



Introducing a National Lottery in Tunisia: a Legal-Economic Study

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Introduction:

In national cultural policy, the question of funding is one of the most critical factors in the development of a dynamic and diverse cultural sector. The importance stems from the economic properties particular to the cultural product or organisation and which set the cultural sector apart from others.

Economically, the cultural sector comes under the category of the “service sector” in that cost-effectiveness is measured by “product quality” as opposed to “productivity volume” or by the criteria of “economies of scale”. In the production phase, every new cultural product is, in its own right, a new investment project in terms of both the capital and the labour involved. The advantages of economies of scale, such as cost reduction with higher production volumes, are not available to the cultural producer. In addition, the shelf-life of the cultural product is relatively short compared to other products, which makes it a riskier market venture than average for a potential investor, which accounts for why it is so difficult to obtain funding for culture at the production phase.

In light of the foregoing economic properties, the cultural organisation (or the cultural production unit, be it the individual artist or a private organisation, NGO or group of individuals) is always in dire need more for immediate cash or working capital than for investment capital to purchase equipment or fund the organisation itself.

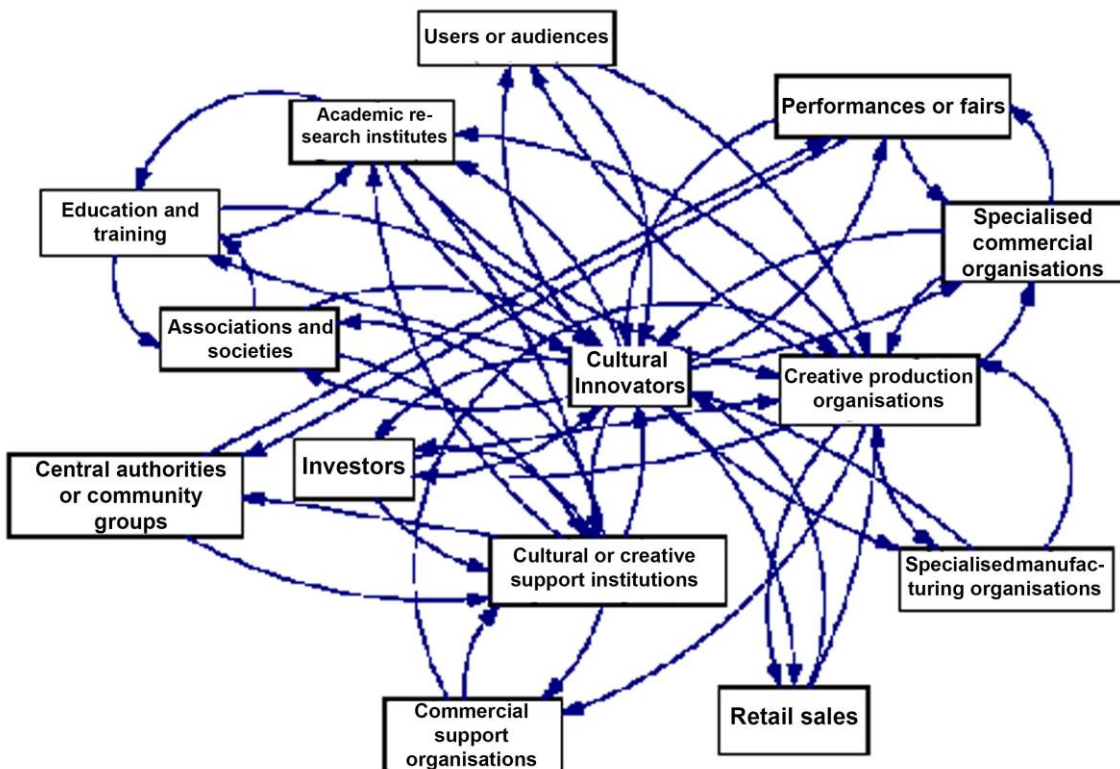
The income derived from the intellectual property rights of the cultural product (whether in the form of copyrights, patents or trademarks), from the use, promotion and presentation of cultural products, as well as from subsidiary products from such products (dolls, games, posters, logos, etc.) are the most important sources of sustainable revenue after the production and distribution phases. In general, the cycle of usage revenues is characterised by a rapid decline rate, especially after the first presentation of a cultural product. This is all the more reason why non-refundable financial resources (gifts, grants, donations) are of crucial importance in the financial cycle as they are available at the pre-production phase.

On the whole, the economic system of the cultural (or creative) industries sector can be set within the model of the “knowledge economy”. It has a web-like matrix, the functioning of which is shaped by the following factors:

1. Creativity, which is the motivating core of the cultural sector.
2. Cash liquidity and working capital, which are more important than investment capital.
3. Intellectual property (copyright and related rights, and manufacturing property rights) as the basis of financial durability of the cultural production unit (the creative person, organisation, society).

4. Effective system linkage (rights and obligations systems, information exchange networks, data supply, etc.) between the support units and the creativity core, as these determine the modes of development for production and use.

The following diagram illustrates the interrelationships between most of the components of the cultural sector:



The four factors mentioned above can be projected onto any cultural policy to assess the degree to which the existing legal, economic and financial system is consistent with the needs of the cultural establishment as a whole.

In Tunisia, funding for the cultural sector primarily derives from public financing of all fields of culture (especially at the production phase, which takes the form of non-refundable grants). Nevertheless, there exists the possibility of obtaining funding through bank loans (notably via the Fund for Safeguarding Cultural Industries – *Fonds de Garantie des Industries Culturelles*) or through mechanisms to support investment in cultural industries that are available at the phase of establishing a cultural organisation (as opposed to at the production phase).



The purpose of this study is to examine additional mechanisms for funding the cultural sector in Tunisia. It will explore, in particular, the options for a national lottery and crowdfunding. On the basis of an examination of the former, it will propose a feasible plan for a national lottery that will contribute to funding culture. It will then proceed to a survey of current attempts to apply the crowdfunding mechanism in Tunisia with an eye to the prospects this mechanism offers the cultural sector.

1. Funding culture through a national lottery

1.1 International practices

Funding the cultural sector through the revenues of a national lottery is one of the most important fundraising mechanisms employed within the cultural policies of many European countries and in North America (the United States and Canada). The particulars as to how this mechanism works vary from one country to the other. The national lottery can be the chief solution to compensate for shrinking public allocations to the cultural sector, or it can be a means to back up public expenditures for culture without cutbacks. Also, there are different methods of pooling and distributing revenues from national lotteries. These can affect the extent to which this mechanism contributes to the systems of cultural production development and opens the horizons to conventional cultural production for renewable innovation and creativity.

In a European regional roundtable on lotteries as a source of funding for culture,¹ organised by the CIRCLE network² in 2002, participants considered several factors that were identified as important to the use of national lotteries in order to fund culture:

- The context and scope of the lotteries: the causes and outlooks that shaped the public policy decision to use lotteries to fund culture.
- The operating and managing framework: the type of institutions that are assigned the task of operating and managing lotteries.
- Allocation and distribution of funding: the type of agencies (public, private or non-profit) that carry out the distribution of lottery revenues.
- How net lottery revenues are distributed: There are two main ways for distributing net lottery revenues to the culture sector. One is to incorporate the percentage of revenues earmarked for culture into the national budget and then channel it to cultural projects. The other is for lottery revenues earmarked for culture to be distributed through designated agencies that distribute money directly to cultural projects. Both methods might be applied simultaneously. In some cases, lottery revenues are distributed in the same way as tax revenues.

¹ <http://www.circle-network.org/wp-content/uploads/2010/09/ConferenceReader.pdf>

² Cultural Information and Research Centres Liaison in Europe, see : <http://www.circle-network.org/>



- The culture sector's share of lottery revenues: Most often, the cultural sector's share of net lottery revenues is quite small. The size of the share is contingent on the prevailing political will which shapes the importance accorded to culture in public policy.

The foregoing factors can be applied to determine how a national lottery to support culture would work in Tunisia. In this regard, it is necessary to take into account the current features of Tunisian cultural policy and the changes that are expected to occur after the completion of the current stage of democratic transition.

It is also important to take into consideration social and cultural ideas and attitudes associated with gambling and lotteries, practices that are frowned upon in Tunisian society in contrast to the prevailing cultural and social attitudes in the West where the lottery mechanism is adopted as a matter of course.

1.2 The current legal framework for lotteries in Tunisia

Tunisia's gaming and lotteries act of 20/74 of 24 October 1974 sets the legal framework for lotteries. The first article of this law states that “games in which the factor of luck prevails over skill and the exercise of the intellect are forms of betting and gambling. Their practice is therefore prohibited unless otherwise stated by law.” The article thus establishes prohibition as the legal rule and permission as the exception possible only through an act of law. Section 3 defines lotteries as such a practice and, in article 8, “prohibits accordingly, the sale of real estate, moveable property and goods by means of the collection of moneys or other profits on the basis of chance, whether through contests or other such activities and, in general, any process open to the public that arouses among the public the desire to profit via the force of luck.” Nevertheless, the provisions of Section 3 do not apply to “lotteries involving movables that aim solely to benefit philanthropic or collective projects or projects that serve the public welfare, as well as what concerns mutual bet, and then in accordance with a license issued on the basis of the conditions stipulated in the ordinance.” Under this law, the Ministries of Justice, Interior, Finance and National Economy (now the Ministry of Development) are responsible for the enforcement of its provisions.

The associated ordinance – 130/1975 issued on 19 February 1975 – establishes the licensing procedures for lotteries involving movable articles and designed to serve charitable or cooperative projects or the public welfare. The ordinance designates the authorised licensing agency on the basis of the total proceeds from lottery tickets:

- The regional governor if total proceeds do not exceed TND 5,000
- The Minister of Interior if proceeds do not exceed TND 50,000.
- The prime minister (after consulting with the minister of interior and minister of finance) if proceeds exceed 50,000.

When it comes to the practical application of the concept of national lotteries to support funding that benefits the public sector, a system of lotteries, or betting, is currently used in the sports sector and is operated by the Promosport company. A public enterprise under the supervision of the Ministry of Youth,



Sports and Physical Education and founded in accordance with articles 67-70 of Law 63/84 of 17 August 1984, Promosport is tasked with promoting athletic activities and their funding, which it does by organising contests, sports betting games, and related activities that have as their objective the advancement of sports and physical activities. The company is one of the most important mechanisms in the system of public financing for sports in Tunisia. It contributes to the National Fund for the Promotion of Sports and Youth through which the Ministry of Sports and Youth finances the sporting infrastructure and athletic societies in Tunisia. The revenues from Promosport operated contests, after deducting the approximately 10 per cent commission due to ticket vendors, are distributed as follows: 50 per cent goes to the FNSPJ (the National Fund for the Promotion of Sports and Youth), 40 per cent to winners, and 10 per cent reverts to the Promosport Company to cover administrative and operating costs.³ In 2012, the FNSPJ budget totalled around TND 10 million.⁴

As the foregoing demonstrates, there exists a regulatory legal framework in Tunisia that permits for the functioning of a national lottery. There also exists a practical experience operating in accordance with this legal framework in order to finance a sector of public activity. A public enterprise was established with the purpose of collecting revenues to support the sports sector. These revenues were incorporated, alongside the revenues from the sports sector itself, into the system of national budgetary allocations for this sector. The Ministry of Sports and Youth plays a part in the distribution of allocations through endowments and grants, in accordance with set regulations and procedures and sectoral priorities.

1.3 The general framework for using lotteries to fund culture in Tunisia

Tunisia's current cultural policy is founded on the premise of support for mechanisms to incorporate culture into the developmental cycle at the national and regional levels. It also seeks to enhance diversity in the forms of cultural expression, to strengthen freedom of expression among other democratic principles while safeguarding the moral and material rights of creative persons, and to promote the development of a sustainable cultural dynamism. The cultural policy has assigned new priorities to local development. These include the promotion of local cultural governance, and the enhancement of the abilities and capacities of civil society to support the cultural sector. Such priorities fall within the current policy orientation in favour of cultural decentralisation, enhancing the role of civil society in cultural activity, promoting the independence of the creative person, and increasing public and private funding for the cultural sector.

For example, the competencies of regional directorates for culture were increased⁵ and restructured so as to bring them in line with the aims of local cultural development. The public ordinance toward this end introduced the Consultative Committee for Culture. Made up of representatives of the bodies concerned with culture at the governorate level (such as the directorates for tourism and education), cultural figures and representatives of public cultural associations in the governorate, its purpose is to present and monitor the implementation of proposals and conceptions for the development of cultural programs, projects and activities in the governorate, and its aims are to work to expand participation in cultural life in the

³ See : <http://www.promosport.sport.tn/index.php?rid=4>

⁴ See the supplementary law for the 2012 budget: http://www.impots.finances.gov.tn/actualites/LF2012/LFC_2012_Fr.pdf

⁵ Ordinance 14 of 2013, pertaining to the administrative and financial organisation of regional delegations for culture.



governorate, profile its cultural specificities, and disseminate them in the diverse cultural disciplines. In this regard, the committees are required to encourage the participation of civil society associations concerned with culture in their respective governorates in the formulation and organisation of cultural and artistic programmes and activities.

In light of such ongoing changes in the Tunisian cultural sector and developments in the political environment, in general, it is possible to conceive the preliminary contours of a national lottery in Tunisia as follows:

Scope and context: The use of the national lottery to support funding for the cultural sector would be linked to the aims of enhancing the independence of the creative person or cultural organisation or society and promoting freedom of expression. Its scope would be linked to the focus on funding cultural production at the local/governorate level.

The operating and managing framework: On the basis of a comparison of international practices, with Europe in particular, a public enterprise can be founded with the purpose of operating and managing lottery contests in accordance with a set of objective criteria for transparency, assessment and accountability for this activity. In the event of an inclination to enhance the component of autonomy, a private firm could be charged with operating the lotteries in accordance with certain binding conditions (this possibility could be considered at a second phase, after proper foundations for democratic governance are established and its mechanisms are set into motion after the end of the democratic transition phase in Tunisia).

The allocation and distribution of funding: The public company charged with operating and managing the lotteries would undertake this responsibility. At a later phase, it might be possible to consider including civil society organisations in this process.

How to distribute net lottery revenues: In view of the current orientation toward local/ regional development, net lottery revenues can be distributed to regional development councils on the basis of the ratio of the population in each governorate to the total national population. A specified ceiling should be set for the quota of net lottery revenues earmarked for this purpose, so as to ensure that this does not become a chief source of direct public funding for culture, because otherwise this might precipitate cutbacks in normal public allocations for culture on the grounds of an additional funding source. For example, 40 per cent of the net lottery earnings could be allocated to the regional development councils and the remainder to other portions of the cultural sector or to other sectors.

The share for culture in the allocation of lottery revenues: Experience has demonstrated that political will is the chief factor in determining the importance of the cultural sector when it comes to funding and promoting this sector in public policy, in general. With respect to the lottery system, a minimum threshold could be set establishing a minimum percentage of the net revenues that would be made available for culture (i.e. allocating 10 per cent of lottery revenues to regional cultural projects) and especially to fund individual projects or the programs of civil society cultural organisations and associations.



1.4 A proposed action plan

Tunisia's current legal framework makes it possible, in principle, to introduce a national lottery system. The legal foundations for such a system are established, in particular, in the above-cited gaming and lotteries act of 20/74 of 24 October 1974 and, specifically, article 11 of section 3. The following are the suggested phases for introducing a national lottery system to support culture:

Phase 1: Establish a National Games Organisation with a non-administrative character⁶ by an act of law issued under the Ministry of Finance law or by a law issued by the Ministries of Finance and Development. The act will define the competencies and duties of the organisation, such as operating and administering games and collecting the revenues. The Ministry of Culture will be represented on the board of directors of this organisation along with other ministries (such as the Ministries of Finance and Development).

Phase 2: Establish how the net lottery revenues are to be distributed. For example:

- 10 per cent reverts to the company to cover administrative and operating costs
- 40 per cent to be allocated to winners.
- 40 per cent to distributed among regional development councils in the governorates.
- 10 per cent to be distributed to the Advisory Committees for Culture in the governorates.

Population ratios will be adopted as the initial criterion for the equitable distribution of lottery revenues among the governorates. Nevertheless, other criteria might be considered later, such as relative poverty levels (among women in particular) or unemployment rates.

Phase 3: After a trial period of three years, if the system proves successful, a non-profit foundation could be created to take over the operation and management of the national lottery from the public company.

This paper recommends that lottery revenues should not be transferred to any central government agency in the cultural sector or to any centrally administered fund to support cultural production (such as the creativity fund). This is to safeguard the extraordinary and flexible nature of this form of funding and its direct linkage with the promotion of local governance in culture.

⁶ It will have a status similar to private companies, following the commercial financial rules, not the public financial ones.
Translator



2. Crowdfunding⁷ for culture in Tunisia

2.1 What is crowdfunding?

There are numerous resources for crowdfunding for culture, a fundraising tool that has become increasingly widespread in Europe and North America. In fact, there are now companies that specialise in this mechanism which offer their services, over internet platforms or using specialised software, to help artists, writers, filmmakers and other creative persons, as well as to cultural organisations fund projects and programmes.

From an economic standpoint, crowdfunding is a means for collecting small to mid-size loans or donations that do not pass through conventional banking or finance institutions. The relationship between the backer and the beneficiary is defined by a third, agreed-upon party who acts as a guarantor for both sides. At present, this mechanism relies on the Internet through websites that are referred to as platforms and that publicize a project and accept and process small and sometimes even token donations or pledges for it. There are four modes of crowdsourcing⁸ that determine the relationship between the backer and beneficiary:

- Backers contribute non-refundable donations
- Rewards: backers are rewarded in a non-monetary form (for example with a copy of a music CD or a free ticket to a concert that they helped fund)
- Loans: backers are guaranteed reimbursement on the basis of a pre-set interest rate
- Partnership: backers become partners in a project and share its returns (contributions are a form of venture capital)

The first use of this mechanism was by the Kiva foundation, which specialised in funding small to mid-size loans. In 2005, Kiva began to collect funding for small development projects in various countries around the world by soliciting small contributions with the guarantee that contributors would be refunded on the basis of a specified interest rate. The mechanism has since acquired popularity among artists and other creative persons, especially at the beginning of the production phase in view of the opportunity it offers for obtaining much needed funding at this phase, whether in the forms of small loans or gifts.

With respect to the cultural sector in the countries of the Maghreb (Morocco, Algeria, Tunisia), a survey of examples of the use of crowdfunding in these countries will help assess the prospects use of this mechanism offers to the cultural sector.

2.2. Examples of the use of crowdfunding in Tunisia

⁷ Also known as participative funding, especially in francophone countries.

⁸ See: <http://wi.mobilities.ca/crowdfunding-culture> Journal of mobile Media – March 2013(



The new political climate in Tunisia after 14 January 2011 was conducive to a broader scope of freedom in fund sourcing, especially for civil society associations and NGOs. This gave rise to growing interest in crowdfunding.

In this preliminary survey of the use of this mechanism in Tunisia, we find that the Pacte Tunisien⁹ society turned to Kickstarter, one of the best-known international crowdfunding platforms, to solicit funding for its project “Speak Out Tunisia: a citizen journalism training project.” On 25 January 2012, the campaign attained its funding goal, having collected \$20,348 (in donations), surpassing its target of \$19,000.¹⁰

Another attempt at crowdfunding was undertaken by Digital Mania,¹¹ a Tunisian startup firm specialising in video games. Using the services of the Indiegogo platform, the company promoted a campaign to raise funding for a new multiplayer digital game on Facebook. Its target was \$100,000.¹² It only succeeded in collecting \$1,212 between 31 October and 30 November 2012.

Along with such fundraising drives using foreign-based crowdfunding platforms for Tunisian projects, there have also been recent attempts to create platforms specifically targeting the promotion of projects in Tunisia. The first is the Floosy crowdfunding platform, launched in May 2012 and, according to the available information,¹³ dedicated to helping finance creative projects or products in Tunisia, in view of the absence of project funding. The platform is operated by a consulting and investment firm.

Another website, launched in 2013, promises the creation of a Tunisian-based crowdfunding platform. ATUNSII¹⁴, as it is called, offers its services for projects and enterprises in all fields, although it is still under construction.

From the above-mentioned examples, it appears that the crowdfunding mechanism has worked better for NGO projects than for commercial ventures. The success achieved by the Kickstarter campaign on behalf of the Pacte Tunisien project testifies to this and to the greater willingness to back projects that seek to enhance democracy. These experiences and the factors that contributed to their success should be drawn on to support Tunisian cultural organisations and to encourage them to avail themselves of the crowdfunding tool.

⁹ <http://pactetunisien.com>

¹⁰ <http://www.kickstarter.com/projects/1924314583/speak-out-tunisia-a-citizen-journalism-training-pr>

¹¹ <http://www.tekiano.com/tek/games/6301-le-crowdfunding-pour-promouvoir-le-1er-social-game-tunisien-sur-facebook-.html>

¹² <http://www.indiegogo.com/projects/defendoor>

¹³ <http://entreprenheure.org/2012/05/07/financement-floosy-com-%D9%81%D9%84%D9%88%D8%B3%D9%8A/>

¹⁴ <http://www.atunsii.org/>