EUR.¹⁴⁷ 'Culture Ireland' provides 3 types of funding may be applied for: 'Regular' is for international representation of work or artist¹⁴⁸, 'Showcases' is for Irish representatives' participation in international events like festivals¹⁴⁹ and 'See Here' is the most interesting – it provides grants for foreign cultural managers or festival organizers who are interested to make themselves acknowledged with Irish creators and intended to make them some offer.¹⁵⁰ Programme covers only travel expenses.¹⁵¹

¹⁴⁵ Marian Fitzgibbon 'Country Profile Ireland' (2015) 17th edn., Compendium Cultural Policies and Trends in Europe <www.culturalpolicies.net/down/ireland_012015.pdf> assessed 1 July 2018, 7.

¹⁴⁶ 'Culture 2025 Framework Policy to 2025 Draft Document' (*Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs*, July 2016) <www.chg.gov.ie/app/uploads/2016/07/culture_2025_framework_policy_document.pdf> assessed 3 June 2018, 7, 22.

¹⁴⁷ 'About' (*Culture Ireland*) <www.cultureireland.ie/about> assessed 1 June 2018.

¹⁴⁸ 'Application Eligibility Requirements and Criteria' (*Culture Ireland*) <www.cultureireland.ie/funding/about/eligibility-requirements-and-criteria> assessed 3 May 2018.

¹⁴⁹ 'Showcases' (*Culture Ireland*) <www.cultureireland.ie/funding/schemes/showcases> assessed 8 June 2018.

¹⁵⁰ 'See Here' (*Culture Ireland*) <www.cultureireland.ie/funding/schemes/see-here> assessed 8 June 2018.

¹⁵¹ 'Eligibility Requirements' (n 148) <www.cultureireland.ie/funding/about/eligibility-requirements-and-criteria> assessed 3 June 2018.

The Ireland Funds is a philanthropic organization, which makes donations in various spheres of human life ‘to promote and support peace, culture, education and community development throughout the island of Ireland, and Irish-related causes around the world’.¹⁵² In 2009 together with U2 band initiated 7 million EUR project “Music Generation” to make music education available for young people.¹⁵³

As I have previously mentioned, Ireland cherish own national identity and culture as much as it can after long-lasting Britain domination. So, the question of quotas is now crucial. First attempt was in 2011 when Ireland tried to introduce 30% quota for Irish musicians on radio. However, it was rejected by the EU as violating article 18 TFEU about nationality discrimination. In a question to the EP Irish politicians Liam Aylward, Pat ‘The Cope’ Gallagher and Brian Crowley gave an example of France where such quota even in 60% together is introduced and accepted.¹⁵⁴ EP representative Ms. Kroes explains the principle of French quotas: they refer no to nationality, but to language – 40% of French-speaking songs and 20% of new French groups, which are fully justified for exceptional culture purposes.¹⁵⁵ So, ‘French-speaking’ means not only France, but also – in EU and EEA – Belgium, Luxembourg, Switzerland, Monaco. Around the world – near 30.

In 2016 a bill amending Broadcast Act 2009 and introducing 40% music quota on radio was proposed by Labour Party representative in Parliament TD Willie Penrose. He argues on a grand misrepresentation of Irish musician on Irish radio and impossibility for even world recognized performers to be on air.¹⁵⁶ He gives an example of Irish singer Donna Taggart: her song became No 1 in the US, Canada, Australian charts, possessed a place in another Billboard, but radio stations of her own country don’t give her a place.¹⁵⁷ This initiative was actively supported by some singers, mostly folk, and Musicians Union of Ireland.¹⁵⁸ Although, this initiative wasn’t widely supported by others. Radio industry representatives, firstly, believe that amount of 40% is ridiculous, secondly, despite statement “for all genres” it is believed that this amendment is about mainly folk music lobbying, and, finally, ‘Irish music needs to be able to

¹⁵² ‘Our mission’ (The Ireland Funds) <<https://irelandfunds.org/about-us/>> assessed 14 June 2018.

¹⁵³ ‘Music Generation’ (*The Ireland Funds*) <<https://irelandfunds.org/about-us/focus-areas/arts-culture/music-generation/>> assessed 14 June 2018.

¹⁵⁴ Question for Written Answer to the Commission – Rule 117 – Liam Aylward (ALDE), Pat the Cope Gallagher (ALDE) and Brian Crowley (ALDE) – Subject: Music Quotas on Radio OJ C 309 E, 21/10/2011, para 1-2.

¹⁵⁵ Answer given by Ms Kroes on behalf of the Commission OJ C 309 E, 21/10/2011, para 2-3.

¹⁵⁶ Cianan Brennan ‘A new Bill is calling for a quota of Irish music on the radio - and the music industry isn't happy about it’ (*TheJournal*, 14 December 2016) <www.thejournal.ie/music-bill-dail-eireann-reaction-3138848-Dec2016/> assessed 31 May 2018.

¹⁵⁷ New Bill calls for Irish music quota on radio stations (*Independent*, 14 December 2016) <www.independent.ie/entertainment/radio/new-bill-calls-for-irish-music-quota-on-radio-stations-35294140.html> assessed 3 June 2018.

¹⁵⁸ Gráinne Ní Aodha “‘We must give musicians a chance’: Quotas for Irish music got TDs very fired up” (*TheJournal*, 15 December 2016) <www.thejournal.ie/music-bill-debate-3140990-Dec2016/> assessed 1 June 2018.

compete, not given a free pass, because if it can't compete and find a place in the home marketplace it won't find one elsewhere'¹⁵⁹, – said Gave O'Grady, member of Gilded ALM artists marketing group and I consider his words as genius. Sinead Troy of Irish Association of Songwriters, Composers and Artists agrees that there are some problems with Irish music, but she thinks that institutional measures won't help, 'Pointing the finger at the radio community has never worked. We have to take some responsibility as a music industry'.¹⁶⁰ For example, increase the amount of working internationally musicians, '... why can't we work together to create more Hoziers, Christy Moores, Kodalines, Scripts, U2s, Glen Hansards? We can, we just have to want to'.¹⁶¹ By the way, Willie Penrose's bill wasn't adopted.

Also cultural property of Ireland was an object of auction sales during 2013-2017, especially within the EU. According to the Department of Arts, Heritage and the Gaeltacht figures, 69 export licenses for EU states were issued between 2013-2017, and 48 out of them were for auction houses like Sotheby's, Christie's and Bonhams from the UK.¹⁶² However, Ireland wasn't involved much in outside EU auctions or other kind of selling processes: only 3 auction and 2 purchase or sell out of 52. Majorly Irish cultural property participates in temporary exhibitions outside the EU.¹⁶³

Summarizing aforementioned, Ireland realizes the high importance of culture and tries to build centralized, but well-operative and challenging regulatory mechanism. An interesting thing: realizing the importance of Irish culture promotion, especially Irish language, it is a miracle why there are still no quotas for broadcasters. It might mean that despite all the concerns a usual market competition helps creators "fight" for listeners even without state support.

5. World Trade Organization's approach towards culture and art trade

5.1. Possible barriers in art trade and the World Trade Organization's regulations

Culture can be fairly called extremely sensitive issue, which is hard to regulate proper from economic, ethic or national approaches even on national level, much less international. When it comes even to European level, where majority states have common cultural background, it is a lot

¹⁵⁹ Brennan (n 156) <www.thejournal.ie/music-bill-dail-eireann-reaction-3138848-Dec2016/> assessed 31 May 2018.

¹⁶⁰ Nial Byrne 'Nialler's How Music Works: Do we need more Irish music on Irish radio?' (*The Irish Times*, 30 April 2015) <www.irishtimes.com/culture/music/nialler9-s-how-music-works-do-we-need-more-irish-music-on-irish-radio-1.2195168> assessed 1 June 2018.

¹⁶¹ Byrne (n 160) <www.irishtimes.com/culture/music/nialler9-s-how-music-works-do-we-need-more-irish-music-on-irish-radio-1.2195168> assessed 1 June 2018.

¹⁶² 'Export Licenses within EU 2013-2017' (*Department of Culture, Heritage and the Gaeltacht*) <www.chg.gov.ie/app/uploads/2015/07/export-licences-within-eu-2013-2017-1.pdf> assessed 25 May 2018.

¹⁶³ 'Export Licenses outside EU 2013-2017' (*Department of Culture, Heritage and the Gaeltacht*) <www.chg.gov.ie/app/uploads/2015/07/export-licences-outside-eu-2013-2017.pdf> assessed 25 May 2018.

of exclusions, facilitations, issues delegated to state. Yes, France is afraid that because of tight integration and free market it might stop being France, Italy is afraid to stop being Italy... Well, it is easy to imagine a situation worldwide, where globalization and cosmopolitanism trends coexist with arising pro-national and protectionism views.

GATT provides us only Article XX where culture is mentioned in 'General Exceptions', 'nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: ... (f) imposed for the protection of national treasures of artistic, historic or archaeological value'.¹⁶⁴ And a common "disclaimer" for each unregulated issue:

such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.¹⁶⁵

And a usual question: where is a border between justified protection of culture and arbitrary? Neither national, nor international legislators are eager to answer it and dismiss with favourite lawyers formula 'It depends'. Prof. van de Bossche presents an analysis of two main views on this issue. First relies only on GATT provision and states that Article XX exceptions are only for 'tangible cultural property', like 'Mona Lisa' or 'Black Square', but not culture in general. Second view is characterized as 'contemporary'. By using other exceptions which had already raised concerns and due to this received their interpretation, Prof. van de Bossche tries to apply same explanation on cultural sphere together with binding it with the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005.¹⁶⁶

He gave as example *US-Shrimps* case, dealt with natural resources protection on national level. In this case a 'progressive' interpretation of term 'exhaustible resources' and 'renewable resources' introduced, which was based on new researches in biology. Due to this, Prof. van de Bossche believes that term 'national treasure' shall be interpreted in a same 'progressive' manner on a base of aforementioned UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005.¹⁶⁷ In the UNESCO Convention, as for me, a great job was performed and core definitions for culture legal regulation were provided as 'cultural diversity',

¹⁶⁴ The General Agreement on Tariffs and Trade <www.wto.org/english/docs_e/legal_e/gatt47.pdf> assessed 15 April 2018, 37-38.

¹⁶⁵ *ibid* 37.

¹⁶⁶ Peter van den Bossche 'Free Trade and Culture: A Study of Relevant WTO Rules and Constraints on National Cultural Policy Measures' (2007) Working Paper No 2007-4, Maastricht Faculty of Law 2007, 53-54.

¹⁶⁷ *ibid* 54-55.

‘cultural content’, ‘protection’, ‘cultural expressions’ and others.¹⁶⁸ Prof. van de Bossche also states that this UNESCO Convention made clear that ‘international community now clearly recognizes the value of, and the need for protection for, a much broader category of cultural goods than pictures of Rembrandt and van Gogh’.¹⁶⁹ UNESCO Convention states following:

Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.¹⁷⁰

Summarizing aforementioned, I consider that in spite of new interpretation which includes judicial thoughts evolution, the issue remains not fully clear and there is still too much room for each state legal “creativity” in the field.

5.2. Trade Related Aspects of Intellectual Property Rights

Culture is majorly copyrightable IP. TRIPS Agreement is a part of GATT, so, based on similar principles, such as national treatment and most favoured nation regimes. Exceptions in a context of TRIPS agreement shall be understood as set of more preferences to other WTO MS/MSs in conformity with various contractual obligations or granting more protection to performers, broadcasters and producers of phonogram.¹⁷¹

TRIPS Agreement refers to numerous IP conventions in order to outline scope of its application and define protection measures below which MSs shall not act. In this list the Berne Convention is interesting for us, because it is applicable on literally and artistic works, and TRIPS Agreement bind MSs with Articles 1-21 of the Convention and its annexes. Among general provisions on kind of works eligible to protection, Berne Convention contains possibility for MSs to ‘to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right’.¹⁷² Despite Berne Convention is not about trade or competition, this rule may be applied on trade relations as well.

¹⁶⁸ UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005 <<http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>> assessed 15 April 2018, 4.

¹⁶⁹ van den Bossche (n 166) 53.

¹⁷⁰ UNESCO Convention (n 168) 4.

¹⁷¹ Agreement on Trade-Related Aspects of Intellectual Property Rights <www.wto.org/english/docs_e/legal_e/27-trips.pdf> assessed 13 April 2018, 332.

¹⁷² Berne Convention for the Protection of Literary and Artistic Works <www.wipo.int/treaties/en/text.jsp?file_id=283698> assessed 14 April 2018, art. 17.

Article 40 of TRIPS Agreement is the most important for us as it lays down provisions concerning IP contracts and their effect on competition law. It is recognised that this Agreement may cause ‘adverse effects on trade and may impede the transfer and dissemination of technology’¹⁷³, so, MSs allowed to ‘adopt ... appropriate measures to prevent or control such practices’.¹⁷⁴ Alongside with applying different restrictive measures, MSs are called for negotiations concerning such measures and justifiability.¹⁷⁵

Summarizing aforementioned, neither TRIPS Agreement nor WTO have liberalization of culture and art trade as a main target. Similar to the EU, cultural matters remain at the discretion of MSs and subjects to negotiations between states concerned.

6. Art trade and cultural policy in non-European Union states

6.1. The United States of America

The most successful and influential expander of modern history, main exporter of culture of different kinds and quality around the world. I am sure that almost each person enjoys some American cultural product – ‘Game of Thrones’, Kanye West or Ernest Hemingway – and dream of American Dream.

Main US governmental agency responsible for cultural affairs on federal level is the Bureau of Educational and Cultural Affairs, which is called to ‘increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange that assist in the development of peaceful relations’.¹⁷⁶ The Bureau mostly involved in educational affairs more than in cultural. However, one interesting initiative worth to be mentioned: together with several countries, the Bureau creates a photo guides of cultural goods from each country prohibited for import to the US and in most cases prohibited to export from those countries. Such initiative should help authorities to identify prohibited goods.¹⁷⁷ Now database contains materials from Belize, Bolivia, Bulgaria, Cambodia, China, Colombia, Cyprus, El Salvador, Egypt, Greece, Guatemala, Honduras, Iraq, Italy, Mali, Nicaragua, Peru, Syria.¹⁷⁸

¹⁷³ TRIPS (n 171) 337.

¹⁷⁴ *ibid* 337.

¹⁷⁵ *ibid* 337.

¹⁷⁶ ‘History and Mission of ECA’ (*Bureau of Educational and Cultural Affairs*) <<https://eca.state.gov/about-bureau/history-and-mission-eca>> assessed 24 May 2018.

¹⁷⁷ ‘Photo Guides for Import Restrictions’ (*Bureau of Educational and Cultural Affairs*) <<https://eca.state.gov/cultural-heritage-center/cultural-property-protection/photo-guides-import-restrictions>> assessed 3 July 2018.

¹⁷⁸ ‘Bilateral Agreements on Cultural Property Protection’ (*Bureau of Educational and Cultural Affairs*) <<https://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements>> assessed 18 June 2018.

Many young people were brought up on American culture. American art has a lot of fans and brings a lot of money within the state and abroad. Giving this, the US has nothing to worry about competition with other states, it is no need for any kind of quota or subsidy... However, US film production receives huge and various governmental support. As an example, California Film Commission (where, by the way, the Hollywood is situated) offers up to 25% tax reduction programme for different categories of films with more than \$1 mil. budget. The \$1,5 bil. programme runs until 2020 and each year grants \$330 mil.¹⁷⁹

Also each state has its own facilitation, according to The Hollywood Reporter. As an example, New York has 30% incentives for any amount of budget with the possibility to receive 10% more if production costs exceed \$500 000. State Nevada, which welcomes us to fabulous Las Vegas, take care about own residents: they receive 15% incentives (12% to non-residents) and there is a possibility to receive extra 5% reduction if 50% of movie production crew are Nevadians.¹⁸⁰

Having no own quotas, the US movie industry struggles with foreign quotas. During last several years the US initiated negotiations about concluding big FTA with the EU – TTIP. This agreement caused a massive kickback for many reasons, including culture. For France this issue was a deal breaker in this negotiations, because excluding cultural issue from TTIP will help, as France convinced, to leave a room for manoeuvres in form of own aid, facilitation or quotas. And the EU has supported France’s position.¹⁸¹

Regarding the EU’s audiovisual market amendment and increasing part of European content, US largest media streaming companies Amazon and Netflix are required to include at least 1/5 of European content in their packages in order to ‘uphold media pluralism, the independence of audiovisual regulators and will make sure incitement to hatred will have no room on video-sharing platforms’, as EU Commissioner on Digital Economy said.¹⁸²

The US and China concluded an agreement on film industry cooperation, which is subject to renegotiations each 5 years. It is important for both parties as China is the biggest market for US films and brings the biggest box-office. And recently a new stage of renegotiations has started. On the one hand, Chinese film production industry in on extremely low level and that’s why such protection measures as quotas and censorship are required. On the other hand, China doesn’t want

¹⁷⁹ ‘Tax Credit Program 2.0.’ (*California Film Commission*) <<http://film.ca.gov/tax-credit/the-basics-2-0/>> assessed 29 June 2018.

¹⁸⁰ Bryn Elise Sandberg ‘Film and Tax Incentives: A State-by-State Guide’ (*The Hollywood Reporter*, 21 April 2016) <www.hollywoodreporter.com/news/film-tv-tax-incentives-a-885699> assessed 3 June 2018.

¹⁸¹ John Hopewell ‘Hollywood Stymied as Europe Sticks With Its Limits on Film and TV’ (*Variety*, 14 June 2013) <<https://variety.com/2013/film/global/hollywood-stymied-as-europe-sticks-with-its-limits-on-film-and-tv-1200497446/>> assessed 2 June 2018.

¹⁸² ‘EU wants Netflix, Amazon to adopt European movie quotas’ (*France 24*, 25 May 2016) <www.france24.com/en/20160525-eu-wants-netflix-amazon-adopt-european-movie-quotas> assessed 14 June 2018.

to lose US films. Meanwhile the US wants even more presence on Chinese film market and control over main Chinese distributor.¹⁸³ James Wang, co-chief of Huayi Bros Media and partner of Hollywood studio STX Entertainment, noted following:

China's film market is getting more open to foreign players. ... We hope that the result of the US-China trade talks will be reciprocally beneficial ... In recent years, Chinese firms are proactively going out, seeking multiple ways of cooperation with U.S. counterparts. We take globalization as an important way of learning and growing. Our vision is to tell Chinese stories to the global audience.¹⁸⁴

To sum up, American culture does not require so much regulation comparing with European states. American entertainment industry is able to produce enough product for itself and the rest of world. So, why do American movies need tax facilitations? It means big loses of local budget and underfunding of other spheres. It's true, but producing blockbusters like David Cameron's *Avatar* or Michael Bay's movies requires enormous amounts of money, post-production expenses, side support from, for example, army. Moreover, each time director has to pray God for another big budget movie to offset itself. And all we can do is to go to the cinema, take a big basket of cheese popcorn and enjoy a new epic adventures of Tony Stark and his friends.

6.2. Ukraine

Ukraine has a complicated history. But... any state can 'boast of' the same thing. Through its long history Ukraine several times obtained and lost its independence, being absorbed by different states. And now there is an independent republic between Western and Eastern Europe for almost 27 years. And maybe only 4 years ago we really started to understand what statehood is. Like any state who devoted substantive part of its existence to fighting for independence, culture is something sacred for Ukraine. For hundreds years it distinguished us from Russians, Belarussians, Polish, Slovaks even despite common Slavic background, and also from Austrians, Romanians and Hungarians.

After 2014 Ukraine started to pay attention on culture in many times actively than before. Main authority on executing cultural policy in all Ukraine is the Ministry of Culture and key

¹⁸³ Patrick Frater 'U.S. and China Struggle Over Film Quotas' (*Variety*, 9 February 2017) <<https://variety.com/2017/biz/asia/u-s-and-china-struggle-over-film-quotas-1201979720/>> assessed 16 June 2018.

¹⁸⁴ Frater (n 183) <<https://variety.com/2017/biz/asia/u-s-and-china-struggle-over-film-quotas-1201979720/>> assessed 16 June 2018.

provisions about cultural policy provided by Culture Act 2011.¹⁸⁵ Local administrations have also own bodies responsible for culture, but they don't have considerable authority and, of course, budget. The Ministry of Culture has introduced numerous state grants money rewards for artists and other creators: bonuses for cultural and artistic achievements, President's grants for young writers and poets and cinema projects competition. Overall culture budget for 2018 is over 3,3 bil. HRN (near 1,1 mil. EUR), where 362,5 mil. HRN are for Ukrainian information space, 483,3 mil. HRN shall finance foreign languages in Ukraine, national television and radio shall receive 990 mil. HRN, 1 bil. HRN for Ukrainian movies and 500 mil. HRN on historical and cultural heritage.¹⁸⁶

Together with strengthen national identity and integration into European cultural space another hot topic of cultural policy and not only is decentralization, when some competences of central governing bodies are delegated to local and municipality authorities. Main goal of cultural decentralization is to make cultural services accessible and high quality. The Ministry of Culture has developed a draft of decentralization scheme, where authorities are divided into three levels: central (Ministry, which is responsible for institutes, cultural fund and bureaucracy machine state wide), regional (oblast, or region, which takes care of local cultural organizations like theatres, libraries or clubs) and basic (urban-type settlements and towns, responsible for communities).¹⁸⁷

Another important stage of modern Ukrainian history is the Association Agreement between the EU and Ukraine establishing cooperation in trade, security, justice etc. The Agreement also touches cultural issues: Article 262 on State Aid puts '(d) aid to promote culture and heritage conservation where such aid does not adversely affect trading conditions contrary to the interests of the Parties' as compatible with EU-Ukrainian trade and competition relations and, therefore, subject to state aid.¹⁸⁸ Articles 437-440 are fully devoted to cultural cooperation: foster cultural relations, facilitate mobility of art and artists, establish a cultural dialog in conformity with UNESCO principles.¹⁸⁹

In 2016-2017 Ukrainian Television and Radio Broadcasting Act 1994 was significantly amended. But first, let me briefly describe cultural relations between Ukraine and Russia. In two words – very tight. There was a kind of 'cultural internal market' between states. Ukraine even

¹⁸⁵ Culture Act dated 14.12.2010 No 2778-VI (UA) <<http://zakon4.rada.gov.ua/laws/show/2778-17>> assessed 15 June 2018, art. 3.

¹⁸⁶ 'Budget 2018: Ukrainian main figures' (24 Channel, 8 December 2017) <https://24tv.ua/byudzhet_2018_osnovni_vitrati_byudzhetu_ukrayini_v_2018_v_tsifrah_n899023> assessed 16 June 2018.

¹⁸⁷ 'The Concept "Decentralization: Culture Sector" was presented + scheme' (*Decentralization Gives Opportunity*, 20 January 2017) <<https://decentralization.gov.ua/news/4038>> assessed 4 June 2018.

¹⁸⁸ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part [2014] OJ L 161/3, 113-114.

¹⁸⁹ *ibid* 159-160.

broadcasted many Russian channels. Musicians created material majorly acceptable only for these two countries, Russian TV-serials were pictured in Ukraine, celebrities were rewarded with national titles (like Meritorious Artist or People's Artist) and awards... In short, there was a big media market of Russian and Ukrainian artists and there was usually hard to define from which state most of them. 2014 shook this big 'friendly' family. And, finally, generally Ukraine didn't intervene much in culture issues as it does it now.

So, about Television and Radio Broadcasting Act. Since 2016 Ukrainian parliament raised quotas on Ukrainian music on radios to 30% and Ukrainian-speaking TV-shows to 75%¹⁹⁰. There was 25% quota on Ukrainian music and near 50% on Ukrainian-speaking TV-content, but, taking into account aforementioned, broadcasters mainly were not obedient to that quotas at all or let Ukrainian music on air late-late at night.¹⁹¹ No one really controlled it. In November 2018 quotas shall rise to 35% on radio.¹⁹² Unlike in EU state mentioned in this Thesis, there were neither strong opposition, nor confrontation between performers and radio editors. It seemed that everyone understood that these are urgent actions and it is needed to get rid of Russian media "obsession" and declare new ways: EU – radios, which specialized on European music, are obliged to broadcast only 25% of Ukrainian music¹⁹³ – and self-identity. Moreover, Ukrainian Television and Radio Broadcasting Act 1994 in article 4 states main principle of media policy in Ukraine: protectionism, no monopolies and tolerance to foreign products and language and minorities languages.¹⁹⁴ Less strictly new quotas are applied or not applied at all to state foreign-speaking radios and TV-channels (like UATV broadcasted in Ukraine and abroad), TV-channels with scientific content in official languages of the EU and satellite TV-channels dedicated only to foreign languages studying¹⁹⁵. The law amendments caused an interesting situation: broadcasters were generally eager to comply with them, but some moments remained unclear, so, they applied for qualification to the National Council of Television and Radio Broadcasting of Ukraine (hereinafter – National Council), responsible for licensing and law fulfilment observation. First of all, the law defines that quota is applied for quantity of Ukrainian songs, but not duration of presence – it gives a possibility to reduce quotas effect by giving on air short Ukrainian songs and considerably longer other, more

¹⁹⁰ Television and Radio Broadcasting Act dated 21.12.1993 No 3759-XII

<<http://zakon5.rada.gov.ua/laws/show/3759-12>> assessed 19 June 2018, art. 9.

¹⁹¹ Roman Lebed', 'Our quota: what will be changed in Ukrainian Radio?' (*BBC Ukraine*, 7 November 2016) <www.bbc.com/ukrainian/entertainment/2016/11/161101_ukrainian_music_limits_rl> assessed 31 May 2018.

¹⁹² Methodology Comments: live air of television and radio broadcasting monitoring on legally binding quotas compliance (UA) <www.nrada.gov.ua/metodologichni-roz-yasnennya-monitoryng-efiru-teleradiokompanij-shhodo-dotrymannya-vstanovlenyh-zakonom-kvot/> assessed 20 June 2018, 5.

¹⁹³ Television and Radio Broadcasting Act (n 190) art. 10.

¹⁹⁴ *ibid* art. 4.

¹⁹⁵ *ibid* art. 10.

‘profitable’ in radio editors’ opinion. And are multilingual songs where Ukrainian and other language/languages are presented considered as Ukrainian or foreign?¹⁹⁶

National Council issued comments and interpretation of law amendments application, where has defined that for the purposes of law song is a piece of art with musical and lyrical elements no shorter than 90 seconds (1:30 minutes) and contains constructions which might help identify its language. Also production with Ukrainian dialect are defined as Ukrainian. However, broadcasters were still unsatisfied: words of law remain same and National Councils comments are contrary to law.¹⁹⁷

But nevertheless many issues remain unclear. The law mentions only TV-channels of particular topics and give them quota facilitations. But what about radio stations declaring to play particular kind of music or music of particular origin. For example, one of the most popular Ukrainian “Radio Shanson”. It is far nothing to do with French shanson like Edith Piaf or Charles Aznavour. Russian Shanson is something like mix of everyday, prison and love lyric and usually associated with low-quality music. Main idea that there is a radio station for particular kind of music and a key problem is that Ukraine doesn’t have so much musicians of this genre. Should they air these singers within 30% quota and wait until Ukrainian shanson media market development? Or look more thoroughly for totally unknown and complete ‘underground’, means totally unknown genre representatives?

Another big issue is the status of Russian-speaking Ukrainian singers. In 2016 National Council and grand Ukrainian radio broadcasters signed a Memorandum on protection and promotion of Ukrainian-speaking music. National Council representative Serhiy Kostynskyi explained it with necessity to seal a huge loophole:

Memorandum... is a unique document as it is unprecedented situation for Ukraine, when finally radio market uses quotas to develop exactly Ukrainian language... a law on national culture product is applicable and it works in a way that even songs of DDT¹⁹⁸ may enjoy this quota, because one group participant is Ukrainian citizen and in a framework of law it is Ukrainian product. Now we are trying to circumvent this trap ... and nowadays it is a matter of national security, considering current situation.¹⁹⁹

¹⁹⁶ Lebed` (n 191) <www.bbc.com/ukrainian/entertainment/2016/11/161101_ukrainian_music_limits_rl> assessed 31 May 2018.

¹⁹⁷ Methodology Comments (n 192) 5.

¹⁹⁸ Russian famous rockband.

¹⁹⁹ ‘Serhiy Kostynskyi: Memorandum on song quotas law fulfilment shall work for national language development’ (*National Council of Television and Radio Broadcasting of Ukraine*, 19 October 2016) <www.nrada.gov.ua/sergij-kostynskyj-memorandum-shhodo-vykonannya-zakonu-pro-kvoty-pisen-pratsyuvatyme-na-rozvytok-derzhavnoyi-movy/> assessed 19 June 2018.

As radio stations representatives stated, the situation with quotas significantly reduced an amount of Russian-speaking Ukrainians on radio. They also state that such ‘silence’ caused by absence of new hits. ‘Where are their Ukrainian language songs?! They don’t produce them and rest on their laurels, hoping to get into Russian-speaking block because they are popular... Radio stations require high-quality Ukrainian-speaking content much’²⁰⁰, - argues Anna Sviridova, programme director of popular Ukrainian radio stations “Autoradio” and “Pyatnitsa” (“Friday”). Director of Radio No1 in Ukraine “HIT FM” Vitaliy Drozdov finds simpler explanation – no songs, no hits for a long time²⁰¹.

Due to the conflict between Russia and Ukraine the legislation concerning tours of Russian musicians and attending of Ukraine by Russian culture representatives has subsequently changed. So, if a tour of, if to speak officially, ‘aggressor country’ representative or his or her participation in a festival or other culture event in Ukraine is planned, an organizing body shall 30 days prior to the beginning submit a request to the SSU with a sufficient information about identifiers (real names and pseudonyms)²⁰². SSU shall within 10 days check own lists of *personae non gratae* and qualify whether this person done or said publicly something against Ukraine (e.g., support of Crimea occupation or separatism, Russian government propaganda etc.). Only after positive characteristic from SSU an organizing body may conclude any treaty or other kinds of agreement with Russian culture representative. A full ban of Russian performers in Ukraine, how was even proposed by some deputies, and would be absolutely unjust to Russian performers who support Ukraine and understand that their own land does, hmm, something wrong²⁰³.

A special place in this topic possesses the List of Persons who pose a threat to Ukraine national security, or ‘Ministry of Culture’s Black List’ (hereinafter – List). This document was issued by the Ministry of Culture and periodically updated by the Ministry and SSU. Today the List contains 134 names of majorly Russian culture representatives who somehow supported Russian aggression against Ukraine. Many of them attended occupied territories of Donbas and Crimea, so, illegally crossed the border. However, not only Russians are in this List: 3 Belorussia representatives for attending Crimea, supporting unconstitutional Crimean referendum and supporting separatist organizations from Donbas; famous French-Russian actor Gerard Depardieu

²⁰⁰ Rylev Konstantin and Milinevsky Nikolai ‘Rianna is better than Potap’s Russian song. How radio and TV shift to Ukrainian’ (*Vesti*, 9 October 2017) <<https://vesti-ukr.com/kultura/260125-ukrainizatsija-efira>> assessed 24 June 2018.

²⁰¹ Rylev and Milinevsky (200) <<https://vesti-ukr.com/kultura/260125-ukrainizatsija-efira>> assessed 24 June 2018.

²⁰² Tour Activities Act dated 10.07.2003 No 1115-IV <<http://zakon5.rada.gov.ua/laws/show/1115-15>> assessed 29 June 2018, art. 3-1.

²⁰³ ‘Decree – Russian musicians tours shall be coordinated with SSU’ (*BBC Ukraine*, 7 November 2017) <www.bbc.com/ukrainian/news-41906685> assessed 20 June 2018.

for declaring Crimea as a part of Russia; American-Russian boxer Roy Jones Jr. for attending Crimea; American-Russian actor and director Steven Seagal for active support of Russian government and attending Crimea; famous American musician and Limp Bizkit band founder Fred Durst for supporting separatist organizations in Donbas; famous Serbian director and musician Emir Kusturica for supporting Russia's aggressive actions in Ukraine and attending of Crimea. This List is based on names of culture representatives who composed and signed the Collective Address to Russian society from Russian culture activists in support of the President's Position about Ukraine and Crimea, where '... We wish the unity of our peoples and our cultures have a solid future. That is why we are determined in our support the position about Ukraine and Russia of the President of the Russian Federation'²⁰⁴, speaking about the destine of Crimea and its habitants, majorly Russian-speaking.²⁰⁵

In conclusion, it is painful for me to say so, but if Ukraine hadn't this conflict with Russia, we even wouldn't think about doing something with culture. Yes, my generation of 1990s and even my parents were brought up on Ukrainian-Russian common cultural space, which representatives are almost fully in the List. Only now Ukraine understood the power of own culture and started to do something. Long sweet time of phlegmatic drowsiness have gone and its high time explored some new horizons.

6.3. The Russian Federation

Introducing common cultural policy in such state is Russia might appear a complicated challenge. On the one hand, an importance to promote multiculturalism of completely different ethnical groups. On the other – preserving of culture which is known as 'typically Russian', with Slavic and orthodox background.

Main culture regulatory body is the Ministry of Culture, which is responsible for general coordination of cultural policy within entire federation and abroad. The Presidential Decree on Establishment the Basics of State Culture Policy gives a full scope of problems, aims and ideas about a role of Russian culture. Among main threats called citizens' intellectual level decline, misrepresentation of traditional values, increase of aggression, wrong representation of history and individualization. Main aims are support of media and mass culture, preserving and distribution of

²⁰⁴ 'Culture activists supported President's position about Ukraine and Crimea' (*Izvestiya*, 11 March 2014) <<https://iz.ru/news/567299>> assessed 19 June 2018.

²⁰⁵ 'Ministry of Culture publishes a list of persons who poses a threat to national security' (*The Ministry of Culture of Ukraine*, 6 June 2018) <http://mincult.kmu.gov.ua/control/uk/publish/article?art_id=245331003&cat_id=244966805> assessed 20 June 2018.

traditional Russian values to future generations and international promotion of Russia.²⁰⁶ Basics of Culture Legislation Act embodies mainly regulations concerning ethnic minorities of Russia together with provisions on cultural heritage and its preservation.

EU-Russian relations have a long history. In 1994 an Agreement on Partnership and Cooperation was signed. This document declared a most-favoured-nation treatment²⁰⁷ and was an initial stage before establishing a free trade area between the EU and Russia.²⁰⁸ Article 19 excludes ‘national treasures of artistic, historic or archaeological value’²⁰⁹ from trade facilitation provisions for both parties. Also parties signed numerous protocols to the Agreement, among which is Protocol 2 on Mutual Administrative Assistance for the Correct Application of Customs Legislation, where the EU and Russia were intended to establish effective customs operation from both sides. Article 6 of it regulates assistance requests rules and a separate Joint Declaration to it clarifies the spheres of advanced cooperation: one of them is ‘movement of objects of art and antiquity, which present significant historical, cultural or archaeological value for one of the Parties’.²¹⁰

Besides, the EU and Russia established 4 Common Spaces: Economy; Freedom, Security and Justice; External Security; Research and Education, Including Cultural Aspects.²¹¹ Road Map 2005 consists majorly from research and educational information and only some very common provisions about culture like culture promotion, culture strengthen, develop cooperation etc.²¹² No wonder – we can notice even by title a place of culture in the background. However, it is hard to say about the effectiveness of these agreements, especially now. Last year Russia’s works of art and antiquity export statistics demonstrates relatively low figures concerning EU states: overall over \$3,5 mil. (near €2,8 mil.) and almost all the culture export goes to France²¹³ – well, maybe that is why there are many Russian works of art of different ages on French auctions.

Music quotas issue discussions started in 2012-2014, however, without any consolidated position: the proposals were from different people about different percentage. Even 75% for

²⁰⁶ Basics of State’s Culture Policy (RU)

<www.mkrf.ru/upload/medialibrary/3aa/3aa5ed08e6cfbb1c982fee8618c4fa09.pdf> assessed 2 June 2018, 6, 10.

²⁰⁷ Agreement on Partnership and Cooperation establishing a partnership between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part [1994] L/CE/RU/en1, art 5.

²⁰⁸ *ibid*, art 1.

²⁰⁹ *ibid* 16.

²¹⁰ Joint Declaration in Relation to Article 6 of Protocol 2 CE/RU/en50, art. 1.

²¹¹ ‘Basic Documents’ (*Permanent Mission of the Russian Federation to the European Union*)

<<https://russiaeu.ru/en/basic-documents>> assessed 27 July 2018.

²¹² Road Map on the Common Space of Research and Education, Including Cultural Aspects

<https://russiaeu.ru/userfiles/file/road_map_on_the_common_space_of_research_and_education_2005_english.pdf> assessed 27 July 2018, 6.

²¹³ ‘Export from Russia “Works of art, collectors’ pieces and antiques”’ (*Ru-Stat*, May 2018) <<http://en.ru-stat.com/date-M201607-201707/RU/export/world/21>> assessed 27 July 2018.

Russian music!²¹⁴ Such initiatives were supported by music producers – of course, to give more space for their proteges. Although, experts warn that applying quotas won't improve the situation.²¹⁵

A great amount of money is spent on Russian films. Grants are distributed and the candidates are chosen by Federal Fund for Economic and social support of the Russian Cinematography (hereinafter – Cinema Foundation). Before each selection of applicant and pitching (demonstration of film projects) process the Federal Fund of Social and Economic National Cinema Support issues a new selecting schemes. There are 2 types of funding: refundable or non-refundable base. Selecting scheme 2018 regulates only refundable grants: not more than 100 000 000 RUB (near 1,3 mil. EUR), grant shall cover not more than 70% of production costs and grant sum is defined by Supervisory Board based on application and own opinion.²¹⁶ But if we look at 2018 Cinema Foundation grantees list of 17 projects, we can see that almost all the projects are funded on non-refundable base, which looks quite strange: many Russian movies don't pay off. For example, in 2017 only 4 movies out of near 160 paid off double or triple times.²¹⁷

Despite protectionism and slightly 'Western-adversary' trends, the government never supported imposing of quotas. As Russia is a big country with a huge amount of cities, town, villages of various prosperity level and in order to ensure a full distribution of national films, Cinema Foundation also give grants to cinemas. In 2018 Cinema Foundation have granted at an average 4,5 mil. RUB (near 62 000 EUR).²¹⁸ Moreover, the biggest cinema distribution and demonstration networks and the Ministry of Culture signed an agreement on introduction voluntary quotas on films produced in Russia – not less than 20%. As the Minister of Culture Vladimir Medinskiy said, 'it's a kind of cartel agreement'.²¹⁹ Paragraph 1 Article 11 of Competition Protection Act forbids any kind of cartels²²⁰, unless each participant possesses less

²¹⁴ Vladimir Kvasnikov 'Impose quota on Russian music for Radio and TV' (*The Village*, 14 September 2015) <www.the-village.ru/village/city/situation/221883-music> assessed 7 June 2018.

²¹⁵ Kvasnikov (n 214) <www.the-village.ru/village/city/situation/221883-music> assessed 7 June 2018.

²¹⁶ Order No 7 dated 9 February 2018 on selecting projects to support national movies production (RU) <www.fond-kino.ru/documents/download/701/> assessed 10 June 2018, para 1-2.

²¹⁷ Sergey Lavrov 'February 2018 summary: first time ever FOUR Russian movies gained profit in ONE month!' (*Kinodata*, 27 February 2018) <kinodata.pro/vse-o-kino/obzor-kassovyh-sborov-v-rossii/34554-itogi-fevralya-2018-goda-vpervye-chetyre-pribylnyx-rossijskix-filma-za-odin-mesyac.html> assessed 18 June 2018.

²¹⁸ Order No 19 dated 30 March 2018 on confirming grantees for creating conditions for national movies demonstration in towns of the Russian Federation with less 500 000 populations (RU) <www.fond-kino.ru/documents/download/733/> assessed 11 June 2018, para 1-2.

²¹⁹ Elizaveta Fokht and Elizaveta Surganova Cinemas agreed to impose voluntary quotas for Russian movies (*RBK*, 7 October 2015) <www.rbc.ru/business/07/10/2015/5614f1d89a79479bf4e69219> assessed 20 June 2018.

²²⁰ Competition Protection Federal Act dated 8 June 2006 No 135-F3 <www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=299554&fld=134&dst=1000000001,0&rnd=0.1707360514210423#05698073182085901> assessed 5 June 2018, art. 11.

than 20% of market share.²²¹ And each participant of abovementioned ‘cinema cartel’ possesses less than 10% of market share and together they have near 43% of market share.²²²

Last year initiative from the Minister of Culture was to charge 5 mil. RUB (near 68 000 EUR) from foreign distributors with more than 200 mil. RUB (near 2,7 mil. EUR) box office. Money, as assured the Minister, will go to the Cinema Foundation for Russian movies development. A special commission within the Cinema Foundation should define, which films will be charged or not depending also on ‘artistic value’.²²³

It is also interesting to mention about relations between Russia and Ukraine on cinema ground. As I have mentioned previously, Russian TV-series were often in Ukraine and studios from two countries worked together. It seems that current situation does not have much influence – except for Ukrainian Black List of anti-Ukrainian culture representatives. Moreover, the situation is improving. In 2017-2018 two Ukrainian studios, which produce TV content, became leading suppliers of TV-series and shows on Russian TV-channels, even for such absolutely pro-Russian as Channel One and Russia 24.²²⁴ Many Russian TV-shows are adaptation of Ukrainian. ‘World Russian Studios’ director Yuriy Sapronov explained this ‘politically questionable’ choice of Russian TV channels, ‘Ukrainian producers are able to create high-rated product and propose it for more compatible price than Russian. No politics, just business’.²²⁵

To sum up, Russia tries for all forces promote national films as the most influential mean of culture. As I see, the biggest problem is not a lack of materials to broadcast in cinemas, but quality – people don’t want to see bad national movies, so, very often those big non-refundable state’s investments are detrimental. The scheme itself looks very suspicious: isn’t it too much to subsidize huge sums ‘gratis’? Voluntarism, ideology or money laundering?

²²¹ FAS Letter dated 11.11.2009 N AK/40092 ‘Explanation on competition legislation application concerning “vertical agreements” between companies’ (RU) www.consultant.ru/cons/cgi/online.cgi?req=doc&cacheid=F1F44E8A54D2D41A13ABEBA922A8081F&mode=ackrefs&dirRefId=65534&BASENODE=1-1&ts=2947815316454134224&base=LAW&n=141365&rnd=0.1707360514210423#09037612926357805 assessed 5 June 2018, para 1-2.

²²² Artur Chachelov ‘A general amount of private cinemas halls in Russia exceeded 4 000 (*Booker’s Bulletin*, 20 January 2016) www.kinometro.ru/news/show/name/Cinama_Hall_in_Russia_8752 > assessed 17 June 2018.

²²³ Olga Yankovskaya ‘Medinskiy proposed to charge foreign distributors for 5 million RUB’ (*Life News*, 30 May 2017) https://life.ru/t/%D0%BD%D0%BE%D0%B2%D0%BE%D1%81%D1%82%D0%B8/1012636/miedinskii_priedlo_zhil_vzimat_po_piat mln_rubliei_s_inostrannykh_prokatchikov > assessed 8 June 2018.

²²⁴ ‘Ukrainian company became leader in TV-series filming for Russian TV’ (*RBK*, 15 March 2018) www.rbc.ru/technology_and_media/15/03/2018/5aa7beb89a7947428ef235ce?from=main > assessed 10 June 2018.

²²⁵ ‘Ukrainian company’ (n 224) www.rbc.ru/technology_and_media/15/03/2018/5aa7beb89a7947428ef235ce?from=main > assessed 10 June 2018.

7. Art trade and restrictions reasoning in other spheres

7.1. Statistic information on customers' preferences

As we have seen in previous parts, quota policy mostly not applied. An exception is Ukraine, 'voluntary' quotas are presented in Austria for music on radios and Russia for movies in cinemas and the EU imposed 30% quota for national products. While numerous discussion about effective measures to promote national culture an urgent issue was the misrepresentation of national-speaking representatives in contrast with English-speaking. Is it really 'artificial' misrepresentation by radio stations or people just don't want national singers for some reasons?

Eurostat emphasized a drastic growth of European culture trade balance, which means that both export and import rate increased and generated surplus 1 857 mil. EUR. Also figures indicate an increase of export to 12 725 mil. EUR and reduce of import to 10 868 mil. EUR.²²⁶ The EU created and exported cinematographic, music and video game works to third states for 433 mil. EUR.²²⁷ So, it might mean that Europe does not have any deficit of own produced culture goods. However, if we look at particular states, not many of them show any growth. Among all the EU states only the UK shows steady growth.²²⁸ Well, no wonder – near 29% of EU TV channels are based in UK and the Kingdom is second after France of film exporters.²²⁹ Inside EU culture trade leaders are France, the UK, Germany, Italy and Spain.²³⁰ Another interesting detail: in 2014 Latvia, Cyprus and Luxembourg had a real culture trade 'boom'.²³¹

The EU sees a threat from US TV products, even despite a huge creating forces of France and UK. And there is a ground for this fear: in 2013 Hollywood possessed 60-75% of movies' market share throughout Western Europe, except for France where this share was 50%.²³² Recent figures show that EU-made products' share in only 28% comparing with 68% of US.²³³ The main

²²⁶ 'Culture Statistics' (Eurostat, 2016) <<http://ec.europa.eu/eurostat/documents/3217494/7551543/KS-04-15-737-EN-N.pdf>> assessed 29 June 2018, 98.

²²⁷ *ibid* 99.

²²⁸ *ibid* 103.

²²⁹ '29% of all European TV channels are based in the UK' (European Audiovisual Observatory, 28 June 2018) <www.obs.coe.int/en/web/observatoire/home/-/asset_publisher/9iKCxBYgiO6S/content/29-of-all-european-tv-channels-are-based-in-the-uk?inheritRedirect=false&redirect=https%3A%2F%2Fwww.obs.coe.int%2Fen%2Fweb%2Fobservatoire%2Fhome%3Fp_p_id%3D101_INSTANCE_9iKCxBYgiO6S%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D2> assessed 1 July 2018.

²³⁰ '29%' (n 229) <www.obs.coe.int/en/web/observatoire/home/-/asset_publisher/9iKCxBYgiO6S/content/29-of-all-european-tv-channels-are-based-in-the-uk?inheritRedirect=false&redirect=https%3A%2F%2Fwww.obs.coe.int%2Fen%2Fweb%2Fobservatoire%2Fhome%3Fp_p_id%3D101_INSTANCE_9iKCxBYgiO6S%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D2> assessed 1 July 2018.

²³¹ Culture statistics (n 226) 103.

²³² Hopewell (n 181) <<https://variety.com/2013/film/global/hollywood-stymied-as-europe-sticks-with-its-limits-on-film-and-tv-1200497446/>> assessed 2 June 2018.

²³³ '28% of films on TV are European' (European Audiovisual Observatory, 3 May 2018) <www.obs.coe.int/en/web/observatoire/home/-/asset_publisher/9iKCxBYgiO6S/content/28-of-films-on-tv-are-european-

problem is that none EU state produce blockbusters, which are fully beloved by spectators. And Hollywood is a sensei of blockbusters manufacturing!

National music is one more sensitive theme for each state. Until 2011 Austria had 30% quotas on national music, but today it became voluntarily and each radio is free to choose what to air. The result was exited: the biggest Austrian radio station Ö3 blamed that Austrian music significantly reduced station's rates from 38% to 31%²³⁴, so, that's why Ö3 plays Austrian music rarely. And FM4, in contrast, is known for its Austrian music support. Last surveys demonstrate Ö3 38% popularity for 14-49 years old listeners and FM4 has only 4%.²³⁵ As for me, a good example of how people "like" Austrian music.²³⁶

German pop singers complain that they are drowning in an ocean of English pop. However, the surveys show less drama about the situation: "Süddeutsche Zeitung" pointed out that German singers appear quite often and, due to German language 'genre universality', they are popular at least in Germany. Later analyses confirm that in German charts 60% out of Top100 are German songs and German singers.²³⁷

Ireland seems to face a real trouble: Irish singers are not satisfied with the fact that national radios play them too seldom. Journalist Jim Carroll made a thorough analysis and found out which radio stations play the least Irish music: he took 'Top'-lists of each station, where the most often aired songs are indicated, and calculated that most of his list don't have any Irish song in Top10 at all or have just 1 or 2 and in Top100 an average sign is 20 Irish songs.²³⁸ Next step: we take Top20 Irish radio, look at first 10 stations and compare with Carroll's list – stations which 'don't like' Irish music possess places 2, 4, 6, 8 and 9. And the most interesting thing: 1st place possesses RTÉ Radio 1 which plays Irish music the most often and there are 7 Irish songs in Top10 (70%) and 57 songs in Top100 (57%).²³⁹ It looks too ambiguous – Irish musicians seems to be both right and wrong.

[?inheritRedirect=false&redirect=https%3A%2F%2Fwww.obs.coe.int%2Fen%2Fweb%2Fobservatoire%2Fhome%3D101_INSTANCE_9iKCxBYgiO6S%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D2](https://www.obs.coe.int/en/web/observatoire/home?id=3D101_INSTANCE_9iKCxBYgiO6S%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D2) > assessed 20 May 2018.

²³⁴ Ö3 (n 125) <<https://derstandard.at/2000030439666/Oe3Oesterreich-Musik-kostet-Quote>> assessed 19 June 2018.

²³⁵ 'Radiotest, unsmoothed: ORF 70% Market Share' (*DerStandard*, 21 September 2016) <<https://derstandard.at/2000044687557/Radiotest-ungeglactet-70-Prozent-Marktanteil-fuer-ORF>> assessed 30 May 2018.

²³⁶ Michi Koffler 'We have asked people whether they listen to Austrian music' (*Noisey*, 9 January 2018) <<https://noisey.vice.com/alps/article/qvw34q/wir-haben-menschen-gefragt-ob-sie-osterreichische-musik-horen> > assessed 9 June 2018.

²³⁷ Glotzman (n 138) <www.goethe.de/en/kul/med/20867119.html> assessed 5 June 2018.

²³⁸ Jim Carroll 'Radio Silence: Stations which play the least Irish music revealed' (*The Irish Times*, 27 December 2016) <www.irishtimes.com/culture/tv-radio-web/radio-silence-stations-which-play-the-least-irish-music-revealed-1.2902810 > assessed 5 June 2018.

²³⁹ see Radio Stations Top 20 Liveradio <www.liveradio.ie/top-20> assessed 10 July 2018.

Russia is eager to defeat such a massive machine as Hollywood and that's why enormous sums are granted to film makers, biggest cinema networks are pleased to devote 20% to Russian movies. No doubts, it is absolutely normal when state support own culture, but it looks strange when a big amount of projects don't give any pay off. However, 'The Ministry of Culture doesn't do a business, so, such category as "pay off" is not even on second place, but even third. We are responsible for an overall "health" of film industry', as said Vladimir Medinskiy.²⁴⁰ Last year summer only one film, a comedy, generated some profit.²⁴¹ This year 4 out of 10²⁴² (other 6 places are for US)²⁴³ films have successful box office²⁴⁴ and this is considered to be an outstanding result²⁴⁵. Yes, it is true that state structure shall not do business, but money funded are taxes from Russians. Judging by box office, they are not much amused with non-refundable grants to the same producers, which create low-quality products, as statistic shows us.

Ukraine is the only one among states in this Thesis which introduced 30% music quota and 75% TV quota. In order to find out how quotas work and analyse whether listeners enjoy such changes I will take No2 of radio stations rate "Lux FM" as No1 "HIT FM" does not provide sufficient information about songs played. Let's take date 7 July 2015, so, near 1 year before quotas introduction, and time between 7:00-11:00 when people wake up and go to work, so, switch on automobile radio. Out of 32 songs only 2 Ukrainian-speaking songs and 6 songs from Ukrainian singers (both Russian and Ukrainian speaking) – as a result, we had 19% of Ukrainian music and 6% of Ukrainian-speaking music²⁴⁶. According to 2015 statistics, "Lux FM" was on 5th place by rates²⁴⁷. And now I take 12 July 2018 when quotas are used for near 2 years and also the same time 7:00-11:00. Out of 52 songs 22 are Ukrainian-speaking and 23 – Ukrainian (only one

²⁴⁰ Maria Istomina, Pyotr Kanayev and Irina Parfentyeva 'Cinema Foundation and the Ministry of Culture don't care about the payoff problem as our movies are filmed for budget costs which they "allocate" by their own' (*Kinodata*, 22 June 2018) <<http://kinodata.pro/vse-o-kino/novosti-rus-kino/36336-fond-kino-i-minkult-ne-volnuet-problema-okupaemosti-potomu-chto-nashe-kino-snimaetsya-na-dengi-iz-gosbyudzheta-kotorye-oni-zhe-i-raspredelyayut.html>> assessed 29 June.

²⁴¹ Oleg Uskov 'An only Russian film with payoff in summer' (*Kinokratia*, 28 August 2017) <<https://rg.ru/2017/08/28/nazvan-edinstvennyj-rossijskij-film-okupivshijsia-letom-v-prokate.html>> assessed 2 July 2018.

²⁴² 'Projects from leading companies confirmed by Cinema Foundation's Supervisory Board in 2018' (*Federal Fund for Economic and Social support of the Russian Cinematography*, 6 April 2018) <www.fond-kino.ru/news/proekty-kinokompanij-liderov-utverzdennye-popecitelskim-sovetom-fonda-kino-v-2018-godu/> assessed 10 June 2018.

²⁴³ Lavrov (n 217) <kinodata.pro/vse-o-kino/obzor-kassovyh-sborov-v-rossii/34554-itogi-fevralya-2018-goda-vpervye-chetyre-priblynyx-rossijskix-filma-za-odin-mesyac.html> assessed 18 June 2018.

²⁴⁴ Mikhail Vodopyanov 'Until the end of 2018 will be no Russian release with box office between 500 mil.-1 bil. RUB' (*Kinodata*, 4 July 2018) <<http://kinodata.pro/vse-o-kino/obzor-kassovyh-sborov-v-rossii/36538-do-konca-2018-goda-net-ni-odnogo-rossijskogo-reliza-so-sborami-ot-0-5-do-1-mlrd-rub.html>> assessed 10 July 2018.

²⁴⁵ 'Russian Federation's film distribution 1st part of 2018 summary' (*Federal Fund for Economic and Social support of the Russian Cinematography*, 4 July 2018) <www.fond-kino.ru/news/itogi-kinoprokata-rossijskoj-federacii-za-pervoe-polugodie-2018-goda/> assessed 11 July 2018.

²⁴⁶ see Lux FM Radio Station <<https://lux.fm/>> assessed 12 June 2018.

²⁴⁷ 'Radio listening 2nd wave analysis in towns more than 50 000 dwellers April-July 2015' (*Detector Media*, 31 July 2015) <<http://detector.media/rinok/article/109722/2015-07-31-druga-khvilya-doslidzhennya-radioslukhannya-v-mistakh-50-tis-kviten-lipen-2015/>> assessed 23 June 2018.

Ukrainian singer's song in Russian).²⁴⁸ Due to this, we have even 42% of Ukrainian-speaking music, which is higher than required! And "Lux FM" in 2018 is, as I have already mentioned, No 2 by rates.²⁴⁹ I am not sure whether Ukrainian music was the reason for such an upgrade, but it is definitely seen that listeners' preferences haven't changed because of quotas.

In conclusion, in my opinion, audience preferences more than ideology or state policy should be the reason for changes in media market. If there is good quality national product to offer, people will buy and enjoy it, tell the friends about a product's outstanding quality, will support your next projects... Restrictive measures would be useful in case of "informational vacuum" where are no other means of culture sharing except for state-owned TV or radio. In Internet era no quotas can constrain people: who can prevent me from visiting radio station's web-page and connect to online streaming? I believe that no one.

7.2. Art trade and media market

Obviously, state is not the last resort for culture and art distribution and dissemination. There are numerous ways of art trading as well as art financing.

Fine art auctions often appear in a spotlight because of another sold painting record or a scandal. Looking at such giants as Christie's and Sotheby's, you are absolutely sure that you have no chance to win or even get there. But it's not true – Europe has numerous small auctions. The biggest amount has France, where another world famous auction house Drouot. Moreover, the auction house has established a global partnership with other auction houses in France and around the world. Drouot Digital system allows to track interesting auctions, register there, if necessary, provide a possibility for online (eBay principle, where participants can place bids until the end of lot selling time and the biggest bid wins) or live sales (selling process in room is demonstrated online and bids are placed instantly via Internet).²⁵⁰ There is also another big system, Auction.fr, which works by the same principle as Drouot Digital, but without on-line broadcasting.²⁵¹ France strongest point is antiquity auction houses. As I have mentioned previously, goods older than 50 years are considered as antiquity and antiquity falls under Council Regulation 116/2009 and requires export license for both inside and outside EU.²⁵² But antiquity sold while auctions matches only 'Age' parameter, but not 'Value' – for licensing both parameters shall match.

²⁴⁸ see Lux FM Radio Station <<https://lux.fm/>> assessed 13 July 2018.

²⁴⁹ 'Radio listening data in Ukraine 1st waive 2018 Analysis' (*Kantar TNS*) <<https://tns-ua.com/news/dani-radiosluhannya-v-ukrayini-persha-hvilya-doslidzhennya-2018>> assessed 9 June 2018.

²⁵⁰ see Drouot Digital <www.drouotonline.com/en> assessed 5 July 2018.

²⁵¹ see Auction.FR. Auction sales of works of art <www.auction.fr/> assessed 15 July 2018.

²⁵² Council Reg 116/2009 (n 30) 5-6.

It is a usual situation when old rich houses' furniture and even the smallest thing are sold while auction – it is supposed because of French inheritance tax rates. And I also believe that it has something to do with French Revolution times of churches and riches houses looting. So, it is easy to buy magnificent antique chairs, sofas, wardrobes, mirrors of XIX century for extremely cheap price – I have seen such things for 10 EUR, 30 EUR...

Briefly about how such auctions are organized. Prior to selling day an auction house should issue a catalogue of future lots and their estimated price, defined by auction house experts. However, this is not obligatory, but nevertheless lots shall be presented and usually one day before auction house demonstrates lots within own premises. It is important to register for auction and receive your number. Main person of auction sells is auctioneer, of Commissair-Priseur in French: he or she describes shortly each lot, has a right to change price below estimate, if necessary, he or she guides entire selling process and his or her decision is final. And, of course, wooden hammer strikes! Bids are done by announcing price higher than other competitors. Most auctions provide a possibility to do absentee bid – it means that you address an application to auction house, define lots you want to bid and either enter maximum bid you are ready to give or your contact phone for auction house representative to call when interesting for you lot is coming for sale. By the way, most of bids are done by phone because it helps to preserve anonymity, which is quite useful while purchasing something famous and expensive. After auctioneer announced your victory the lot you won immediately becomes your possession and you have to pay for it. Invoice includes price for which you won it and “buyer’s premium” – auction’s house commission. In France it is usually 20-25%.²⁵³

Imagine: you are young, gifted and creative, but you don't have money for self-promotion, not accepted by any talent show and don't get benefits from any kinds of quota. And at the same time you need money for living and improving your content. Why don't you describe your project in details and share it on crowdfunding platform? Or open a channel on YouTube? Or create a Patreon account? So many possibilities to avoid begging state for help!

Generally, crowdfunding means collaborative funding by the Internet: you put some idea or project on crowdfunding web-page and those who are interested donate money to you. In 2012 crowdfunding industry rose up to \$2,7 bil. and rises steadily. Crowdfunding becoming an important part of culture industry²⁵⁴. There is a variety of platforms, but the most well-known are Kickstarter and Patreon. Today many so-called “indie games” (not created by big international

²⁵³ ‘How Auctions Work’ (*Raleigh Auction & Estate Sales*) <<http://raleighauction.com/how-auctions-work>> assessed 6 July 2018.

²⁵⁴ Chance Barnett ‘Top 10 Crowdfunding Sites for Fundraising’ (*Forbes*, 8 May 2013) <www.forbes.com/sites/chancebarnett/2013/05/08/top-10-crowdfunding-sites-for-fundraising/#209a8fae3850> assessed 5 May 2018.

companies like EA Games, for example) survive with the help of crowdfunding and people are eager to donate to talented people: Kickstarter demonstrates, that many video game projects gained significantly more than required – ‘The Binding of Isaac: Four Souls’ is 2,701% funded!²⁵⁵ Patreon is of the same purpose, but it is mostly for regular donations by fans of particular personality.

It is a simple statement, but we live in the era of Internet, which easily substitutes us other media, especially TV. Becoming famous on TV will take you decades and with the Internet you can do it in any way quicker with YouTube video sharing platform. YouTube itself is ready to pay its partners depends on how many times their videos are viewed and how much subscribers they have²⁵⁶. Moreover, YouTube recently introduced paid subscriptions designed to help talented creators to earn more. Also YouTube will help you to get money from advertisings if you agree to add some amount to your video. Or you can find advertisers by your own. Nowadays YouTube creators can earn the same amount on money as on TV, if not even more. These people are mostly young, active, know how to work with audience and how to attract investors²⁵⁷. This factor made TV stars and music labels like VEVO to move on YouTube, where they might have more viewers.

To sum up, creators today have a lot of trade opportunities. The most important is to recognise and use them properly. We live in globalized world and together with some disadvantage it brought one of the most important advantages: each one can “craft” him/herself a future and present. We have a possibility to look beyond the horizon.

Conclusion

Conclusions – the final chords of each research paper. This Thesis was about a literally saint things – culture and art. These are, maybe, the biggest “bricks” which build our personalities as they not only comprise many sides of our life, but sometimes can say who we truly are. Existence of a culture – a triumph of a mankind as species. After long and scrupulous research, I hope that I can now answer the questions raised. So, the conclusions are following.

Firstly, none of EU states considered in Thesis imposed any kind of quotas despite they have a legal possibility because of so-called ‘culture exemption clause’ and EU’s lack of competence in this field. While considering the situation in Ireland, an example of France with 40% quotas for French-speaking songs and separate 20% for new French musicians was mentioned. However, even this not really restrictive quota, because French language coverage is

²⁵⁵ see Kickstarter <www.kickstarter.com/> assessed 15 July 2018.

²⁵⁶ Braveen Kumar ‘How to make money on YouTube (Without a Million Subscribers)’ (*Shopify*, 11 September 2017) <www.shopify.com/blog/198134793-how-to-make-money-on-youtube> assessed 5 May 2018.

²⁵⁷ Anna Johansson ‘Here’s How You Can Actually Make Money With YouTube’ (*Entrepreneur*, 24 August 2016) <www.entrepreneur.com/article/280966> assessed 6 May 2018.

big, poses an opposition from radio DJs: they claim that French music production has drastically declined, they are unable to fulfil quotas as it would also worsen music quality and either boycott quotas at all or play same songs for several times. Finally, state met the needs of DJs and reduced quotas to 35%.²⁵⁸ France have this quota since 1994 as they wish to combat “Anglo-Saxon invasion” and stimulate French musicians sing French, not English. German musicians claimed that they don’t receive attention they deserve, but nevertheless they are popular. Austrian music seems to be not really beloved by Austrians, as FM4 radio rate show us. Ireland has weird situation: Top 1 radio plays mainly Irish music, but half out of Top 10 radios play extremely small amount of Irish songs.

So, due to this goes *second conclusion* – they are not really justified in case some of aforementioned states change its opinion. I think that examples of France and Austria are demonstrating: France shows the result of quotas – national musicians, relying on their 100% guaranty to be on air, became ‘lazy’ and weaker against the competition. Austria indicates, if it is ethically to said so, some sort of music crisis: FM4 offers a lot of various Austrian songs, established as a radio policy the support of Austrian music. The result – low rates comparing to others, which play almost no Austrian music. I really think, that states should think about some “demand test” to prove the potential effect of quotas for national media product – establish a state-funded radio, which will play only national music, and during a particular period observe rates dynamic.

Thirdly, EU states mentioned in Thesis together with the EU try to support national and European culture at all. However, none of them apply any kinds of strict measures. Another important point is the possibility to impose limitations in culture sphere by states when they consider it urgent. If to speak about usual market realities, each kind of restriction or subsidiary measures can possibly disturb competition and the EU internal market at all, so, Articles 34 and 35 TFEU forbid quantitative import and export restrictions. But, at first, Article 36 defines protection of national treasury of historic, artistic or archaeological value and, at second, the EU has only supportive and coordinative competence in culture sphere.²⁵⁹ However, Irish example shows that EU can reject proposal for quotas, even when they are justified as encouraging national music measure. It might mean that while imposing any restrictive measure the state has to analyse any possible ways to advert significant impact on internal market and apply in a way beneficial for the entire EU. On the other hand, states, in accordance with the EC practice, are free to use state aid mechanisms for any cultural purposes, any sum and of any duration – just don’t forget to

²⁵⁸ Samuel Osborne ‘France reduces legal quota on number of French songs DJs are forced to play’ (*Independent*, 18 March 2016) <www.independent.co.uk/arts-entertainment/music/news/france-reduces-legal-quota-on-number-of-french-songs-djs-are-forced-to-play-a6938201.html> assessed 13 July 2018.

²⁵⁹ Foster (n 1) 28.

notify in case of exceeding designated notification threshold. Case *CELF* was a unique precedent, when the EC's persistent decision not to raise objections was cancelled by the ECJ.

Fourthly, the EU bodies are developing numerous culture cooperation bodies and make culture affairs key sphere in its diplomatic relations. EU considers its main problem US dominance in European film distribution, so, that's why a 30% quota on EU created movie and TV products was established. It has to make such visual content streaming companies like Netflix and Amazon to include European created content.

Fifthly, the US and Russia also don't have any restrictions quotas – both really don't need them because of sufficient culture products not only for internal consuming, but also for export, especially the US. Although, US states give tax facilitations for film producers and sometimes are ready to grant aid under some circumstances which vary from state to state. Despite Russia produces over 100 movies each year, extremely small amount of them even allow to cover production cost. What is more interesting, the Cinema Foundation does not call 'payoff' a sufficient indicator. But... don't Cinema Foundations authorities think that payoff means not only quality, but also citizens' interest? No payoff means no one go to the cinema to watch, which in turn means that people don't want you. They don't trust you. Or I am wrong and quantity someday will overcome quality?

Ukraine – the country I came from – is only in this Thesis imposed Ukrainian language quotas for music and TV programmes. Technically, existing quotas were increased by 30% and 75%. As I have analysed, people accepted drastic increase of Ukrainian language on radio and radio station rates haven't change in favour of those who play the least Ukrainian-speaking music.

Finally, I deeply believe that in our globalized and 'Internetized' world any kind of quotas can't overcome free choice of what to enjoy. As a culture product consumer, I have the strongest power – to vote with my wallet. If I go to the cinema and it feeds me with hog-wash, even national produced, I won't go anymore there, I won't bring them my money for ticket, cheese popcorn and Cola. I'd rather buy same popcorn and Cola in supermarket – it would be even cheaper! – switch on my computer and log in to some online cinemas or buy interesting film through, for example, "Video" in my Apple device. The same with radio – if you air mess, I switch you off and buy something interesting via iTunes. Which quotas can stop me with Spotify, SoundCloud, YouTube or piracy (I'm joking – of course I know piracy is prohibited)? And yes, no one denies English language rapid dissemination and content amount. First of all, now English is an international language – the same place earlier possessed French and Latin. Next, does it mean that any young garage band become worldwide famous just because of English language? Of course, no! But many national musicians present facts in such manner. And, finally, if there weren't 'Rammstein', 'Tokio Hotel', Shakira, 'Notre Dame de Paris' musical, Garou, Rickie Martin, Luciano Pavarotti,

Lara Fabian and many others, I could believe in ‘Anglo-Saxon Apocalypse’. All these talented people singed German, Spanish, Italian, French... By the way: first video reached 1 billion views on YouTube was Korean PSY with Korean-speaking ‘Gangnam Style’ and last year’s hit also with some billion views – ‘Despacito’ in Spanish. There is no conspiracy theory about it – successful performers appeared to be more comprehensible, charming, thought of.

I think that any kind of restrictions as protection measures are like doping or consuming antibiotics in case of simple cold, when it is just enough to stay home some days and drink hot tee. Yes, protecting own culture and cultural identity through such popular means as movie or music is good intention... unless you are coward producer who wants to promote own ‘disaster protégée’ with help of national quotas. As people say (or it was Virgil?), ‘the road to hell is paved with good intentions’. But I like an alternative version of this proverb – ‘Hell is full of good meanings, but heaven is full of good works’. By weaken own culture’s ‘competition immunity’, states’ restrictions definitely don’t help it. World culture massive will grow, communication means will improve, but weak national culture won’t be able to challenge new era and in order to save it state will impose more and more restrictions until a desperate decision to close state’s ‘culture space’ from external influence. It is worth it? Is it what we want, what we eager to reach?

And some more pathetic words in the end. Culture is something that shall exist beyond the borders. Creativity reveals the best of us. Constraining it to some ideological or patriotic needs makes culture degraded, turns it from something bright like Patronus from ‘Harry Potter’ into a vacant propaganda tool. Each culture is unique and shall have a right to live. But ‘to live’ comprises not only existing – born, growing, heyday and death. Pity when dead is your culture, but don’t be upset – it will spawn new cultures and ensure itself a place in eternity.

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Annex

Abstract

I have chosen the topic 'EU Internal Market Freedoms and State Aid in Culture and Art' for two reasons: firstly, its relative novelty, and, secondly, this is something very close for everyone. Art and culture have always possessed a special place in peoples' mind. Common people like culture because of its variety, role as a platform to express yourself, function to unite people and point out diversities at the same time. States like culture for its influence and, obviously, eager to regulate it. Culture is suitable for market relations: one creates a song, play, movie, book and sell and others buy and enjoy. States today try to protect and promote their national culture and art not only abroad, but among own citizens. They use usual for trade and economy measures as quotas and restrictions: the most common variants are quotas for foreign movies in cinemas and national music on radio. Such measures are justified with protection of national identity, encourage and support national artists, make sure that they can be heard, watched, seen anywhere.

While research process I found out following. None of EU states considered in Thesis imposed any kind of quotas despite they have a legal possibility because of so-called 'culture exemption clause' and EU's lack of competence in this field. They are not really justified in case some of aforementioned states change its opinion. EU states mentioned in Thesis together with the EU try to support national and European culture at all. However, none of them apply any kinds of strict measures. Another important point is the possibility to impose limitations in culture sphere by states when they consider it urgent. While imposing any restrictive measure the state has to analyse any possible ways to advert significant impact on internal market and apply in a way beneficial for the entire EU. States, in accordance with the EC practice, are free to use state aid mechanisms for any cultural purposes, any sum and of any duration. the EU bodies are developing numerous culture cooperation bodies and make culture affairs key sphere in its diplomatic relations. EU considers its main problem US dominance in European film distribution, so, that's why a 30% quota on EU created movie and TV products was established. the US and Russia also don't have any restrictions quotas – both really don't need them because of sufficient culture products not only for internal consuming, but also for export, especially the US. Ukraine is only in this Thesis imposed Ukrainian language quotas for music and TV programmes. Technically, existing quotas were increased by 30% and 75%.

I think that any kind of restrictions as protection measures are like doping or consuming antibiotics in case of simple cold, when it is just enough to stay home some days and drink hot tee. By weaken own culture's 'competition immunity', states' restrictions definitely don't help it.

Zusammenfassung

Ich habe das Thema „EU-Binnenmarktfreiheiten und staatliche Beihilfen in Kultur und Kunst“ aus zwei Gründen gewählt: erstens, es ist relativ neu, und zweitens ist dies für jeden sehr nahe. Kunst und Kultur hatten immer einen besonderen Platz in den Köpfen der Menschen. Gewöhnliche Menschen mögen Kultur wegen ihrer Vielfalt, Rolle als Plattform, um sich auszudrücken, funktionieren, um Menschen zu vereinen und weisen gleichzeitig auf Unterschiede hin. Staaten mögen Kultur wegen ihres Einflusses und offensichtlich eifrig, sie zu regulieren. Kultur eignet sich für Marktbeziehungen: Man schafft ein Lied, spielt, filmt, bucht und verkauft und andere kaufen und genießen. Die Staaten versuchen heute, ihre nationale Kultur und Kunst nicht nur im Ausland, sondern auch unter ihren eigenen Bürgern zu schützen und zu fördern. Sie verwenden übliche für Handels- und Wirtschaftsmaßnahmen als Quoten und Beschränkungen: die häufigsten Varianten sind Quoten für ausländische Filme in Kinos und nationale Musik im Radio. Solche Maßnahmen sind mit dem Schutz der nationalen Identität gerechtfertigt, ermutigen und unterstützen nationale Künstler, stellen sicher, dass sie überall gehört, gesehen und gesehen werden können.

Während des Forschungsprozesses habe ich Folgendes herausgefunden. Keiner der in der These berücksichtigten EU-Staaten hat irgendwelche Quoten eingeführt, obwohl sie aufgrund der sogenannten Kulturausnahmeregelung und der mangelnden Kompetenz der EU in diesem Bereich eine rechtliche Möglichkeit haben. Sie sind nicht wirklich gerechtfertigt, wenn einige der oben genannten Staaten ihre Meinung ändern. Die in der These zusammen mit der EU erwähnten EU-Staaten versuchen, die nationale und europäische Kultur überhaupt zu unterstützen. Keine von ihnen wendet jedoch irgendwelche strengen Maßnahmen an. Ein weiterer wichtiger Punkt ist die Möglichkeit, im kulturellen Bereich Beschränkungen durch Staaten aufzuerlegen, wenn sie dies für dringend halten. Der Staat muss, während er irgendeine restriktive Maßnahme vornimmt, alle möglichen Wege untersuchen, um auf den Binnenmarkt erhebliche Auswirkungen zu haben und in einer für die gesamte EU vorteilhaften Art und Weise Anwendung zu finden. Den Staaten steht es frei, im Einklang mit der EG-Praxis staatliche Beihilfemechanismen für kulturelle Zwecke jeglicher Art und jeder Dauer zu verwenden. Die EU-Organe entwickeln zahlreiche Gremien für die Kulturzusammenarbeit und machen den Kulturbereich zu einem Schlüsselbereich in ihren diplomatischen Beziehungen. Die EU betrachtet das Hauptproblem der US-Dominanz im europäischen Filmvertrieb. Aus diesem Grund wurde eine 30% Quote für in der EU hergestellte Film- und Fernsehprodukte festgelegt. Die USA und Russland haben auch keine Quoten - beide brauchen sie wirklich nicht wegen ausreichender Kulturprodukte nicht nur für den internen Konsum, sondern auch für den Export, vor allem die USA. Die Ukraine ist nur in dieser These

gezwungen, ukrainische Sprachquoten für Musik und Fernsehprogramme aufzuerlegen. Technisch gesehen wurden die bestehenden Quoten um 30% und 75% erhöht.

Ich denke, dass jegliche Art von Einschränkungen als Schutzmaßnahmen wie Doping oder Antibiotika-Konsum im Falle einer einfachen Erkältung sind, wenn es gerade genug ist, um einige Tage zu Hause zu bleiben und heißes Tee zu trinken. Indem sie die Wettbewerbsimmunität der eigenen Kultur schwächen, helfen die Restriktionen der Staaten definitiv nicht.