

Component 1

Cultural heritage legislative and regulatory framework adequate to the current needs of Moldova is elaborated, leading to improved governance of the cultural heritage sector

Activity1.1

Comparative review of Moldova's present legislation regulating cultural heritage sector governance and of the required framework

Activity 1.2

Evaluation of the implementation of the current legislation

1.1 - "State of the art" report on Legal Framework on the protection of cultural heritage. Preliminary observations and recommendations to strengthen and make more effective the legal framework.

1.2 - Assessment report on the level of implementation and feasibility of the current legislation. List of recommendations and specific amendments



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LIST OF ABBREVIATIONS

AIRM	Agency of Inspection and Restoration of Monument
BC	Beneficiary Country
CoE	Council of Europe
ICH	Institute of Cultural Heritage
ICOM	National Committee of International Council of Museums
LPA	Local Public Authority
MARDE	Ministry of Agriculture, Regional Development and Environment
MECR	Ministry of Education, Culture and Research
MEI	Ministry of Economy and Infrastructure
MF	Ministry of Finances
MIA	Ministry of Internal Affairs
MS	Member State
NAA	National Archaeological Agency
NAC	National Archaeological Commission
NAR	National Archaeological Repertory
NAMSI	National Agency for Monuments and Sites Inspection
NCHM	National Council of Historical Monuments
NCMC	National Committee of Museums and Collections
NGO	Non-Governmental Organizations
NICH	National Institute of Cultural Heritage
STE	Short-Term Expert
UNESCO	United Nations Educational, Scientific and Cultural Organization
WCO	World Customs Organization
WTO	World Trade Organization



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TERMS OF REFERENCE OF THE DOCUMENT

The present document has been elaborated for the **EU Twinning Project** between Italy and Moldova **MD 13 ENPI OT 01 16 (MD/26)** *“Support to promote cultural heritage in the Republic of Moldova through its preservation and protection”* within **Component 1** *“Cultural heritage legislative and regulatory framework adequate to the current needs of Moldova is elaborated, leading to improved governance of the cultural heritage sector”*, as the due deliverable of **Activity 1.1** *“Support to the implementation of the strategic work plan's activities to strengthen implementing agencies and others stakeholders' capacities”*, and of **Activity 1.2** *Evaluation of implementation of the current legislation* according to what is set out in Annex A1 – Description of the Action of Contract Ref. Ares(2017)4121713/ 22.08.2017 – 2017/ 387-025.

Considering the close interlinkages between Activity 1.1 and activity 1.2, the reports that are due for the two activities have been merged into one single report.

Activities 1.1 and 1.2 have been carried out jointly and in parallel with Activity 2.1 *“Assessment of the current situation of the implementing agencies”*.

The Deliverable for Activities 1.1 and 1.2 is formed by the present report, which acts as the main document and analyses the key legislation concerning the tangible cultural heritage, and other reports that analyse the legislation concerning other sectors that are related to or are likely to have an impact on cultural heritage protection and management:

1. *Introductory report: key elements for an inter-sectorial approach to cultural heritage promotion*
2. *Comparative review of legislation on cultural heritage in EU Countries*
3. *Review of spatial planning legal framework relevant for cultural heritage sector*
4. *Review of legal framework on administrative procedures and the status and responsibilities of civil servants*
5. *Review of the legislation on construction sector*

For the manageability and readability of the reports, it has been decided to keep the reports on the State of Art of the Legal framework independent as self-standing documents. The conclusions and recommendations of each report will form the basis for the Deliverable concerning activity 1.3 *“Development of an Action Plan to revise legislative and regulatory framework”* which is merged with Activity 2.2 *“...”* in order to guarantee the necessary integration of the action plan for the revision of the legal framework and the one for the revision of the institutional framework.

The analysis of the legislation regulating the institutional framework is provided in the Report prepared as deliverable of Activity 2.1, for reasons of consistency and understandability of the analysis and of the improvement proposals.



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The executive summary of this report, on the other hand, presents the overall findings of the analytical work carried out also on the other relevant sectors of the legislation, in order to offer a comprehensive and organic overview of the governance system as it emerges from the coordinated and inter-sectorial analysis of the legal framework.



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EXECUTIVE SUMMARY

The present report analyses and reviews the sectorial legislation on the protection of tangible cultural heritage and it will only indirectly mention the institutional framework to implement protective measures as the organisation of the implementing institutions is dealt with in the deliverable envisaged for activity 2.1 under component 2 **The administrative and management capacity of the Agency for Inspection and Restoration of Monuments and of the National Archaeological Agency, as well as Ministry of Culture's cultural offices and other relevant stakeholders are increased.** It only focuses on the legal and regulatory instruments in place to ensure protection, conservation and proper use of tangible cultural heritage, as this is the main focus of the present Twinning Project.

The analysis of the relevant national primary and secondary legislation has been carried out to identify potential gaps, redundancies and internal contradictions, as well as areas of improvement and simplification, both internally and in relation to the international law framework which has to be considered as a reference.

The report on comparative review of legislation in EU countries backs up and exemplifies the proposals for improvements to the Moldovan legislation in order to be more in line with European principles, criteria for cultural heritage protection. It focuses specifically on the legal and institutional framework related to the protection of tangible cultural heritage currently in force in Moldova, provides for elements of comparison with the legislations in place in EU countries and suggests amendments and integrations that would strengthen the effectiveness of the heritage protection system. Special attention has been paid to the legal and institutional framework that has been developed and updated in Italy and other European countries and how in these countries the changes in the general role of heritage in the society have triggered an evolution of the legal framework.

On the other hand, the reports on the relevant laws pertaining other sectors, namely the construction sector, the public administration functioning and administrative procedure, the spatial planning sector, complete the analysis of the state of the art of the legal framework that make up the governance of the cultural heritage sector and provide insights on the gaps and weaknesses of other laws that affect negatively also the effectiveness of the legislation related to the cultural heritage sector and for which modifications may be beneficial to improve the governance of the cultural heritage sector.

From the analysis of the legislation it emerges an overall governance system that does not appear completely adequate to tackle with the contemporary challenges to be faced by the protection, conservation and promotion of cultural heritage in a sustainable development perspective and administratively and financially viable.



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The Moldovan system tries to address key issues that the Moldovan public administrations, particularly the central ones, have been facing in terms of human, institutional and financial resources by lightening the administrative burden of ministries and devolving many functions to newly created subordinated bodies: this applies to many sectors, including the one pertaining the protection of cultural heritage. However, the system that has been set up suffers from a number of shortcomings which include the excessively low number of staff units dedicated to the protection of cultural heritage, excessively low salaries compared to the level of required competences and to the scope of responsibilities, which results in a very limited number of adequately skilled technical staff units, particularly architects (currently only one architect is engaged by the cultural heritage sector of MECR, none at the Agency of Inspection and Restoration of Monuments). On the other hand, research institutions for cultural heritage enjoy a very high number of staff, compared to size of the country (some 125 people work at the Institute of Cultural heritage), with evident imbalance with regard to the use of human resources.

In a context of shrinking public budget and limited awareness of society about the role of cultural heritage, to fully harness the potential of the legislative reform undertaken since 2008, to develop a functional and viable cultural heritage protection and promotion system it would have been indispensable (and still is) the elaboration of a strategy based on five pillars:

1. Legal and institutional framework equipped with clear provisions, clear and balanced tasks,
2. Raising awareness at all levels on the key role of cultural heritage for the well- being, resilience and sustainable and equitable growth of Moldovan society
3. Diversifying the sources of funding for the conservation and promotion of cultural heritage,
4. Developing a people – centred approach to cultural heritage protection, conservation and promotion based on the engagement in the process of a plurality of actors
5. Counteracting effectively crimes and mis-behaviours against cultural heritage through an effective set of civil, contraventional and criminal sanctions

As a matter of fact, these pillars have been founded – through provisions included in the sectorial laws – but could not be built because these provisions remained confined to the sectorial legislation and intentional in nature rather than being operationalised.

1. the legal reform carried out over the last nine years has progressively modernised and made more specific the provisions of the law for specific sectors of cultural heritage: this has to be praised, however, the choice to proceed via sectorial laws has also brought to a certain fragmentation to the sector, which need to be overcome. Legal and institutional framework need to go hand in hand since laws need an effective institutional infrastructure. The recent ministerial reform has merged into one single ministry education, culture and research, ideally a winning synergy, however this has also caused a cut in the staff and a further reduction of the units dedicated to cultural heritage at MECR far below the level of what is needed to fulfil the MECR's mission. The reform for the subordinated institutions envisages the merging of the Agency for Inspection and Restoration of Monuments and the national Archaeological Agency, which has to be welcomed, however the limitation of the new agency's function only to inspection is not advisable and risks



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to limit the effectiveness of the reform, hindering the whole system. It is highly advisable to revised the proposed organisation and articulation of responsibilities.

2. The Legal framework for cultural heritage has tried to promote the role of foundations and associations for cultural heritage but this has not been accompanied by fiscal measures or by a structural programme for awareness raising on the role of civil society and of each and every citizen in protecting cultural heritage or to explain why cultural heritage is so important for society and individuals. Large strata of Moldovan society and with them, most of decision – makers, do not understand that protection of cultural heritage is not a luxury but a pre-condition for sound and durable development, a source for creativity and well- being that contribute to the richness of a country and even its productivity.

3. Since the 1990s the legislation envisaged a variety of options for setting up more viable culture system that could be supported by different funding sources and more viable human resource strategy. However, this has not been accompanied by fiscal measures, incentives, tax reliefs that could have promoted private donations, investments, tax preferences as a support to the public budget dedicated to culture. Options and proposals to strengthen and to diversify the sources of funding for supporting culture or cultural heritage remain confined within the sectorial provisions and do not have any real impact on the fiscal / financial system of Moldova. This means that the discussion on the reinforcement and, as a matter of fact, on the creation of a viable and lively culture system, able to contribute to the reinforcement of the socio- economy of the Republic of Moldova, remains within the ‘culture family’ and does not reach the highest level of the political decision making, Prime Minister’s Office, MF, MEI, which are the main actors to be sensitized towards the need of structural reforms to trigger a ‘culture economy’.

4. In the absence of an awareness raising strategy, society has not developed particular attention to cultural heritage, however it seems that when Moldovan society, particularly youngsters, are offered the opportunity to be involved with heritage, the response is encouraging. A people -centred approach to cultural heritage would be able to stay away from an elitist concept of heritage and would involve more and more citizens, thereby increasing their personal sense of responsibility and at the same time, offering opportunities to overcome some control and management problems that derive from insufficient staffing, especially in remote areas, and at the same time offering some integration to the livelihood of

5. The lack of a coherent and convinced system of civil, administrative, contraventional and penal sanctions which are proportionate to the gravity of the violations of the provisions of the law (no efforts seem to be addressed to amend the penal code, for instance, through parallel legal initiatives with the latest draft law on historic monuments) and are consistently implemented remain a major limitation of the whole system, because crimes and misbehaviours are not really disincentivised.

The main effort of the legislator over this third post – independence period has been to improve and to detail the legal framework concerning the protection of different categories of cultural heritage which were not adequately addressed by the Law on the protection of Monuments issued in 1993.

As explained in detail in this report, the choice has been to adopt a sectorial approach and to develop distinct legal instruments addressing the protection issues of each main categories of heritage, as it was found more feasible, from an administrative point of view and given the human resources available.



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While this approach has allowed to produce progressively modernised and more detailed primary legislation and accompanying regulations for the implementation of the law, on the other hand has also produced a fragmentary system, with definitions often overlapping and inconsistent, with problems of coordination among the provisions of the laws that address overlapping topics and with approaches to the same sphere of activity, e.g. classification and declassification procedures, pre-emption, appealing system, to name a few, which differ from one law to another. This fragmentation has an impact also on institutions dealing with cultural heritage, which, despite the scant number of their staff, work independently and with little or no dialogue among one another, a factor which limits the exchange/ circulation of information and the cooperation, all key elements for effectiveness and efficiency in any administration system, but particularly relevant where human, material and financial resources are scarce and coordination may help avoid redundancy and contribute to an economy of scale, without mentioning a more integrated and less sectorial approach to the protection of cultural heritage, intended not as a sum of different categories of properties but as a multifaceted continuum exhibiting a variety of qualities, specificities and values.

Notwithstanding the above-mentioned structural problems, individually some of these laws are remarkably well conceived and detailed – in particular the law on the protection of mobile cultural heritage n. 280/2011 has to be seen as one of the clearest and adequately detailed, with the only – significant – gap in what it concerns the provisions on the circulation of cultural goods. Indicative of the quality of the law is also the fact that almost all its regulations have been adopted within 12 months and only the regulation on the circulation of cultural goods was left behind. Also the law on the protection of archaeological heritage n. 218/2011 is very detailed and rich in provisions, well equipped with almost all necessary regulations and templates necessary for its application. Only one key issue can be identified for the Law on archaeology, which concerns the provisions on archaeological discharge and preventive archaeology, which, as designed today, tends to privilege the discharge over the possibility to preserve, even in situ, the archaeological remains.

In this process of legal renewal and modernisation, the sector which mostly suffers profoundly is the one covering historic monuments and sites: the law is still to be approved and the draft law that was released with difficulty, after years of gestation, last October 2017, showed significant shortcomings that required substantial interventions and modifications, receiving substantial observations also from the Anti-Corruption National Agency. The experts of the MECR involved in the elaboration of the law took note of the several objections presented by the MS STEs in written notes, meetings and revised and commented drafts produced over the period November 2017 – March 2018; regrettably, due to the dire lack of staff and the pressures derived from ordinary activity and extraordinary workload related to the reform process and the upcoming national political elections, the revised version of the draft despite evident improvements, still suffer from many weaknesses that would suggest further interventions in order to pass an effective law, which did not need immediate amendments for it to become a useful instrument able to effectively replace the former Law n. 1530/1993. In this regard, several principles and provisions contained in that Law should be recovered and reintegrated in the new law, to keep high the strength of the norms conceived in the 1990s and which suffered from poor implementation but were not wrong.

The completion of the set of laws elaborated over the period 2009 – 2018 with the approval of a hopefully improved draft law on historic monuments is necessary to create a basis for protection implementation and to complete the process undertaken by the Ministerial officials begun in 2009.



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However, the next legislature will have to tackle with the unavoidable challenge to harmonise the principles and provisions of these laws and to proceed to their consolidation into one single Code for cultural heritage and more importantly to begin a constant an inter-ministerial dialogue to lay down the basis for a larger framework for cultural heritage protection and promotion, beginning with a process of raising awareness and sensitisation of a variety of audiences: political decision makers, central and local administration officials in key institutions, Ministry of Interior, Police, Ministry of Justice and the prosecutorial/judicial bodies, Ministry of Finances and related Agencies, Ministry of Economy and Infrastructure, Ministry of Rural Development (MARDE) and other public/private stakeholders, continuing with constant inter-ministerial dialogue to ensure that key trans- sectorial measures to support the cultural heritage sector are agreed upon and introduced: a functioning cultural heritage system cannot rely only on constraints and sectorial 'passive' provisions but need a series of active mechanisms that trigger virtuous processes.

The next phase of reform for the legal framework, with the consolidation of the sectorial legislation into one Code, would also represent an opportunity to revise, if conditions make it possible, to reform the Constitution in order to introduce in a more explicit way the obligation of the State and its articulations (regions, districts, municipalities, villages,...) to protect and preserve the cultural heritage in all its facets (articles 33 and 59).

Finally, it will be necessary to proceed with the reduction of the role of the government and of the parliament in matters that administrative in nature, such as the listing / delisting of cultural heritage.

Spatial planning and cultural heritage

The legal framework for the protection of cultural heritage needs to be complemented by sound spatial planning and high-quality architecture. Unfortunately, despite an overall well developed legal framework, the lack of regional, local and urban plans (including zonal and detailed plans) jeopardise the protection of the historic built environment and of monuments and undermines the commitments that the Republic of Moldova has taken on when signing several international documents, including the Convention for the protection of the architectural heritage, adopted in 1985 (ratified in 2001) and the European Landscape Convention, adopted in Florence, 2000 (ratified on 14.03.2002). More recently, RM has committed to achieving 106 targets for a better life by 2030 included in the 2030 Sustainable Development Agenda's nationalization by adopting the UN Declaration of the Sustainable Development Summit (2015).

The lack of a set of severe sanctions in the relevant laws was indicated by several actors in different administration as a key issue both in relation to the infringement of plans and approved projects. The sanctioning aspect needs to be addressed with the maximum urgency in all sectors and laws related to the protection of heritage.

On the other hand, there is a strong need to provide the urban planning sector with some crosscut clear regulations to be used by all public actors and administrations involved. A possible solution, could be represented by the upcoming new Code on Urbanism and Constructions currently under approval by the parliament that will potentially address the identified issues by unifying and harmonizing some of the existing overlaps and conflicts shown by the current legal framework.

However, the critical situation of the planning instruments would call for a decided response from the State, which should go beyond the approval of a new code of urbanism



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and construction, and would need to be accompanied by considerable capacity building measures for the various levels of the local administration to achieve the coverage of the Moldovan territory with the necessary planning instruments.

Concerning the conservation/ intervention sector, one of the main issues emerged from the analysis is the lack of dedicated infrastructure for diagnostics and specialised technical expertise and the lack of dedicated norms for the construction and for public procurement concerning interventions on cultural heritage.

The Moldovan “Constructions” legal and normative framework does not contemplate, at present, any specific legislation explicitly regarding Cultural Heritage: this means that all construction works performed on cultural objects are done according to the provisions for the general Construction sector (for which it does not exist a Code of Laws on Constructions, thus it is difficult to collect all the relevant legislation). This apply to the elaboration of project documentation as well as to all other specific sectors, such as structural reinforcement, installations, fire-safety, thermal insulation and other energetic requirements.

Unfortunately, the Draft Code on Urban Planning and Construction does not address this issue and does not envisage a specific section of the code dedicated to the historic buildings which provides for specifications or reference to ad-hoc regulations to be developed in relation to the need to adapt technical requirements to the nature of the historic building concerned. In particular, specific frameworks for: a) structural assessment and structural / seismic rehabilitation of historic buildings, b) technical and installation and health requirements, c) fire - safety requirements, d) accessibility requirements, e) energy efficiency requirements.

In this regard, the MS Twinning team has begun to share technical documentation in use in the MS for the above. A suitable platform for further work and discussion on the needs for developing ad – hoc criteria and requirements is represented by the HE Training on conservation of historic buildings.

Construction sector and cultural heritage

On the other hand, the draft technical norms under development since 2017 represent a considerable advancement in respect of the current situation and need to be supported. Improvement to the current draft include an alignment of definitions with the draft law on historic monuments, more developed and articulated definitions of the project phases, with particular regard to the clarification of the objectives and function of each document within the project, in order to clarify to the reader and the user for what purpose each document is expected to be elaborated. In some cases, despite the high level of detail of the document, further specifications may be offered. For the detailed analysis of this document see the commented draft in Annex.

Another aspect that need further deepening is the qualification system of enterprises and professionals. At the moment the Moldovan system is not fully clear and established and would need to be revised, at least for what it concerns the built heritage sector.



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The Italian experience may be relevant both for the documentation of projects and the qualifications of enterprises, as this field has been recently entirely reorganised and regulated. Considering the specific nature of the Moldovan built heritage, the approach needs to be adapted and may be simplified but the basic element of the system may be considered.

With regard to the programming of the intervention by MECR on monuments under ministerial responsibilities, the main key issues to be addressed include

Given the circumstance that at present “Constructions” legal framework lacks of a specific legislation explicitly regarding Cultural Heritage, the main emerged criticalities are the following ones:

- The major criticality appears to be related to the works done on cultural objects through the “Capital Repairs (Reparatii Capitale)” funds, which do not foresee any specific measure to safeguard cultural objects (as it is done instead for the Investitie capitală funds, under which restorations are realised).

It is suggested in that respect:

- *To foresee specific provisions on how performing Repairs (Reparatii) on cultural objects for ensuring that no harm is caused to them during the works, expressly providing that also Repair works on cultural objects need to be carried out according to the (binding, see below) opinion of the National Council of Historical Monuments*
- The little expenditure capacity of the MECR in the case of large-scale interventions affects also the allocation of funds for other more important interventions – in a country where several protected monuments suffer from lack of maintenance, abandonment, lack of use.

It is suggested in that respect:

- *to establish a fund for emergency repair and safeguard measures in order to ensure that protected buildings in state of dilapidation are safeguarded through ad hoc measures (e.g. temporary roofing/cover, supporting scaffolding and shoring, etc.) so as to prolong their life while elaborating the project for their conservation/ restoration and preparing the funding programme. This solution would allow for a much more effective use of the available budget of MECR (as well as of local authorities) to guarantee the preservation of many more monuments. An ad-hoc programme should be pursued and elaborated with the assistance of the reformed subordinated bodies, namely Agency of Inspection for Monuments and Sites.*

With regard to the process in force for designing an intervention on a cultural object, the following criticalities emerged from the analysis:

- An evident problem is that the 3 phases of the process (starting the process; processing the request within MoECR; passage for financing at the Ministry of Finance), seem to be not fluidly linked among them: each phase is managed by different subjects, so that it becomes difficult to draw together the disparate strands of the course of actions.

It is suggested in that respect:



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- *To introduce the figure of the “procedure’s responsible official” in charge for managing the administrative process from its very beginning to the final step, representing the qualified interlocutor within the Ministry of Culture about the whole concerned procedure. Such a role is not envisaged at present by the Ministry.*
- When speaking about the input for the work coming from the bottom – with a request from the holder of the object – it appears that a major problem is the lack of capacity to draft such a project - which foresees, among the others, a precise feasibility study - so that the request for intervention often is not even taken into consideration.

It is suggested in that respect:

- *As for the previously mentioned criticality, even in this case introducing the figure of the “officer responsible for the procedure” (or public project manager) could represent a valid support for correctly drafting the project of work on a cultural object: he/she could actually help the holder of the good in better understanding which is the requested documentation and how correctly fill it in so as to reduce the possibilities that the project is rejected for formal shortcomings).*

Effectiveness of Public administration procedures and requirements

Shortcomings in the implementation of the legal framework on cultural heritage in the Republic of Moldova do not only depend on weaknesses and gaps in the legal and regulatory framework regulating the specific sector but also on the level of adequacy and implementation of the wider legal / regulatory framework on the functioning of public administrations.

Therefore, the review of the legal framework has been expanded to consider also public administration functioning and administrative procedures, focusing specifically on how key principles for good practice in public administrations are embedded in the legislation and how provisions respond to the specific need of the cultural heritage sector.

The analysis has implied deskwork and ‘fieldwork’ through interview with the BC public officers.

The focus has been put primarily on understanding how ‘transparency’, ‘accountability’ and ‘individual responsibility’ of civil servants and staff of public bodies is understood and regulated. Additionally, it has been examined how the conflict of interest and incompatibility of functions of civil servants and staff of public bodies is regulated.

One of the first identified criticalities in the administrative system is represented by the fact that not all the staff of central administrations has the status of civil servants, even when the bodies which they work for have key responsibilities delegated by ministries and these bodies depend from ministries, their structure, functions, staff units are regulated through legal provisions. In particular, in the cultural heritage sector, this applies to the NAA and the AIRM, which have crucial functions in the implementation of the legislation for the protection of cultural heritage.



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This situation not only generates a disparity between Agencies' staff, invested of key responsibilities for heritage protection, and ministerial or Institute's staff, who enjoy the status of civil servants. It also gives rise to ambiguities in the application of several other key provisions that apply to civil servant but do not seem to apply to the staff of other public institutions. This is particularly important when it comes to conflict of interest, incompatibility of functions as public officials, e.g., with elective functions.

The different regime in terms of staff selection criteria, requirements for recruitment, obligations between civil servants and staff of bodies subordinated to central public authorities is not beneficial to the efficiency and effectiveness of these bodies, at least in the cultural heritage sector. It is therefore suggested that irrespective for the regime – civil servant or non- civil servant – the rules for recruitment, obligation in terms of impartiality, conflict of interest and incompatibility be extended to the staff of all authorities subordinated to ministries.

A short overview of the European Union common regulatory frame and of the relative Italian sector regulation together with some general information on some EU Member states complete the overview. The quick review of the EU countries, done with the goal of outline the main principle applied, is focused the great importance attribute to the citizens participation, the information available to the public and to the public accountability as well.

Specific consideration of specific provisions of the Italian system regulating public administrations, procedures and civil servants may be beneficial to RM, particularly with regard to provisions and mechanisms to:

- *strengthen the individual responsibility of civil servant in the administrative procedures*

At the moment, no provision is in place in the administrative legislation – not even in the recently approved code – that identify the person responsible to follow a procedure from its inception until it is concluded. Art. 35 of the new administrative code states that public authorities and individuals representing them shall be liable for criminal, contraventional, civil or disciplinary reason: it is important to clarify who are the individuals representing the public authorities and to what extent liability concern also individual civil servants.

- *reinforce the necessity to justify the decisions of the public administrations in order to ensure that not only the interests and rights of private citizens are guaranteed but also the larger collective interests of society/ communities and the specific mission of each public administration*

The recently approved Administrative Code goes in this direction. It is necessary however that it is clarified that legitimate interests, which are not defined in the definition sections, include also 'public interests' (or collective interests) which on the other hand find a definition in the Code which to suitable to cover environment and heritage considerations (as part of the fundamental rights of people).

- *expand the notion of conflict of interest and incompatibility of functions to a larger spectrum of situations and roles beyond family ties and patrimonial advantages*

it would be advisable that a reappraisal of the notion of conflict of interest and incompatibility be expanded and mechanisms of temporary suspension (e.g. unpaid or paid leave) at least for high- rank officials in public administrations or bodies subordinated to them and funded by the state, for instance,



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in case of election as political representative and not only in case of appointment to specific positions, as it seems the case now according to the legislation. This would embody EU principles and would contribute to ensure impartiality in the exercise of public function and protect servants in these bodies from potential external pressure.

The suggested improvements of the larger legal framework on the point mentioned above would greatly contribute to the strengthening of the implementation of the legislation in the cultural heritage sector.



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EXISTING LEGAL INSTRUMENTS FOR THE PROTECTION, CONSERVATION AND PROMOTION OF CULTURAL HERITAGE

Since independence, the Republic of Moldova has developed a full set of legislative acts concerning the sector of culture and cultural heritage. A first set of laws was prepared between the 1990s and the early 2000s, which has then been subject to amendments throughout the years.

Since 2008, the legislation has been progressively reformed through the approval of laws covering specific types of cultural heritage, e.g. archaeological heritage, movable cultural heritage, museums, monuments of public space, which until then were all covered by the provisions of the Law on the Protection of Monument n. 1530/1993.

Given the scope of the present Twinning project, which focuses on tangible and immovable cultural heritage, the analysis of the legislation will be limited to the relevant laws in the sector, the only exception being represented by the Law on the protection of movable goods (law n.280/2011), for which the representatives of the MECR have asked the support of the Twinning Project to comment upon the draft regulations on the circulation of cultural goods, currently published for comments on the portal www.particip.gov.md, and the newly issued Law on Museums (Law n. 262/2017), which innovates the sector.

Below the Laws concerning cultural heritage are listed in chronological order

- *Law on Archives* no. 880 - XII of January 22, 1992;
- ***Law on Historical Monument Protection*** n. 1530 - XII of June 22, 1993
- *Law on the Audiovisual Sector*, n. 603 - XIII of October 3, 1995;
- ***Law on Culture*, n. 413 – XIV of May 27, 1999**
- *Law on Publishing* no. 939 - IV of April 20, 2000; modified on August 17, 2001;
- *Law on Theatres, Circus and Performing Art Organisations* no 1421 - XV of October 31, 2002
- ***Law on Museums* no. 1596 - XV of December 12, 2002; amended on July 30, 2010 – now replaced by the Law on Museums**
- *Law on Architecture* no. 1350 – XIV of February 27, 2000;
- *Law on Cinematography* no. 386 of November 25, 2004;
- *Law on Libraries* no. 286 - XIII of November 6, 1994; amended on July 29, 2005;
- ***Law on Formation of Cultural and Natural Reservations "Orheiul Vechi"* no. 251 of December 4, 2008;**
- *Law on Copyright and Related Rights* no. 139 of July 2, 2010;
- ***Law on Protection of Archaeological Heritage* no. 218 of September 17, 2010;**
- ***Law on Monuments in Public Space* No. 192 of September 30, 2011;**
- ***Law on Protection of National Movable Cultural Heritage* no. 280 of December 27, 2011;**



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- *Law on the Protection of Intangible Cultural Heritage no. 58* of March 29, 2012;
- *Law on Artists and Artists' Unions No. 21* of March 1, 2013 (no. 1263-VII, July 28, 2014); and
- *Law on Cinematography no. 116* of July 3, 2014
- ***Law on Museums, no. 262* of December 7, 2017**

Where relevant, the analysis will compare the first laws produced since the Independence of the Republic of Moldova and the ones that have replaced or will be replacing the old ones, so as to develop a dynamic analysis of the changes and improvements in the sector of cultural heritage protection.

The main legal texts regulating the institutional framework and the governance system of the sector are presented and analysed in detail in the Report summarising the findings of activity 2.1.

Although the Twinning Project is focussed on immovable cultural heritage, it appeared useful a general screening of the laws concerning also movable cultural heritage and museums, in consideration of the inevitable overlapping/interferences among different legal instruments. The BC representatives also requested support in the finalisation of the draft regulation on the circulation of movable cultural goods, an exercise that requested an analysis also of the primary law. Finally, a new Law on Museums was approved in December 2017 with potential overlapping with the Law on movable cultural goods: it was therefore decided to analyse it also in relation to the key role that museums can play in supporting a strategy for forms of tourism based on cultural heritage.



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THE CONSTITUTION

The Constitution of the Republic of Moldova has been adopted in 1994, that is to say one year after the approval of the fundamental law on the protection of cultural heritage – the Law on the protection of monuments n. 1530 – and two years later than the Law on Archives.

Three articles are relevant for the purpose of the cultural heritage sector.

The first is art. 8 under Title I - General Principles and concerns the respect of the international law and treaties. The article states that:

(1) The Republic of Moldova pledges to respect the Charter of the United Nations and the treaties to which she is a party, to observe with her relations to other states the unanimously recognized principles and norms of international law.

(2) The coming into force of an international treaty containing provisions contrary to the Constitution shall prevail or lead to a revision of the latter.

Romanian text:

(1) Republica Moldova se obligă să respecte Carta Organizației Națiunilor Unite și tratatele la care este parte, să-și bazeze relațiile cu alte state pe principiile și normele unanim recunoscute ale dreptului internațional.

(2) Intrarea în vigoare a unui tratat internațional conținând dispoziții contrare Constituției va trebui precedată de o revizuire a acesteia.

This article implies that the Republic of Moldova explicitly engages itself to observe international treaties which is signatory part of and to give priority to the provisions of any new international treaty and/or to revise the Constitution. This is an important precautionary measure in order to ensure that signed international treaties or prevailing law are taken into account by the Moldovan legal system.

However, as any precautionary measure, it is intended to be provisional, to cover the period until the primary legislation in the country is amended, in this way fully implementing principles and rules as contemplated by the ratified international treaties.

This means that, whenever a treaty is ratified, the relevant laws need to be expeditiously updated in order to explicitly include the principles and provisions envisaged by the newly ratified international legal document. This has been rarely the case in the Republic of Moldova, the legal framework for cultural heritage being no exception until recently, when a series of modernised laws have been progressively elaborated by the former Ministry of Culture, now Ministry of Education, Culture and Research.

The second relevant article is art. 33 on freedom of creation under Title II – Fundamental rights, freedoms and duties, which reads as follows:



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- (1) Freedom of artistic and scientific creation is guaranteed. Creation is not subject to censorship.*
(2) The right of citizens to intellectual property, their material and moral interests arising in connection with different genres of intellectual creation are protected by law.
(3) The State shall contribute to the preservation, development and dissemination of cultural and scientific achievements, national and global.

Romanian text:

- (1) Libertatea creației artistice și științifice este garantată. Creația nu este supusă cenzurii.*
(2) Dreptul cetățenilor la proprietatea intelectuală, interesele lor materiale și morale ce apar în legătură cu diverse genuri de creație intelectuală sînt apărute de lege.
(3) Statul contribuie la păstrarea, la dezvoltarea și la propagarea realizărilor culturii și științei, naționale și mondiale.

This article is key in that it underline the key role of the State in the preservation, development and dissemination of cultural and scientific achievements. Being presented under the register of ‘freedom of creation’, paragraph 3 of this article may not necessarily be understood with reference to cultural heritage/ inheritance, especially because art. 59 explicitly mentions the ‘monuments’ and it does not directly and explicitly mention cultural heritage. On the other hand, its phrasing does not close the doors to an interpretation of the wording ‘scientific and cultural achievements’ to include also ‘heritage of culture and science’, which would be in line with international definitions of cultural heritage.

The third relevant article of the Constitution is article 59 under Title II, Chapter III. Duties which deals with the protection of Environment and Monuments. The article reads as follow:

It is the obligation of every citizen to protect the environment, and to preserve and protect the country's historical and cultural monuments.

Protecția mediului înconjurător și ocrotirea monumentelor: Protecția mediului înconjurător, conservarea și ocrotirea monumentelor istorice și culturale constituie o obligație a fiecărui cetățean.

While this article is very important, as it introduces the obligation to preserve and protect the natural environment and the cultural historic monuments, it shows at least three major weaknesses. The first is that the article only refers to the obligations that are incumbent on every citizen and does not mention public institutions, the second weakness concerns the fact that the obligation appear limited to monuments and does not encompass the wider notion of heritage, which has been introduced only subsequently through the Law on Culture in 1999; the third weakness is that into the constitutional framework there is only an indirect reference to the cultural property enhancement, which should be a duty incumbent on private citizens as well as public authorities.

It would seem appropriate to envisage in the medium term to modify the text of this article and to introduce the concept of cultural heritage/inheritance in place of the concept of historical and cultural monuments, which today seems being limited to certain categories rather than being holistic and comprehensive, as well



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as to strengthen the concept of the obligation of the State and its central and territorial articulations to protect and sustain the environment, the natural and cultural heritage and culture in general.

As a preference, article 33, could be amended in order to include among the obligation of the State (and its administrative central and local articulations) protecting, enhancing and sustaining both creativity and natural / cultural heritage. In this way, the Constitution would be explicitly equipped with provisions engaging not only the private individual citizens with duties related to the protection, enhancement and conservation of cultural heritage but also public entities, obligations well framed in a constitutional system, whose legal force appears necessary in a country where the individual administrative responsibility, that is to say, the accountability of the individual in performing her/his function as civil servant is not sufficiently regulated and explicitly stated by the Law.



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THE LAW ON CULTURE N. 413/1999

The “Law on Culture” sets out the main principles and concepts related to culture, cultural heritage and cultural products and the objectives of the national cultural policy. It also defines the main obligations and commitments of the Moldovan State with regard to Culture and cultural heritage and regulates the rights of citizens in this sphere.

Whilst the Law on Culture focuses specifically culture and creativity, it also addresses cultural heritage and resources, particularly their definition, basic provisions for their protection and use in chapters IV and VI in particular.

The law contains 29 articles organised in seven chapters.

Chapter I – General dispositions– includes three articles: art. 1 sets out the object – cultural framework and cultural activity - and the aims of the law, which include the protection of the constitutional rights of Moldovan citizens with regard to cultural activity, the establishment of basic principles for a cultural policy designed to sustain culture development. Article 2 provides for the definition of the main notions, including culture, cultural activity, values, goods, heritage, etc. Of particular interest are the definitions of cultural activity, which include not only creation, but also preservation, recovery, protection, dissemination of cultural goods and values. thereby including within the realm of cultural activity also cultural heritage protection, conservation and promotion. Cultural heritage is very broadly defined, as it encompasses all cultural values and assets, a definition that goes well beyond the limited categories identified by the ‘second wave’ of reformed legislation, namely historic monuments and sites, movable goods, archaeological heritage, monuments in public space, intangible heritage. Article three states that the law aims at regulating cultural activity in several areas, including performing arts, fine arts, publishing, but also protection and enhancement of cultural heritage, museums, archives and libraries, scientific research, culture management, training in the culture sector, cultural tourism.

Chapter II – State’s obligation in the culture sphere– includes seven articles, all dedicated to the modernisation of the attitude of the State towards culture. The State, through the relevant ministry, is responsible to set out priorities and legal framework (art. 4); it is also responsible for protecting and developing culture, through ad – hoc state programme and funds, (art. 6) to protect intellectual property (art. 7) and to guarantee free access to cultural activity, values and assets (art. 8), through organising and funding the technical and material basis of the cultural institutions of national rank, supporting the creation of non- state cultural organisations and activity, creating conditions favourable to the aesthetic and artistic education. The State is also called to act in order to demonopolize the culture sector (art. 9) and to protect its young talents.

Chapter III – rights and freedoms in the culture sector– contains five articles that define the right of any individual to conduct cultural activity, as part of the set of human rights (art. 11), to conduct creative activity, both at the professional and unprofessional level, and the products of this creative activity is protected equally in terms of intellectual rights (art. 12). Article 13 sets out the right to enjoy the protection of each



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individual to see his/ her cultural identity protected by the state. Art. 14 defines the spheres where intellectual rights are recognised and protected; the right to create cultural organisations and to carry out cultural activity abroad are also established (art. 15 and 16).

Chapter IV – national cultural patrimony of the Republic of Moldova– contains only one article stating that the cultural heritage of the country is established by the government in agreement with the Parliament; the maintenance, use and placement of objects recognised as cultural heritage is in the responsibility of the Parliament and of the Government, upon advice of independent commissions. Understandably, particular attention is given by the law to the integrity of collections historically established, i.e. funds of museums, archives, libraries, cinemas, etc. Privatisation of objects belonging to national cultural heritage is prohibited.

Chapter V – state and creative people– contains only one article regulating the relationships between the State and artists.

Chapter VI – economic organisation and regulation of culture – contains ten articles dealing with different topics: the regulation of cultural organisations from their creation to their liquidation, the rights and obligations of the founders of cultural organisations, funding system for culture, financial sources of cultural organizations, investment policy, the material and technical means to support culture, economic activity of cultural organisations, the relationships between cultural organisations. The provisions of these articles set out at the general level the options for funding culture, beyond the public budget, and include donations of physical and juridical persons, grants from national or international organisations and foundations. The state allocates capital investment, according to the law in force, for the consolidation and development of the technical – material basis of culture; attraction and distribution of capital investments for cultural objective is based on the law in force in the sector.

Preliminary observations and recommendations

The Law on Culture n. 413/1999 is a very important law setting out principles that have, in fact, constitutional character. It provides for the main principles and regulatory framework for the development of a modernised culture sector in the country. It attempts to position itself as a framework law for the whole sector, with a particular focus on culture and cultural activities, aiming at providing for viable conditions to the development of a richer cultural setting for the Republic of Moldova. While trying to expand the notion of cultural heritage, it also takes into consideration the Law on the protection of monuments, avoiding to provide specifications with regard to the protection of cultural heritage but including it within the realm of cultural activities. The law aimed at supporting the flourishing of cultural initiatives as well as of cultural organisations that could contribute to the action of public institutions.

Some provisions are rather generic, for instance those dealing with the relationship between the State and the creative persons, and would need to be detailed via additional provisions or secondary legislation. At least one provision in art. 27, paragraph 5) stating that “the alienation and the transmission of the edifices, constructions and related land belonging to the cultural institutions for purposes other than the cultural activity shall be prohibited” appears too rigid and may benefit from being nuanced and further regulated through criteria and conditions under which, assets belonging to cultural institutions that have no function or utility for the purpose of the cultural activity and have no potential for being rented or leased, may be alienated or transferred.



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As other laws, to fully harness its potential, its approval would have requested the introduction of modifications to other laws, particularly in the fiscal and public budget sector, in the civil service sector, in the contraventional and penal sectors, as a result of a collective political and strategic reflection on the needs for a real, modern, inclusive and effective culture system that is socially inclusive and economically sustainable.

Regrettably, the lack of public funds has not triggered the elaboration of a strategy to activate other sources of funding: the provisions of the law referring to a variety of options for setting up more viable culture system that could be supported by different funding sources has not been accompanied by fiscal measures, incentives, tax reliefs that could have promoted private donations, investments, tax preferences as a support to the public budget dedicated to culture.

This problem is identified here but concerns all laws of the sector: options and proposals to strengthen and to diversify the sources of funding for supporting culture or cultural heritage remain confined within the sectorial provisions and do not have any real impact on the fiscal / financial system of Moldova. This means that the discussion on the reinforcement and, as a matter of fact, on the creation of a viable and lively culture system, able to contribute to the reinforcement of the socio- economy of the Republic of Moldova, remains within the 'culture family' and does not reach the highest level of the political decision making, Prime Minister's Office, MF, MEI, which are the main actors to be sensitized towards the need of structural reforms to trigger a 'culture economy'.



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LAW ON THE PROTECTION OF MONUMENTS N. 1530/1993

This Law (Lege privind ocrotirea monumentelor in Romanian) has been adopted in 1993, only a few years after independence of the Republic of Moldova. It contains 63 articles articulated into eight chapters. Since 2010 it has been repeatedly amended, lastly in August 2017.

Chapter I - general dispositions- includes nine articles. The first two set out what can be considered monument under the provisions of the law, the third forbids any discrimination in the consideration of the status of the monument and provides for the historic dimension to prevail over the aesthetic, functional or material values. Articles from 4 through 6 concern the formation and keeping of the Register of the monuments, whilst articles from 7 to 9 regulates the ownership rights and their limitations, in relation to the monument's protected status.

Chapter II – protection of monuments - include 8 articles defining the scope of protection, the protection competences and the main provisions on how to implement protection, providing for a role to the Parliament and to the Government (perhaps at the time justified by the absence of a Ministry of Culture and of related administrative structures tasked with duties in the cultural heritage sector) and, through more recent amendments, defining the tasks of the NCHM and of AIRM. The law already envisaged tasks for the regions and the municipalities concerning monuments of local importance. Not all LPAs however have been capable to elaborate registers of monuments of local importance and even less able to set up programmes for their conservation, due to budget constraints and lack of technical capacity.

Chapter III – evidence, study and enhancement of monuments- contains six articles that set out provisions concerning the preliminary study of monuments, the listing procedures, based on the creation of additional lists to be added to the Register via parliamentary approvals, preventive protection measures as well as regulating archaeological research.

Chapter IV – Conservation and restoration of monuments- contains 12 articles that set out the general principles for conservation and restoration, the competences for issuing conservation criteria and necessary documentation for conservation works, the main actors involved in monument conservation and restoration, the obligation for the State authorities in charge of heritage protection to prevent the deterioration of the monuments, the need for specialisation in the field to intervene on protected monuments. Art. 26, paragraph 2, art. 27 and art. 30 in this chapter contain key provisions for the effective implementation of the protection of monuments: art. 26(2) obliges the State authorities responsible for the protection of monuments to prevent the deterioration of the monuments and to intervene promptly with the execution of conservations works; art. 27 establishes that the state monument protection authorities shall designate special empowered persons who are the only ones with the right to supervise and control the conservation and restoration of works as well as to interrupt them in case of non- observance of the provision of the law; art. 30 obliges the state authorities responsible for protection of monuments to investigate systematically the state of the monuments to prepare well-grounded preservation programmes. If systematically applied, these three provisions would contribute significantly to a much more effective protection.



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Chapter V – financing the protection of monuments– contains seven articles that set out the possibilities to fund the activity of the protection and conservation of monuments through earmarked state or local budgets lines funded through specific revenues, donations, leasing of monuments, as well as through commercial activities that include the sale and purchase of monuments within the borders of the Republic of Moldova, the sale of promotional material (calendars, postcards, etc.). The chapter also include one provision (art. 39) that obliges the owner of a protected monument to stipulate an insurance and one (art. 40) establishing that, in the exceptional case a monument needs to be demolished due to its dilapidated and not- recoverable conditions, the expenses of the demolition shall incur on the party interested in the demolition.

Chapter VI – circulation of cultural goods– comprises three articles that have been now superseded by the provisions of the Law n. 280/2011.

Chapter VII – activity of public foundations- comprises three articles that set out the framework for the cooperation between the State and the public foundations the mission of which is heritage protection as well as the rights of these foundations, which include the possibility to participate in the development of conservation plans. They enjoy also the right to exercise the control over the protection and valorisation of monuments, to prepare projects and programmes in the protection areas of monuments as well as the right to demand the interruption of works endangering the integrity of a protected monument, to appeal against the decision of state and local bodies responsible for the protection of nationally or locally protected monuments to start and closely monitor the progress of trials, including criminal ones, and to be a plaintiff in case of flagrant violation of the provisions of the law (art. 51). The law therefore ideally provides for a strong role of organisations safeguarding public utility (as defined in the law on public associations n. 837/1996 and subsequent amendments).

Chapter VIII – liability for infringement of the present law – contains 12 articles regulating the consequences of non-compliance with the provisions of the law. In particular art. 53 obliges whoever has damaged a protected monument or its protection area to restore it to its previous state or, in case this impossible, to cover the damage according to the law. The amount of the contravention or of the penal sanction as well as the amount of the damage to be refunded is determined by the court and by the competent bodies based on the assessment made by the relevant directorate of the Ministry of culture. Art. 56 provides for the earmarking of the penalties paid by offenders to constitute a specific State budget line dedicated to the protection of cultural heritage.

Preliminary observations and recommendations

The law on the protection of monuments n. 1530/1993 is an ambitious legal instrument, particularly when one considers the time when it was designed and approved, in that it aimed at protecting both natural and cultural monuments, both tangible and intangible heritage, through a comprehensive approach to heritage, which is very rare to find. In this regard, the notion of ‘monument’ used by the law is very wide, as it refers to objects holding historic, artistic or scientific value, “which are testimonies of the evolution of civilisations on the territory of the republic and of the spiritual, political, economic and social development” (art. 1, para 1). However, unfortunately, this broad definition is immediately limited by the addition “which are registered in the Register of monuments of Moldova”, thereby limiting the condition and status of monument only to those objects already included in the Register and renouncing to the idea that monuments may exist beyond



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what is already included in the Register and await being identified, understood and formally acknowledged as such through the protection process. This narrow and somehow bureaucratic understanding of heritage prevents the full harnessing of the law as a tool for establishing a wider protection framework based on a more updated and open understanding of heritage.

Also the definition of protection of monuments is comprehensive and advanced: art. 10 reads “State protection of monuments include the provision and assurance of recording, study, enhancement, rescue, conservation and restoration works, the expansion of its material base [increasing the protected monuments], of their use and accessibility for investigations for educational and promotion purposes”.

Another clear and useful provision is set out in art. 23 which states that “ conservation of monuments is a priority in restoration or construction works” and that “restoration and appropriate preservation works shall first provide for measures to prevent damage and ruin, to preserve the original structures of the monuments without damaging their historical, artistic or scientific value”, thereby setting out in a short clear sentence that prevention and conservation have to be prioritised over any type of other works, a principle that was meant to guide also the rules and prescriptions – never developed – for the conservation and restoration of works mentioned in the subsequent art. 24. Additionally, it can be noted that the use of the word ‘restoration’ in this law refers to a broad understanding of the notion, which may accommodate a variety of intervention nuances.

The articulation of the law in chapters is well thought and the provisions are generally consistent with the topic of the chapter, clearly set out and based on sound and advanced principles.

On the other hand, many provisions remain very general and for them to become fully operational would need being further detailed via secondary legislation or through appropriate amendments and cross-referencing with other laws, e.g. with the contraventional and penal codes, the fiscal legislation and the provisions regulating the State budget formation and articulation.

For instance, the chapter on financing of heritage protection outline a variety of possible solutions to support the sector, however, the provisions are too general and ‘intentional’ rather than ‘enacting’ and lack the necessary level of detail, which, regrettably, the legislator has never developed to turn these articles into operational provisions. If at the time the law was approved the financing mechanisms could have been considered advanced, nowadays they would benefit from a being revisited and updated. In this regard, the Twinning has provided an overview over financing mechanisms that could serve the purpose of modernising and making more viable the current Moldovan system of cultural heritage protection (see the report “Encouraging private support to cultural heritage” annexed to the proposal for a Strategic Plan prepared for Activity 2.2).

No criminal sanctions are envisaged for conducts putting at risk the protection of monuments. In particular, it is difficult to prosecute public officials who carelessly or intentionally violate or ignore the provisions of this law, the mission of the institution they work for, when this is in charge of heritage protection, or their specific duties. This aspect would need to be better regulated also in laws pertaining more general sectors, such as those concerning the status, rights and obligations of civil service, functioning of public administrations, administrative procedures (see the analysis of the legal framework concerning this sector in the relevant report).



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No detailed steps and criteria are established when taking decisions on the demolition of monuments, which is a highly sensitive area where pressures and corruption – broadly intended - could play an important role in distorting the application of this provision (art. 40, introduced through amendment in 2007).

The competences of public foundations could be very important to stop the increasing destruction of monuments in Moldova. Therefore, they should be supported and facilitated in their power of intervention. Regrettably, this provision has not been accompanied by adequate awareness raising programmes and even the founders or associated of many of these associations and foundations have, in most cases, a limited understanding of their role in acting as the ‘controllers’ of the public administrations’ interpretation and implementation of the Law.

Additionally, the subdivision of the implementation of the law between two ministries – the MECR for cultural heritage and the MARDE for natural heritage – without any coordination mechanism between the two ministries and no clear provisions established for the role of the MARDE has undermined the original goal of the law to integrate the protection and management of natural and cultural heritage, because it has not provided the law with legal, regulatory and administrative instruments.

One structural weakness of this law is represented by the excessive role given to the Government and the Parliament - they are charged respectively with the drawing up and the approval of the Register of Monuments - for technical administrative tasks, which ideally should be performed by the MECR and, perhaps, to a certain extent, by the Government. While it is understandable that, following independence and the establishment of a new political order, the Register of protected monuments had to be established by law for the first time, in order to confirm that the newly established political institutions recognised as those objects as monuments of the independent Republic of Moldova, it does not seem appropriate from a juridical perspective that considers the separation of powers set out in the Constitution of Moldova, that the Parliament, which is in charge of the legislative power, deals with administrative tasks and the regulation of specific conditions, as it is the case for the listing of a monument and the establishment of a specific protection regime.

The role given to the Parliament in the listing of monuments has considerable repercussions on the procedure, which is complicated, lengthy and clearly cannot be undertaken for one single object, thus preventing from the possibility to augment the protected assets in a feasible and regular manner. As a matter of fact, since 1993, when the Register of Monuments was firstly approved by the Parliament with law n. 1531/1993, it has never been updated: only between 2016 and 2018 an effort has been made to create a new, independent, Register of the monuments in public space, which basically is an updated excerpt of the 1993 Register.

Following the approval of the Law on the protection of archaeological heritage in 2010, the law on the protection of movable goods in 2011, the law on the protection of intangible heritage in 2012, the law on the protection of monuments n. 1530 currently suffers from problems of coordination with the provisions of these laws. As a matter of fact, this law is destined to be superseded by a set of updated sectorial laws, which at the moment only misses a revised law on historic monuments, the draft of which has demanded years of preparation and which has been the object of detailed analysis and extensive work to strengthen it by the MS STEs within the activities of the project over the period November 2017 – February 2018 (see relevant chapter in this Report and the annexed documentation). However, since several years have passed since



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other sectorial laws were approved, the overlapping and conflicts of provisions have affected the implementation of this law in particular.

The amendments to this law and the adoption of regulatory instruments for bodies that did not exist at the time the law was approved have also contributed to create dangerous ambiguities.

For instance, art. 40 envisages the possibility of demolition, under inadequately specified “exceptional cases”, when this is “inevitable”. However, no clear procedure is set out.

The demolition of a protected monument implies also its declassification, since the physical evidence supporting the cultural significance vanishes and, with that, also the reasons for which the building was considered deemed of becoming a ‘protected monument’. This would imply that only after declassification, due to the loss of the cultural value, the monument returns to be just a building/ structure/ construction and can therefore be demolished.

If the monument, however damaged, still retain cultural significance, it is an obligation to conserve and restore it, to the extent that this is technically feasible.

This means, under the current legal framework, that no complete demolition or demolition of a significant part of a monument can be authorized without its preliminary declassification. This means that the procedure of demolition needs to be anticipated by its declassification. This relates also to any project proposal that may implicitly involve the demolition of a protected monument. If legislation maintains the roles given to the Government and the Parliament, the NCHM in this case should issue advice to the Government and the Parliament about the survival or not of cultural value in the monument for which demolition is requested. If so, then technical solutions are to be found and immediate rescue measures to be put in place.

The Law n. 1530/1993 can be considered as a solid skeleton for a law regulating the entirety of heritage in Moldova, in that overall general principles and main provisions are sound but is deficient in terms of adequate detailing and specific provisions, particularly regarding archaeological heritage, museums, movable objects, as well as natural heritage.

Unfortunately, the lack of sectorial provisions for specific categories of heritage has triggered partial reforms through the elaboration of sectorial laws instead of preferring the option of detailing the original legal skeleton of the Law through the elaboration of ad-hoc provisions grouped in sections dedicated to specific heritage categories. This approach would have saved most of the ambitions, if not all, of the 1990s legislator and would have progressively enriched the initial Law to the point that the achievement of a comprehensive Code for the heritage of the Republic of Moldova, an objective which should be prioritised in the agenda for the next legislature, would have been more easily reached.

A valid reform of the Law n. 1530/1993 would benefit from:

- a thorough reconsideration of the registering system of cultural heritage in general and of any of the acknowledged categories (historic monuments and sites, archaeological heritage, commemorative monuments (monuments ‘de for public’), movable goods;
- a clarification and update of the distribution of the responsibilities among the state bodies in charge of the implementation of the protection, consistently



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reflecting the modifications to the ministerial institutional structure, including its subordinated bodies (this step has never been undertaken, leaving a number of ambiguities open with regard to how the locution ‘state bodies for the protection of monuments’ has to be interpreted);

- clarification and distinction in regulating the transfer of ownership and the of hold regimes, e.g. concessions, leasing and rental of protected monuments;
- *revision of the procedure for authorising demolitions of protected monuments (while a monument can be declassified only by the Parliament, demolitions – whatever their extent – seem to be decided upon only by the National Council of Historic Monuments within the procedure of approval of projects – this need to be modified, as complete or substantial demolition of a protected monument leads the their destruction – total or partial – and implicitly to their declassification and this, according to the law, can be done only by the Parliament;*
- detailing and cross- referencing of the provisions concerning the financial measures with the fiscal legislation and the state budget regulations;
- elaboration of provisions for specific categories of cultural heritage and, where necessary adaptation of the ones already existing to cover more categories;
- elaboration of the set of secondary legislation mentioned in the text of the Law to make it fully operational and therefore understanding the real needs for reform.

The MECR has chosen to abandon the Law n. 1530/1993 and to progressively replace it through new sectorial laws. These will be analysed below. A comparative assessment of the achieved improvement is outlined at the end of the analysis.

LAW ON ARCHAEOLOGICAL HERITAGE (LAW N. 218/2010)

The Law on the protection of archaeological heritage is the first organic law dealing explicitly and specifically with the archaeological heritage in the Republic of Moldova. It has been adopted in September 2010 and entered into force in March 2011.

The Law comprises eleven chapters and 48 articles and reflects an updated approach to the architecture of a law: it contains a preamble that set out the overall principles and aims of the Law, it provides for a comprehensive list of definitions of notions and words used in the law and includes chapters dedicated to the institutions responsible for the implementation of the law.

Chapter I – general dispositions– contains two articles, the first sets out the scope of the law, the second provides for the definitions of the concepts used in the law. the definitions logically focus on the notions related to the archaeological heritage and procedures related to archaeology, however they would benefit from some additional definitions regarding how conservation, preservation, salvage of archaeological heritage has to be understood, what is meant by integrity (and authenticity) of archaeological heritage, or at least a reference to the secondary legislation that shall include these clarifications.

Chapter II – the protection system of archaeological heritage– contains nine articles establishing the system to ensure the protection of archaeological heritage – movable and immovable – within the territory of the



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Republic of Moldova. Art. 3 sets out the roles and functions of the State institutions (Parliament, Government, Ministry of Culture – now MECR – NAA, Academy of Sciences) and of local administrations in ensuring the protection of archaeology. The subsequent articles deal with the classification of archaeological heritage and the protection mechanisms in case of fortuitous discoveries and with the procedure for the archaeological discharge of sites that might contain archaeological vestiges. Art. 6 deals with preventive archaeology, which is a task reserved to the NAA. Differently from the archaeological discharge procedure, which is financially covered by the applicant through the establishment of a service contract, preventive archaeology has to be performed by NAA at its own expenses, regardless it is included in its own programmes or it has been requested by a proponent of a work. Art. 7 sets out the main features of the archaeological cadastre, whilst art. 8 through 11 regulate the exercise of the property rights on archaeological heritage and on archaeological heritage land, the legal regime of the land containing archaeological heritage, envisaging compensation in case special protection regimes of registered sites prevent or limit the use of the land by its owner as well as the situation of accidental discovery of a treasure.

Chapter III – attributions of the central public authorities and instruments for the protection of archaeological heritage – contains six articles defining the key administrative bodies responsible for the protection of archaeological heritage and their tasks as well as the main instruments on which the protection of archaeological heritage is implemented. The key institutions comprise the Ministry of Culture (today MECR), the NAC, the NAA and the law outlines their respective main tasks to be further detailed through secondary legislation. The key instruments for the documentation and protection of the archaeological heritage include the NAR, a database containing all cartographic, graphic, photographic and textual documentation that is the outcome of archaeological research, the national archaeological register, which contains the information of the archaeological heritage formally protected under the law, the register of the archaeologists of the Republic of Moldova, which includes professional archaeologists which are qualified to carry out archaeological surveys, preventive archaeology, surveillance and systematic investigations, according to the their qualifications.

Chapter VI – attributions of LPAs– contains two articles which defines the general and specific attributions of the LPAs. These include: cooperating with the state bodies responsible for the protection of archaeological heritage, ensuring the protection of archaeological heritage in case of fortuitous discoveries and as a result of systematic research, finances archaeological discharge of areas where public works are to be carried out and are funded through their budgetary and extrabudgetary resources, include specific protection objectives in their development programmes, specify in the urban certificate the regimes of the immovable assets located in areas containing archaeological heritage. Specific tasks include the suspension of building permit in case of archaeological discoveries, notifying the Ministry of Culture the fortuitous discovery, ensuring the update information of their services and citizens about the registered archaeological heritage and sites located within their territories of administrative competence.

Chapter V – cooperation of State bodies with associations and foundations of public utility– contains four articles dealing with the role, prerogatives and scope of activity of associations and foundations the mission of which is the protection of archaeological heritage. In particular, the associations are entitled to demand the suspension of any type of work that may endanger or diminish the integrity and the historical value of the archaeological site/ heritage and to set up enterprises in the field of archaeological conservation, promotion, valorisation.



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Chapter VI – zone of priority archaeological interest – contains three articles that are all devoted to set out measures to ensure that areas of priority interest for their archaeological significance are provided with the necessary protection mechanisms, financial resources for their conservation and promotion are secured and prioritized.

Chapter VII – research, conservation and restoration of archaeological heritage – contains 9 articles that set out principles, criteria and conduction of research, conservation and restoration of archaeological heritage. particularly important are the provisions contained in art. 27, paragraphs (2) and (3), establishing that research and conservation have to be prioritised over restoration and reconstruction works and that systematic archaeological research needs to be accompanied by in-situ safeguard and conservation measures. Articles 28 and 29 establish that these activities need to be carried out on the ground of technical and scientific norms and prescriptions and of adequate technical documentation resulting from multidisciplinary studies. Paragraph (3) is of particular relevance with regard to preventive archaeology and archaeological discharge in that it obliges all institutions and stakeholders responsible for underground and underwater works to take into account in the elaboration of their projects the potential presence of archaeological vestiges in the target area of their works and, more importantly, to insert in the estimation of the budget allocated for these works the necessary financial means to salvage archaeological vestiges that might be threatened by the works. Articles 30 and 31 deal with requirements for professionals in the fields and regulate projects, samplings and replicas. Art. 35 is particularly interesting in that provides for the identification of a person responsible for the integrity of the archaeological vestiges during conservation works in the contract for the works, which must be accompanied by the minutes of the technical opinion on the state of conservation of the site, at the beginning of the works.

Chapter VIII – import and export of archaeological goods – comprises three articles regulating the topic: definitive export of archaeological heritage is forbidden (art. 36), temporary export for movable archaeological heritage is permitted but need to be authorised by the Ministry of Culture (today MECR) and, where necessary, upon specific conditions. Archaeological movables owned by foreign states, organisations and citizens and temporarily imported fall under the provisions of the Law and can be removed from the country on the basis of the certificate attesting their arrival in the country and of the export authorisation. No other regulation is given to archaeological items of foreign provenance however entering the Moldova territory (confiscation could not be at disposal of the competent judicial authorities whenever *praescriptio* occurred).

Chapter IX – financing the protection of archaeological heritage – contains six articles that outline the provenance of the funds necessary for this activity: beyond the state budget, art. 39 mentions the budgets of LPAs, revenues, donations, etc. whilst art. 41, similarly to the provisions contained in the law n. 1530/1993, allows for the production of promotion material to be sold as a form of financing. Art. 40 establishes that funds for rescue archaeology are to be secured and made available by the organisations promoting the works, whilst further sources of funding can be sought through rental of archaeological sites/ heritage, upon specific conditions and obligations for their protection and conservation. The revenue of the rental activity is deposited in the bank account of the NAA and earmarked for protection, conservation/ restoration of archaeological sites. Art. 44 establishes that the Government shall provide funds in the state budget on an annual basis for exceptional interventions for the salvage of archaeological heritage. LPAs, be they districts or mayoralities, may allocate, in their budgets, sums for the financing or co- financing of protection activities



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(art. 45). A very interesting and useful provision is the one set out in art. 46, which establishes that the State grants incentives, under the legislation in force, for those who produce or procure raw material, tools or equipment needed for the protection of archaeological heritage (that is to say recording, research, rescue, conservation, etc.). Unfortunately, no coordinated work with the MF has been initiated and, to date, no fiscal incentives exist for the sector.

Chapter X – liability for infringement of the law – contains one article (art. 47) which lists the forbidden activities and the liability according to the civil, contraventional and criminal law, according to the law in force (see articles 186, 187, 188, 190, 191, 199 of the Penal Code and articles 74, 423 of the Contraventional Code. The list include: carrying out research without authorisation, carrying out works that may affect archaeological vestiges without discharge certificate, unauthorised sale, possession or use of metal detectors or other remote sensing devices, carrying out unauthorised excavations in areas bearing archaeological potential, deliberate damage or destruction of archaeological heritage, subtraction of archaeological findings from authorised excavations, unauthorised commerce, export of mobile archaeological goods, failure to notify public authorities of fortuitous discoveries, violation of the legal provisions concerning fortuitous discoveries, unauthorised continuation of works on soils where archaeological remains have been found, failure to respect obligations to protect archaeological heritage, failure to respect the provisions to allow free access to specialists into archaeological sites, failure to bring back to initial conditions the land after archaeological research. If damage is caused to archaeological sites, the author of the damages is obliged to repair them according to the manner envisaged by the law, it shall be done voluntarily or based on a court decision.

Preliminary observations and recommendations

The adoption of a very articulate law defines in detail the tasks and all the figures involved in archaeological researches: agencies, universities, professional archaeologists, foreign research institutes (articles 13 & 14) and three different system to register the archaeological data (i.e. articles 15-16&17)¹. The complexity of this law is also due to the fact that the archaeological heritage of Moldova is perhaps one of the most relevant aspect of the cultural heritage in Moldova and one of its strengths among the countries of the Eastern European continent (for instance, the Palaeolithic site of Cosăuțior the Neolithic Culture of Cucuteni- Tripolie or the graves culture system of tumulus in the Iron Age).

Clearly it emerges a profile of a country with a strong tradition of archaeological research and a system of archaeological registration data well consolidated and detailed as evidenced by the updated database in possession of the agency, which contains several thousands of sites, out of which around 1500 are documented to an extent sufficient to proceed to their formal inclusion into the Register of Archaeological Heritage (source: NAA staff).

Of particular interest is the Preamble to the Law which states:

¹Just to compare with another country which is rich in archaeological heritage, one can see that in Italy the provisions concerning the archaeological heritage are concentrated only in a few specific articles in the Code of Cultural and Landscape Goods (D. Lgs. 42/2004) and in others two articles in the new Code of public contracts (D. Lgs. 50/2016 n. 25 & 26).



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The archaeological heritage is the essential element that defines the age and originality of culture, history and traditions of every nation, state or cultural space in relation to other peoples, states or ethnocultural spaces. Every people have an obligation to preserve their cultural assets and to harness them for the benefit of all humanity. The archaeological heritage of the Republic of Moldova - a basic component of the national cultural patrimony, subject to serious threats of degradation, both as a result of the intensification of the process of accomplishing the major projects of complex planning, new construction and land exploitation, and the risks natural, clandestine digging or insufficient information to the public - needs to be protected, by integrating organically the policy of protecting the archaeological heritage in cultural, educational, environmental, urban development and land development policies, land management, land management and forests.

In the preamble clearly resonates the principles of the CoE *Convention on the protection of archaeological heritage* (1992), known also as the Valletta Convention, which also informs the definitions and the provisions contained in the Law. In particular, it is worth mentioning here the notion of archaeological heritage - it encompasses both immovable and movable ensemble of material goods resulting from past human activity and preserved in natural conditions aboveground, belowground or underwater, which are susceptible of being studied with archaeological methods – and of juridical regime of discovery and research – a set of legal, administrative, financial, technical and scientific measures designed to ensure prospecting, identification, discovery, inventory, preservation, restoration, guarding, maintenance and valorisation of archaeological heritage and of its land – that attest to the thorough reflection carried out on archaeology, its aims, obligations and methods.

Interestingly, the Law defines the preventive archaeological investigations as *part of the strategies for sustainable social-economic development, for environmental development, for town development and territorial planning, for tourism development at the national and local levels.*

Importantly, the law envisages that the responsible ministry (currently MECR) shall approve the documentation for town development and territorial planning which include archaeological sites or zones with archaeological potential (Article 12), in order to promote a sustainable policy in the field of the protection and recovery of the archaeological heritage.

Overall, the provisions of this Law provide for a solid legal framework for the protection of the archaeological sites and of in situ archaeological remains and represent an important achievement for the Republic of Moldova.

The Law was equipped two years after its issuance and entry into force with most of the secondary legislation that is envisaged in its text to ensure its implementation, namely:

- Regulation concerning the evidence and the classification of archaeological heritage (immovable and movable)
- Regulation concerning the archaeological research and the archaeological expertise
- Regulation concerning the archaeological repertory and the archaeological Register
- Regulation concerning the Register of Archaeologists in Moldova
- The Deontological Code of archaeologists



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The regulations indicated above specify with abundant detail the principles, criteria, requirements, necessary documentation and phases of the corresponding procedures. They represent the essential complement to the provisions of the law for the key procedures necessary to implement the protection of archaeological heritage.

The NAA has also developed templates for the daily implementation of the Law even though they have not been endorsed yet by the Ministry. They include:

- Request of authorisation for archaeological research
- Archaeological expertise
- Contract for archaeological research for discharge
- Certificate of archaeological discharge

The MECR has prepared a template for the authorisation to carry out archaeological research.

However, notwithstanding the substantial achievements reached with the approval of this Law and the adoption of its regulations, some weaknesses have emerged through the analysis. They concern:

A) the mechanisms to ensure the tracking and to establish protection of the archaeological findings emerging from rescue, preventive or discharge archaeological investigations.

By law, the finds that come from archaeological excavations are not protected until they become part of the collection/ patrimony of one museum. This issue is consequent to the fact that a better definition of archaeological item/site is required, independently by the inventory procedures. In particular, this law should consider enacting timeframes as established by the international legislation. Therefore, an intermediate risk arises between the moment of the discovery of a find to its enhancement through the inclusion in the patrimony of a museum. A grey zone of uncertainty with regard to status of the find can be detected and this is not resolved by the provision that removing any emerging archaeological finding from the area of excavation without authorization is forbidden (art. 47, paragraph 1, let. f)).

The law contains several articles that define how to protect the known archaeological sites but it is not very clear on what is expected to be the path that archaeological finds must follow once discovered before being transferred to the museums and acquired into the collection and exhibited. The NAA's responsibility seems predominantly to be concentrated on archaeological sites and not on movable heritage, therefore it does not seem clear whether there is a responsible person and who is for the deposits of materials before their inclusion in the museum collection.

The Regulations for the archaeological research and archaeological expertise (Annex n. 2 to Ministerial Order n. 126/2013) attempts to fill this gap by:

- imposing to the institution requesting the authorisation to carry out the archaeological research to ensure the provisional preservation of the archaeological materials resulting from excavations and their transmission, within the established timeframe, to specialized state institutions according to the decision of the MECR
- giving the applicant the responsibility of transmitting all the archaeological materials discovered, after the laboratory work, to the specialized institutions for preservation and storage, in conformity with



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MECR's dispositions on the matter; the document attesting the reception of the material by the identified specialized institutions needs to be annexed to the Scientific Report.

The legislation however does not require the applying Institution to carry out immediately after discovery a preliminary inventory of the findings and appropriate photography of them to be transmitted to the specialised public institution that will be receiving the archaeological material at the end of the archaeological excavation, in order to keep track since its emergence of the find, nor to demonstrate that the researching institution has access to adequate storage facilities where the archaeological material will be temporarily protected.

Additionally, the Law should envisage a form of precautionary protection status for all findings until they are definitively transferred to the specialised institution and inventoried/ protected. This can be obtained by integrating an article to extend the protection to movable property from the moment of its discovery. The transfer to museums or to other specialised institution can be detailed via a specific regulation that must be mentioned both the law of archaeology and of museums and should envisage coordination and cooperation mechanisms among the parties involved (NAA, the receiving specialised institution/ museum, the responsible person for the excavations).

This article could find a place in Chapter VII (for instance between articles 33 and 36) and provides that when the movable remains are excavated and out of the archaeological excavations there are in State ownership, are automatically protected, must be conferred to the local museum within a defined timeframe and, at that moment the responsibility of their protection and conservation is transferred to the latter.

Another weakness is represented by the:

- B) the implicit mechanisms triggered by the rationale of the provisions for the archaeological discharge procedure and the preventive archaeology procedure.

The procedure for the archaeological discharge of a site is separate from the procedure for preventive archaeology, of which it would seem a logical possible option. Secondly, the procedure for the archaeological discharge is triggered upon request by interested parties who have developed projects the implementation of which may have negative impacts on possible archaeological vestiges and who also must cover financially the research activity. The institution solely responsible for carrying out the archaeological research and issuing the certificate of discharge is the NAA, which stipulates a contract with the applicant and then prepare a research project proposal which must be screened and authorised by the NAC. The NAC may or may not issue the authorisation for discharge research; in case of positive response, the NAA undertake the excavation and, at the end of the research, usually issues the certificate of discharge and return the land to the applicant. This double role – executing the archaeological excavation as a preliminary action to the archaeological discharge and releasing the archaeological discharge certificate – delineates potential conflict of interest and therefore the procedure needs to be modified. The Agency, as an implementing body subordinated to the MECR, issues the archaeological discharge certificate and therefore cannot carry out the preliminary research excavation related to the requests for archaeological discharge. This would give more time to the Agency staff to monitor building sites and carry out inspections and supervision of archaeological



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discharge research excavations, which should be carried out by other actors, including accredited private archaeologists.

In order to ensure that the revenue obtained from contracts stipulated with public entities for archaeological discharge and, in perspective also by preventive archaeology, continues to contribute to the activity of the NAA (and future NAMS), it is necessary to establish a mechanism for the transfer of a percentage of the amount of these contracts to the Agency, until salaries of the Agencies' staff will be adequately increased by Government/Parliament decision.

Alternatively, the Agency may continue to carry out archaeological research excavations for discharge, but they do not issue any longer the archaeological discharge certificate, the function being transferred to the General Directorate of Cultural Heritage.

On the other hand, preventive archaeology research, even though it may be triggered by the proposal for a project that may affect negatively archaeological remains, although through a different path - as in this case it is the issuer of the certificate of urbanism who must inform NAA about the submission of a project proposal that might need the initiation of preventive archaeological research – is financially covered by NAA own funds.

This distinction creates an ambiguous situation and implicit message that developers/ proponents only cover financially the research aimed at the clearance of an area from potential archaeological remains, whilst preventive archaeology, which does not pre- condition in advance the conclusion of the research and the decision on the possible vestiges that might be exposed, must be paid by the citizenry through state funds. It is the view of the MS experts that all preventive archaeology triggered by development activity has to be covered by the 'developer' or the proponent within the budget of the proposed work and not by the budgets of the institutions devoted to heritage protection. In this regard it is interesting the mechanism set up in France with the creation of an ad-hoc National Fund for preventive archaeology (Fonds national pour l'archéologie préventive – Fnapp, details can be found at <http://www.culture.gouv.fr/Thematiques/Archeologie/Sur-le-terrain/Archeologie-preventive>).

Additionally, although the issuance of the authorisation for archaeological research aiming at the discharge by NAC does not automatically imply that a certificate of archaeological discharge will be issued at the conclusion of the research campaign, it is reasonable to think that the applicant will expect that, at the end of the process, a certificate of discharge will be obtained, because it is for it that he/she has activated the procedure and stipulated the contract.

While certainly this procedure allows for many archaeological campaigns to be carried out and is 'self – funded', thus favouring the accumulation of considerable knowledge about the archaeological sites and potential of the territory of the Republic of Moldova, this risks to be achieved through a high price, taking into consideration the structural financial constraints of state institutions responsible for cultural heritage in Moldova, combined with a low sensitivity of Moldovan society to cultural heritage. As a matter of fact, there might be the risk to accelerate the erase of archaeological heritage in the country, leaving not much to future generations of archaeologists to explore and research, contrary to the principles of international conventions and documents.



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Further specific weaknesses are to be signalled. They concern: 1) statistics to be collected on illegal digging; 2) the issue of valorization not always properly faced; 3) The radius of the protection area, too limited; 4) Use and other forms of exploitation of archaeological heritage that should be ruled in details.

More detailed recommendations on the provisions of the law can be found in the relevant section of this report.



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LAW ON MONUMENTS IN PUBLIC SPACE (MONUMENT DE FOR PUBLIC) N. 192/2011

The law regulates the establishment of commemorative monuments and monumental art. The law on the monuments in the public space contains 18 articles organised in six chapters. It has been amended in 2017 and in July 2018 the corresponding Register was adopted by the Parliament.

The aim of the law is stated in its preamble – creating optimal conditions for the development of national and international values through monumental artworks located in public spaces – and the provisions of the law intend to ensure their integration into cultural, educational, urban and spatial planning policies and to provide a legal framework for the building and protection of this type of documents.

Chapter I – general provisions – contains six articles. They address the object of the law, the definitions of monument of public space and other relevant concepts, the categories of importance of these monuments, the statute of the monument in public space and the criteria to consider artworks in public space as eligible for being considered ‘monuments in public spaces’ according to the law; the conditions to establish public monuments and the ownership of these monuments.

Chapter II – establishing and protecting monuments in public space – contains three articles regulating the manner in which monuments of public space are established, the procedure to establish their protection zone and how protection of monuments in public space implies and is regulated.

Chapter III – National Council for monuments in the public space – introduces this new advisory body which is further regulated through Government Decision, establishes the profile, competences of the Council and remuneration of its members.

Chapter IV – the attribution of the central and local authorities – defines which are the obligations of MECR and of local authorities in the matter. Level-I local authorities are central in this process, as they are the ones which are entitled to propose the building of new monuments, whilst MECR and local authorities of level II have competences in keeping the register of national and local importance respectively. MECR has also control, advisory and inspection functions in the matter.

Chapter V – liability for breaching the present law – contains one article that establishes what are the forbidden activities and refers generally to civil, contraventional and criminal responsibility / liability of physical and juridical persons.

Chapter VI – transitional and final provisions – contains two articles that establishes the timeframe for the inventorying and documenting of the monuments in public space.

Following a rationalisation and inventorying process, in July 2018 the national Register of the monuments in public space has been approved. It includes 101 monuments distributed in 4 municipalities, 26 districts and two autonomous regions.

Preliminary observations and recommendations

The law on monuments in the public space is very specific and responds to the need of the Republic of Moldova to manage the monumental artworks inherited from its past and to crystallise common memories as an independent State. It is also a way to regulate the creation of new public artworks, as the statute of



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monument in public space. In this sense, this law is very interesting as it reflects specific needs of the country and reflect the distinction made at the beginning of the 20th century by Alois Riegl between commemorative monuments and historic monuments. On the other hand, this law suffers as other ones, of an excessive role given to the Government and to the Parliament and of an unclear sanctioning system (e.g., the exact articles of civil, contraventional and criminal codes are not mentioned in the law).

LAW ON THE PROTECTION OF THE NATIONAL MOVABLE CULTURAL HERITAGE N. 280/2011

The Law on the protection of the mobile cultural heritage contains 30 articles subdivided into ten chapters. It has been amended only recently, in 2017 and 2018, following the ministerial reform and the adoption of the Law on Museums, which envisaged changes in this Law.

Chapter I – general dispositions – contains six articles. The first sets out the object of the Law – regulating the legal status of the mobile cultural heritage as well as specific activities in the field. Article 2 defines the main notions in use in the law. Worth being mentioned are the definition of the national movable cultural heritage, which is very broad, as it encompasses *a set of mobile cultural goods, introduced in the national cultural heritage of exceptional historical, archaeological, documentary, ethnographic, artistic, scientific and technical, literary, cinematographic, numismatic, philatelic, heraldic, bibliophilic, cartographic, epigraphic, aesthetic, ethnological and anthropological value, representing material testimonies of the evolution of the natural environment and the relationship of man with this medium and the human creative potential*, and the definition of protection, which is defined as *a set of measures of a scientific, juridical, administrative, financial, fiscal and technical nature, meant to ensure identification, research, inventory, classification, preservation, security, maintenance, preparation, restoration and putting into value of the mobile national cultural heritage for democratic access to culture and the transfer of this patrimony to future generations*. Article 3 establishes that the responsible bodies for the protection of the national mobile cultural heritage include central and local authorities and specialised institutions, such as museums, art galleries, public and private collections, memorial houses, archives, libraries, religious cults, NGOs with attributions in field. The State on its end has the obligation to provide the material and financial means to implement the protection. Article 4 contains a long list of typologies that are eligible of being considered mobile cultural heritage: they span from archaeological heritage, manuscripts, musical instruments, cloths, designs and prototypes of designs, films, elements of ethnographic significance, rare specimens and collections related to natural sciences, achievements of popular technology, commemorative objects. Article 5 assigns the mobile cultural goods to Treasure, if of exceptional importance for humanity, and to Fond, if bearing national importance. Art. 6 regulates the right of ownership: movables can be either publicly or privately owned.

Chapter II – research, classification, inventory of national cultural goods – contains eight articles regulating these fields of activity. Article 7 establishes the aim of the research and that research on national cultural goods can be carried out only by specialised institutions. Article 8 sets out the procedure for the classification of movable cultural goods: it can be done ex officio if the goods belong are in public ownership or in which public administrations hold shares, movables in the ownership of religious entities, goods put on sale in auction and for which export certificate is requested, goods for which restoration is envisaged and those



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which are subject to penal investigation. In all other cases, classification has to be triggered by the request of the owner. The classification is preceded by a technical expertise, which is submitted for opinion to the National Commission of Museums and Collections. The decision to classify the object rests in the Ministry of Culture and it is approved by order. The article contains also several detailed provisions regulating the classification procedure in case the privatization of the object is envisaged as well as the rights/ duties pertaining protected objects.

Article 9 establishes the Register of mobile cultural heritage, regulates data sharing; the MECR is responsible for its creation, and includes objects for which the classification orders have been issued. Art. 10 regulates the classification of objects in private ownership. Article 11 sets out the conditions under which declassification is possible: it follows the same procedure as for classification. Particularly interesting is the procedure for appealing against classification/ declassification or upgrading/ downgrading the status of the movable object: the owner can appeal the MECR within 30 days since decision has been taken and MECR settles the appeal within the subsequent 30 days since the appeal registration. If the appellant is not satisfied, he/ she can apply to the competent court.

Chapter III – ensuring the security of national cultural heritage – contains two articles: art. 15 details the obligations of the owner or holder of protected movable cultural heritage, which include the installation of specialised devices to avoid burglary and to maintain the indoor climate adequate to the conservation of the objects. On the other hand, the owner of a protected object may benefit freely from the advice of specialised institutions. Article 16 regulates the executions of copies, moulds and facsimile.

Chapter IV – conservation and restoration of classified cultural goods – includes one article which establishes the criteria for intervention on protected monuments, restricted to accredited conservators and restorers, and defines the procedure for releasing and withdrawing the accreditation to professionals and laboratories. The necessary regulations have been approved within one year since the approval of the Law and the list of accredited conservators/ restorers is published on the website of the MECR.

Chapter V – circulation of cultural goods – contains two articles dealing with circulation, loans and commercialisation. Publicly owned classified movables cannot be alienated, therefore for them only the temporary export can be authorised. Contemporary works of art are not subject to classification and therefore no restriction applies for their temporary or definitive export, on the basis of accompanying documentation, essentially a declaration of the creator or a certificate issued by relevant bodies according to the specific cases. The sale of classified objects is subject to authorisation by MECR, which can exercise its right of pre-emption within 30 days since the registration of the offer.

Chapter VI – financing the protection of mobile cultural heritage – contains two articles which set out the financial arrangements for funding protection activity. The provisions establish that for publicly owned goods, the state and local authorities must guarantee within their budget allocations for the protection and conservation of mobile cultural goods and these need to be earmarked for this purpose. Donations and other extra budgetary resources are also admitted. Art. 21 is the only one, among the various laws, that envisages the possibility of the direct intervention of the state also on privately owned goods, in case of imminent danger threatening goods of exceptional importance (read Treasures): in order for the state to intervene, the owner must submit a declaration stating that he/ she has not the financial means for the conservation. In



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case of sale, after the restoration, the owner should reimburse the State of the expenditure borne for the restoration.

Chapter VII – protection system of the mobile cultural heritage – contains five articles setting out the repartition and hierarchy of responsibilities with regard to the protection of the mobile cultural heritage: the parliament provides the legislative framework, approves the national strategies and the funds from state budget, the government ensures the implementation of the state policy, approves the normative frameworks and the state programs for the implementation of the policies. MECR is responsible for the development and implementation of specific policies, programmes, strategies and norms, whilst local authorities cooperate with the central specialised authorities on the implementation of the programmes for protection, conservation, enhancement of the mobile cultural heritage. In article 23 the attributions of the MECR are clearly stated with sufficient detail. Article 24 and 25 are dedicated to the National Commission of Museums and Collections and its tasks, all typical of an advisory body. Article 26 establishes the tasks of the public services with responsibilities in the protection of mobile cultural heritage: these are clearly circumscribed and adequate for the purpose of guaranteeing the necessary activities at the base of protection of mobile cultural heritage.

Chapter VIII- restitution and recovery of illegally exported/ imported mobile cultural goods – contains two articles dealing with the matter.

Preliminary observations and recommendations

This law is one of the best prepared among the second generation of legal instruments concerning the protection of cultural heritage, along with the one on archaeological heritage. It is clearly articulated and written, the provisions are elaborated with an adequate level of detail and exhibit a clear understanding of the hierarchy and functions of the different political and administrative organisms.

In Chapter II, the classification procedure adopted for the movable goods appears appropriate as it envisages the right legal instrument – Ministerial order – to establish the protected status under the provisions of the law. Classification is at all effects, an administrative procedure. The law also rightly separates the moment of the issuance of the order – which sign the moment of the classification and the establishment of the protection regime – and the inclusion in the register, which requires the preparation of specific documenting evidence. Such an approach should be extended to immovable objects, thus facilitating the increase of immovable assets under the provisions of the law.

Article 9 on the appeal procedure is clearly delineated and could easily be transposed into other laws, and most usefully in the draft law on historic monuments, which has been resealed in its second revised version in early August 2018.

In particular, chapter VII on the attributions of the public authorities appears clearly set out and the most juridically sound, among all laws approved or drafted in the last ten years, in assigning the respective responsibilities to the political organisms. In particular, the Parliament, Government and MECR's responsibilities are correctly delimited to their proper powers and functions. Article 22 should be transposed in all other laws concerning the protection of cultural heritage.



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Notwithstanding the robustness of this Law, some weaknesses have been identified and should be carefully considered by the beneficiary Country.

First, there is a need to reinforce the current normative system by establishing a clear definition of cultural property, which is a fundamental prerequisite for the administrative and criminal enforcement of sanctions that should accompany many of the obligations stipulated in this legal tool for private and public owners. In the Moldovan legislative system there are several and different definitions of cultural goods. For instance, article 133 of the Criminal Code (Cultural Values) seems to have reference only to the cultural items as protected by the 1970 UNESCO Convention. It is, instead, necessary to have a uniform concept of cultural good in order to reach certainty about rights, obligations/duties for all the stakeholder, including public administrators. With regard to this, the European framework can help in establishing what could be protected. In other words, there should be the introduction of temporary and economic/value limits.

In particular, in article 2 the inclusion of the word exceptional in paragraph 1, let a) may lead to confusion and it would be better to remove it. In article 4, on the other hand, some specifications in terms of age, rarity, or exceptionality may be useful, as the provisions of this article set out the initial conditions for the distinction and future classification of the goods.

In article 5, the distinction between the goods to be included in "Treasure" due to their age, uniqueness, importance and rarity, to be considered unavailable assets for the humanity, and the goods to be included in "Fund", whose value is important for the Republic of Moldova, is useful, however it would need some further clarification. On the other hand, it seems seem contradictory mentioning the notion of "(iii) cultural goods of normal value", if these are not considered for classification and therefore not subject to the provisions of the law: Furthermore, it leads to confusion the notion of "(iv) contemporary cultural goods" which in turn can be of national exceptional/special/normal value (being their protection always the same).

Articles from 8 to 14 (Classification), from 15 to 17 and 19 (Security, Preservation, Restoration, Commercialization) seem to be very well structured and imply the establishment of new offices able to carry out the multiple tasks required by the classification procedures, the creation of registers, the authorizations for restoration works, the procedures of pre-emptive purchases, the contacts with agents authorized to sell cultural assets. The 30-days deadline set for exercising the pre-emption right referred to in paragraph 4 of article 19 seems too short. It is suggested to extend it to 60 days. A longer period of time would also involve other local institutions or public bodies interested in buying goods.

On the other hand, article 18, deserves a specific comment, which also relates to the draft regulations of the movement of cultural good elaborated in order to implement the provisions of the Government Decision no. 1472 of 30.12.2016, which transposes Regulation no. 116/2009/EC; and in order to implement the Culture Development Strategy "Culture 2020", approved by the Government Decision no. 271 of 09.04.2014 but also in accordance with Law no. 280 of 27.12.2011 on protecting the national cultural heritage.

In particular, the analysis of the draft regulations on the circulation of cultural goods has revealed the need to amend also the primary legislation because some of the provisions introduced in draft regulation, which is secondary legislation, have a higher, legal, rather than regulatory, status, and should therefore be introduced in the primary law. this reasoning also applies to the proposed creation of a ministerial export office in the Republic of Moldova



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The provisions concerning the tasks of the MECR are not fully detailed. This appears problematic, especially for what it concerns key duties related to importation-exportation operations and for the inherent responsibilities. With regard to this, it would be appropriate the creation of an Exportation Office, whose competences and organization will be dealt with in a separate report.

With regard to protection, there is a need to reinforce the current normative system, by introducing criminal protection of cultural heritage and reaction to its trafficking. Therefore, the Moldovan legal system should focus its attention on the possibility to provide for:

1. Specialized law enforcement bodies or units, having opportune procedural arrangements;
2. Targeted and detailed sanctions;
3. A clear definition of movable and immovable cultural property, which is a fundamental prerequisite for the administrative and criminal enforcement of sanctions that should accompany many of the obligations stipulated in the present draft for private and public owners.

In the present Moldovan legal system, there is not any provision on concerted international efforts, including emergency import agreements and bans to be adopted when the cultural heritage of a State Party is in jeopardy from pillage of archaeological or ethnological materials.

To carry out the tasks envisaged by the Law, there is a need to establish a specialized public institution / department subordinated to MECR which is responsible for administering movable cultural property classified in accordance with art. 8 paragraph 10. This institution/ department should also be responsible for the Register of national movable cultural heritage in accordance with article 9 paragraph 1).

Also the following tasks might be assigned to the above-mentioned new specialized institution/ department subordinated to MECR, thereby supporting also the work of the NCMC:

- Establishing/ maintaining/ updating the Register of accredited experts in the field of movable cultural goods;
- establishing/ maintaining/ updating the Register of accredited conservators and restorers in the field of movable cultural goods.
- starting classification procedures;
- setting the model for private owners' application to having their movable cultural goods classified and registered (article 10 paragraph 2), enacting (fiscal and other incentives) measures to favor requests by private citizens and legal or ecclesiastic institutions to come forward, requiring classification of the cultural goods they own/hold;
- triggering the procedure for exercising the pre-emption right referred to in paragraph 4 of article 19;
- approving the restoration projects and contracts presented by private individuals and legal entities of private law in accordance with the normative acts in force.
- approving the applications for laboratories and workshops for the preservation and restoration of national movable cultural goods presented by private individuals and legal entities of private law in accordance with the normative acts in force.

It would be also important to establish a Regulation on teaching standards in the field and on restoration schools' structure and skills.



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DRAFT REGULATION ON THE CIRCULATION OF MOVABLE CULTURAL GOODS (VERSION MARCH 2018)

The present considerations respond to the request by the Moldovan authorities that the Twinning project provide inputs and suggestions on the draft of Regulation on the movement of mobile cultural goods currently under discussion.

The Twinning Project believes that a new regulation devoted at protecting the Moldavian cultural heritage in one of its crucial moments, such as that of its exportation and importation operations, is not only welcomed but also necessary because often cultural goods come to be firstly known during their import-exportation operations.

With regard to this, it is important to stress that many international normative tools are focused on cultural goods exportation. They are encouraging States “to give particular attention to the issue, form and security of the export certificate and to ensure close liaison between the customs authorities, heritage managers and police officers for its control and reliability”².

Article 6 to the UNESCO 1970 Convention is the fundamental provision, and this Treaty underlines that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property. Control movement of cultural property should be realized mainly through: 1) Laws and regulations designed to secure the prevention of the illicit import, export and transfer of ownership of important cultural property, considering illicit all the import/export operations effected contrary to the provisions adopted under the Convention; 2) The prohibition of the exportation of cultural property, unless accompanied by an export certificate, and the advertising of this prohibition by appropriate means, particularly among persons likely to export or import cultural property; 3) A duty to inform the State of origin of an offer of cultural property illegally removed from that State; 4) The imposition of penalties or administrative sanctions on any person responsible for infringing some of the above-mentioned prohibitions; 5) Concerted international efforts, including emergency import agreements and bans to be adopted when the cultural heritage of a State Party is in jeopardy from pillage of archaeological or ethnological materials; 6) The restriction by education, information and vigilance of movement of cultural property illegally removed from any State Party, obliging antique dealers to inform the purchaser of the cultural property of the export prohibition; and 7) Ruling as illicit the export of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power.

Regional normative tools such as the Regulation and the Directive in force as instruments of the European Community also envisage export/import certificates³. The Model treaty for the prevention of crimes that

² See, Guideline 62 of the Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Properties (Paris, 1970), adopted by consensus on 18 May 2015 by the Meeting of States Parties to the 1970 Convention.

³ See, EC Regulation 3911/92 and the Directive 93/7/EC, as amended.



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infringe on the cultural heritage of peoples in the form of movable property, as approved by the United Nations 8th Congress on crime and criminal justice, held in 1990, also requires a system of export/import certificates.

The above-mentioned international normative tools create a regime composed of recommendations as well as prohibitions, which should make illicit and/or highly suspicious the contravening conducts.

The introduction of an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized is a basic and fundamental operative tool. Export/import certificates are considered fundamental also by the UNIDROIT Convention. Article 6 states: “...In determining whether the possessor knew or ought reasonably to have known that the cultural object had been illegally exported, regard shall be had to the circumstances of the acquisition, including the absence of an export certificate required under the law of the requesting State”. The UNESCO Handbook also takes export certificates into account. At European level, they are also envisaged by the *Council of Europe Convention on Offences relating to Cultural Property*, as adopted in Nicosia, on 3 May 2017, and by the “Final Report and Recommendations to the Cultural Affairs Committee on improving the means of increasing the mobility of collections” OMC Expert Working Group on the mobility of collections, of June 2010 (see, in particular, Recommendations 25, 28 and 36).

States should consider, when appropriate, the absence of a valid export certificate accompanying an imported cultural object as a criminal offence and/or as the basis for mandatory reporting the cultural property as suspicious to competent authorities in the State of origin. At times, it will be necessary to verify the procedures for export certificate release. Law enforcement bodies are often in great difficulties in performing such checks. This is a time-consuming task requiring expertise. States need to take into account the necessary resources required to do this function properly. There should be also the direct criminalization of all the illegal export/import operations. This crime should be considered a legislative backup to catch material that has been otherwise illicitly traded. For developing States and for occupied territories in the event of armed conflict, is, in fact, impossible to patrol fully their borders and prevent the exit of cultural goods. Clandestine excavation or wrongful alienation may be difficult to prove. Evidence of illegal operations of import/export is instead easily collected. The importation of a cultural good not covered by an export certificate or licence by the State of origin should be everywhere seriously punished as a concrete infringement of that public international order well settled in the cultural field. With the consequence that all the transactions of the cultural good illegally exported or imported should be considered null and void. These principles are also upheld by the above-mentioned Operational Guidelines⁴.

⁴In particular, Guideline 58 suggests that “...State Parties should prohibit the entering into their territory of cultural property, to which the Convention applies, that are not accompanied by such export certificate”. The absence of “... the export certificate should make illicit the import of that cultural property into another State Party, as the cultural property has not been exported legally from the country affected”. Similar recommendations are also provided by Guidelines 57, 64 and 89. In order to give effective implementation to the export restrictions of the State of origin, there should be the obligation to declare at customs any cultural object. Any object that has been illegally exported should be seized by the importer country. Dealers and other stakeholders should also refrain from acquiring cultural goods of foreign provenance when these items are not accompanied by an export certificate of the country of origin. In this regard, Guideline 71 of the above-mentioned Operational Guidelines encourages States to give special attention to “... sales, including by introducing national legislation, where appropriate, to ensure that the cultural properties involved has been licitly imported, as documented by a legally issued export certificate, to inform the State of origin of the properties of any doubts in this regard, and to put in place the appropriate interim measures....”.



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It would be also useful for certificates authorizing the exportation and possibly the importation of cultural goods, to be as detailed and clear as possible in depicting and describing the item, its dimensions, characteristic, origin or provenance and its cultural and economic value. Certificates of exportation should be recognized through commercial and customs agreements with nations. Photographs of the object should accompany the so-called forms of exit and entrance for cultural goods.

Consideration should be given to using the model export certificate or similar existing certificates. Due to its importance in fighting trafficking, a model export certificate has been jointly developed by the UNESCO and the WCO⁵. Below and in the next page the Model Export Certificate for Cultural Objects as recommended by WCO is presented:

MODEL EXPORT CERTIFICATE FOR CULTURAL OBJECTS																			
Each heading must be completed, except headings 2, 12 and 18 if they do not apply																			
1	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; padding: 5px;">1. Beneficiary applicant requesting the exportation (name and address)</td><td style="width: 50%; padding: 5px;">2. Beneficiary applicant's representative (name and address)</td></tr><tr><td style="padding: 5px;">3. Issuing authority (name and address)</td><td style="padding: 5px;">4. Export authorization No. _____ Duration: _____ From: ____ / ____ / ____ Country of destination: _____</td></tr><tr><td style="padding: 5px;">5. Initial consignee (and subsequent consignee(s) if known (name and address))</td><td style="padding: 5px;">6. Type of export Permanent export Temporary export Time limit for re-importation: ____ / ____ / ____</td></tr><tr><td colspan="2" style="padding: 5px;">7. Owner of the cultural object (name and address)</td></tr></table>	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)	3. Issuing authority (name and address)	4. Export authorization No. _____ Duration: _____ From: ____ / ____ / ____ Country of destination: _____	5. Initial consignee (and subsequent consignee(s) if known (name and address))	6. Type of export Permanent export Temporary export Time limit for re-importation: ____ / ____ / ____	7. Owner of the cultural object (name and address)											
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7. Owner of the cultural object (name and address)																			
8	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 100%; padding: 5px;">8. Photograph of the cultural object : 9 x 12 centimeters minimum <div style="border: 1px solid black; height: 150px; margin: 10px 0;"></div></td></tr><tr><td colspan="2" style="padding: 5px;">(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp)</td></tr></table>	8. Photograph of the cultural object : 9 x 12 centimeters minimum <div style="border: 1px solid black; height: 150px; margin: 10px 0;"></div>	(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp)																
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(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp)																			
9	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; padding: 5px;">9. Dimensions and net weight of the cultural object (possibly with its stand)</td><td style="width: 50%; padding: 5px;">10. Inventory number or other identification <input type="checkbox"/> Inventory : No. <input type="checkbox"/> No existing inventory <input type="checkbox"/> Other classification : No. <input type="checkbox"/> No other existing classification</td></tr><tr><td colspan="2" style="padding: 5px;">11. Description of the cultural object (a) Type : _____ (e) Geographical origin : _____ (b) Author /co-author: _____ (f) Dating : _____ (c) Title or, failing that, subject matter : _____ (g) Other information for identification purposes: _____ (d) Scientific name if there is one: _____</td></tr><tr><td style="padding: 5px;">12. Number of cultural objects in the collection Presented : _____ Not presented : _____</td><td style="padding: 5px;">13. Copy, attribution, period, studio and/or style</td></tr><tr><td colspan="2" style="padding: 5px;">14. Material(s) and Technique(s)</td></tr><tr><td colspan="2" style="padding: 5px;">15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :</td></tr><tr><td colspan="2" style="padding: 5px;">16. Legal status and use of the cultural object Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (please specify) : _____ Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) : _____</td></tr><tr><td colspan="2" style="padding: 5px;">17. Attached documents /special identification methods <input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) : _____ <input type="checkbox"/> List <input type="checkbox"/> Catalogue <input type="checkbox"/> Seal <input type="checkbox"/> Valuation documents</td></tr><tr><td colspan="2" style="padding: 5px;">18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)</td></tr><tr><td style="padding: 5px;">19. Application I hereby apply for an export authorization for the cultural object described above and declare that the information in this application and the supporting documents is true. Place and date : _____ Signature : _____ (Position and name of signatory)</td><td style="padding: 5px;">20. Signature and stamp of issuing authority Place and date : _____</td></tr></table>	9. Dimensions and net weight of the cultural object (possibly with its stand)	10. Inventory number or other identification <input type="checkbox"/> Inventory : No. <input type="checkbox"/> No existing inventory <input type="checkbox"/> Other classification : No. <input type="checkbox"/> No other existing classification	11. Description of the cultural object (a) Type : _____ (e) Geographical origin : _____ (b) Author /co-author: _____ (f) Dating : _____ (c) Title or, failing that, subject matter : _____ (g) Other information for identification purposes: _____ (d) Scientific name if there is one: _____		12. Number of cultural objects in the collection Presented : _____ Not presented : _____	13. Copy, attribution, period, studio and/or style	14. Material(s) and Technique(s)		15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :		16. Legal status and use of the cultural object Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (please specify) : _____ Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) : _____		17. Attached documents /special identification methods <input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) : _____ <input type="checkbox"/> List <input type="checkbox"/> Catalogue <input type="checkbox"/> Seal <input type="checkbox"/> Valuation documents		18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)		19. Application I hereby apply for an export authorization for the cultural object described above and declare that the information in this application and the supporting documents is true. Place and date : _____ Signature : _____ (Position and name of signatory)	20. Signature and stamp of issuing authority Place and date : _____
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Fig. xy. UNESCO – WCO Form of Export Certificate for Cultural goods. The form is accessible at http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/cultural-heritage/model-export-certificate-unseco_wco.pdf?la=en.

⁵ The United Nations Economic and Social Council (ECOSOC) have upheld similar provisions. In 2009, this Council, thanks to a group of experts, created a set of recommendations for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property. They include the recommendation to prevent the transfer of illicitly trafficked cultural property. They require “better regulating the export of cultural objects by using, as appropriate, the model export certificate designed by UNESCO and WCO”. These provisions encourage the reporting, when feasible and preferably to the International Criminal Police Organization (INTERPOL), of “information on losses of cultural property, using, as appropriate, the Object-ID international standard to facilitate prompt circulation of information in case of crime”. Those ECOSOC recommendations have been transformed into guidelines. A model export certificate is also upheld by the International Guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property and other related offences, as approved on 16 May 2014. In particular, Guideline 9 requires that “States should consider, in accordance with the relevant international instruments, introducing and implementing appropriate import and export control procedures, such as certificates for export and import of cultural property”.



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This model comprises five copies, which must be filled in legibly for each cultural object, without overwritten text, erasures or alterations. They should preferably be completed using a mechanical or electronic typewriter. *Copy No. 1* is to be retained by the issuing authority; *Copy No. 2* is to be presented, in support of the export declaration, to the Customs export office and to be retained by the applicant requesting the exportation (or his representative); *Copy No. 3* is to be presented to the Customs export office and then to accompany the consignment to the Customs office at the point of exit from the country. After endorsement by the Customs service, this copy is returned to the issuing authority by Customs, or by the applicant requesting the exportation or his representative. *Copy No. 4* is to be retained by the Customs export office (or the Customs office at the point of exit from the country); *Copy No. 5* is to be presented to the Customs export office and then to accompany the consignment to the Customs office at the point of exit from the country. After endorsement by the Customs service, it accompanies the cultural object and must be presented at importation in the country of destination to certify the legality of the export operation.

Below the guidance for the compilation is reported as presented in the Model:

<p>2. Headings</p> <p><u>Heading 1</u> : <i>Beneficiary applicant requesting the exportation</i> : Full name and address. The applicant requesting the export authorization (e.g. museum, art dealer, gallery or individual) may or may not be the owner of the cultural object (if the regulation so permits).</p> <p><u>Heading 2</u> : <i>Beneficiary applicant's representative</i> : Full name and address of the legal or authorized representative (e.g. carrier, forwarding agent, authorized agent or other). To be completed only when such a representative exists.</p> <p><u>Heading 3</u> : <i>Issuing authority</i> (heading for issuing authority only) : Name and full address of the competent authority issuing the authorization.</p> <p><u>Heading 4</u> : <i>Export license</i> (heading for issuing authority only) : Indicate the authorization number, its duration (in months or years), the date from which export is authorized and the country of destination.</p> <p><u>Heading 5</u> : <i>Initial consignee (and subsequent consignee(s) if known)</i> : Full name and address of the consignee(s) of the cultural object (e.g. museum, art dealer, gallery or individual). Continue on supplementary pages if necessary.</p> <p><u>Heading 6</u> : <i>Type of export</i> (heading for the issuing authority only) : Tick the appropriate heading. If it is a temporary export, the time limit for re-importation of the cultural object must be indicated.</p> <p><u>Heading 7</u> : <i>Owner of the cultural object</i> : name (e.g. museum, art dealer, gallery or individual) and full address.</p> <p><u>Heading 8</u> : <i>Photograph of the cultural object</i> (in colour and minimum 9 x 12 centimeters) : To be stuck on to the form. The issuing authority must validate the photo by signing and stamping it. The issuing authority is invited to request other photos, taken from different angles, for three-dimensional objects.</p> <p><u>Heading 9</u> : <i>Dimensions and net weight of the cultural object (possibly with its stand)</i> : The unit of measurement for these dimensions is in meters or centimeters, in the following order : height, width, depth and diameter if appropriate. For the net weight of the cultural object (possibly with its stand), the unit of measurement is kilograms or grams.</p> <p><u>Heading 10</u> : <i>Inventory number or other identification</i> : Tick the appropriate heading(s). Enter the inventory number of the cultural object within the establishment or collection of origin. If no inventory exists, specify this for the cultural object at issue and enter the number of any other existing specific or by category classification.</p>	<p><u>Heading 11</u> : <i>Description of the cultural object</i>: Apart from identification by number (inventory or other, see heading 10), describe the cultural object by:</p> <p>(a) its precise nature (e.g. painting, statue, low-relief);</p> <p>(b) its possible author or co-authors, if known and/or documented. If the author is unknown, indicate : name unknown. Specify if the work is signed (signature, monogram) and in what part;</p> <p>(c) its precise title or, failing that, the subject matter it represents :</p> <p>- <u>Title</u> : The title to be used is the official one, i.e. that listed in an inventory of cultural property or by the national heritage and cultural property authorities. The title should be given: (1) in the author's original language or, failing that, in the language of the catalogue; (2) in the language of the form.</p> <p>Example : Painting by Munch from the museum in Oslo (Norway)</p> <p>(1) In the original language : SKRIK</p> <p>(2) In the language of the form (English) : The SCREAM.</p> <p>It is very important to give the exact title, especially for books.</p> <p>- <u>Subject matter</u> : for paintings, mention portrait, landscape, still life, etc. For furniture, specify: armchair, commode, wardrobe, etc. If it is a statue: dancer, bishop, musician, etc. For a religious or liturgical object: chalice, paten, ciborium, etc.</p> <p>(d) its scientific name (especially for natural science collections and specimens), if one exists,</p> <p>(e) its geographical origin,</p> <p>(f) Dating (as accurately as possible),</p> <p>(g) Any other useful information that could facilitate its identification. Specify, for example, if restoration work has been carried out, if certain elements or parts of the object are missing, damaged, cracked, etc. Indicate the issue number for bronze castings, sculptures and works such as lithographs and engravings.</p> <p>For collections comprising several items forming a homogenous whole (e.g. archaeological finds with similar dates found during the same excavation), a general description of the above characteristics, together with a list of objects and/or a certificate from the competent scientific or archaeological organization or institute.</p> <p>Continue on supplementary pages if necessary.</p>
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<p>Heading 12 : <i>Number of cultural objects in the collection</i> : If the cultural objects presented at export form a homogenous whole making up part of a collection, specify their number and the number of other objects in the collection not presented at export (if applicable).</p> <p>Heading 13 : <i>Copy, attribution, period, studio and/or style</i> : If they are copies, indicate the author or authors copied. If the work is simply attributed to one author, indicate "attributed to"</p> <p>Attributed to : Followed by an author's name, guarantees that the work was produced during the lifetime of the author mentioned and that there are serious reasons for believing he was the author.</p> <p>If the author is unknown, indicate the studio, school, style and period (e.g. Velasquez's studio, Venetian school, Louis XV or Victorian style, Ming period, etc.). For printed documents, indicate the editor's name.</p> <p>Studio : Followed/preceded by the author's name, indicates that the work was produced in his studio or under his leadership.</p> <p>School : Expression which, when followed by the author's name, indicates that the author was a pupil of the master. These terms may only be applied to a work produced during the author's lifetime or within 50 years of his death.</p> <p>Heading 14 : <i>Material(s) and technique(s)</i> : Great care should be taken when completing this heading; indicate the materials used and specify the technique employed (e.g. oil painting, woodcut, charcoal or pencil drawing, low wax casting, nitrate films, etc.).</p> <p>Heading 15 : <i>Value of the cultural object in the country of exportation</i> : Indicate the actual values or, failing that, an estimated value on the basis of reasonable criteria, in the national or reference currency (in this case, indicate the currency).</p> <p>Heading 16 : <i>Legal status and use</i> : Specify whether the cultural object presented at export has been sold, loaned, exchanged or other, and whether it is being exported for an exhibition, appraisal, research, repair or any other use.</p> <p>Heading 17 : <i>Attached documents/Specific methods of identification</i> : Tick the relevant heading.</p> <p>Heading 18 : <i>Supplementary pages</i> : Indicate the number of supplementary pages used, if any.</p>	<p>Heading 19 : <i>For copy (1) : Application</i> : Must be completed by the applicant requesting the exportation or his representative, who undertakes to provide accurate information in the application and the attached supporting documents. <i>For copies (2), (3), (4) and (5) : Endorsement by the Customs export office</i> : to be completed by the Customs export office. This means the office where the export declaration is presented and the export formalities are completed.</p> <p>Heading 20 : <i>Signature and stamp of issuing authority</i> : To be completed by the competent authority, specifying the place and date on the five copies of the authorization.</p> <p>Heading 21 : <i>Endorsement by the Customs exit office</i> : For copies 3, 4 and 5 only. To be completed by the Customs exit office, bearing the date. Customs exit office means the last Customs office prior to the exit of the objects from the country.</p>
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Fig.xx. Guidelines for the compilation of the Export Model endorsed by UNESCO and WCO. The document is accessible at http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/cultural-heritage/model-export-certificate_-unseco_wco.pdf?la=en.

The model presented above is widely accepted as an operational tool. It has been specially adapted to the growing phenomenon of cross-border movements of cultural items. It can be useful to law enforcement bodies as it enables them to check effectively against transnational, illicit dealings.

In order to avoid forgery⁶ and corruption, a notation should be made in a specific register of the country of export noting the date of the export certificate, a description of the cultural good and the name of the responsible officer who has issued the certificate. This record⁷ should be at disposal of a customs officer in another country whenever they are verifying the export certificate validity. A copy of the full export

⁶ See, Guideline 60 of the above-mentioned Operational Guidelines. Competent authorities should contemplate the securitization (anti-counterfeiting and anti-forgery) of the certificates and licenses that authorize the export of goods.

⁷ The record should also include all items for which the export denial was issued.



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certificate could also be sent to the foreign customs office if agreements were to establish such opportune exchange of information. A copy of the export certificate should also be retained in the country of export⁸.

Law enforcement bodies should be trained in the export control checks and their specific issues, having frequent coordination meetings so that they well understand services' processes. They should have updating sessions to ensure that they will properly perform their duties concerning the identification of cultural heritage, viewing at its proper control as a major priority.

National heritage services should publicize their export control list for cultural goods and communicate it to other States in order to enhance their cooperation⁹.

Special attention should be given to the official inventory realized through "categories of types of cultural objects.....categorized by region and epoch or any other suitable reference". The lists "should be made readily available for the customs authorities of other States Parties and other relevant authorities and entities"¹⁰.

Guidelines 1 and 41 to the above-mentioned International Guidelines require the development of databases of cultural property for the purpose of protection against its trafficking. They also require "the exchange of information on trafficking in cultural property and related offences by sharing or interconnecting inventories of cultural property and databases on trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property, and/or contributing to international ones". Databases/platforms and national statistics focused on the international circulation of cultural goods are very important. The use of databases and of statistic can improve the law enforcement bodies responses and in the end the effectiveness of recovery of illegal traded cultural items. Via their national services, States should improve the reporting mechanisms on a national/international level and give publicity through mass-media communication. The result will be that a cultural object comes to be unmarketable and that his/her/its holder will surrender it without compensation.

Data-bases should be developed in such a way that illicitly exported/imported cultural property should be immediately inserted. They could be clearly identifiable through its photographic documentation. Where the object was never registered (as in case of looted archaeological items), any available information should be inserted in the database. These databases should be interconnected to other national and international databases. They should be available to the public with a system of registration or secured access for professionals and private individuals. Consultation of such databases before any professional activity should be required.

⁸ See, Guideline 59 of the above-mentioned Operational Guidelines.

⁹ Guideline 39 of the above-mentioned International Guidelines exhorts States at "cooperating in identifying, tracing, seizing and confiscating trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property".

¹⁰ See Guidelines 20, 34, 35, 37, 63 and 108 of the above-mentioned Operational Guidelines. In brief, these Guidelines suggest applying the ICOM Red Lists protective initiatives. These lists should be made available especially to the authorities that are in border countries or in transit and market nations.



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In Moldova, collecting of statistics on movements of cultural goods has not reached any valuable level. The above-mentioned International Guidelines require that “States should consider: (a) Introducing or improving statistics on import and export of cultural property ...”¹¹.

It is important to establish “risk analysis with customs to prevent the illicit import and export of cultural property as well as exchange of information and best practices among each other”¹². A systematic data collection on exported and imported cultural goods, their country of origin/provenance and destination, their characteristics and the dealers involved can provide valuable information on market trends. They can also enhance international cooperation and assist also proactive investigations by law enforcement bodies.

General remarks to the current legislation on circulation of cultural goods

The efforts accomplished by the authors of the above-mentioned draft represents, undoubtedly, an important step and indicates a real commitment to improve the effectiveness of heritage protection. However, it is considered opportune to draw the attention on the following aspects:

The existing legal framework is not completely satisfactory, and some of its provisions appear problematic, especially for citizens, interpreters and public administrators. The latter could be, in fact, induced to resort to praxis not always in line with a correct protection of the cultural heritage. It is particularly evident that the cultural good as concept should be well specified in order to reach certainty about rights, obligations/duties for all the stakeholder, including public administrators.

The present draft should fully implement the ad-hoc provisions of: (i) The UNESCO convention over the measures that follow to be taken for the prohibiting and impeding unlawful operation of import, export and property transfer of heritage goods, Paris, 04.11.1970, adhered on 14.09.2007; (ii) The Convention for protecting cultural goods in case of armed conflict, along with Regulations of executing, adopted in The Hague, on May 14, 1954 and the Protocol at The Hague Convention, 1954, adhered on 09.12. 1999. The European legal framework and the existing Recommendations, Guidelines and Resolutions as mentioned in the preamble to this commentary report should be also pondered in each of their suggestions. It is not a secondary aspect that, according to Article 8 of the Constitution of the Republic of Moldova, “*the Republic of Moldova pledges to respect ... the treaties to which it is a party, to observe ... the unanimously recognized principles and norms of international law. The coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter*”. Therefore, the principles enshrined in the above-mentioned Conventions have at least a constitutional value according to the Moldavian legal system, which is pledged to modify its Constitution and -obviously- all the other subordinated legislation whenever existing legal tools do not abide such principles.

¹¹ See, *Guideline 3*.

¹² See, *Guideline 79 of the above-mentioned Operational Guidelines*.



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DRAFT REGULATION ON THE MOVEMENT OF MOVABLE CULTURAL GOODS (VERSION JULY 2018)

The specialised directorate of the MECR has revised the draft regulation on the circulation of cultural goods and has published it on the platform www.particip.gov.md to gather commentaries from all parties concerned. The deadline for the public to provide comments was 18 July 2018

The MS STEs who have provided comments and suggestions to the first draft have provided further comments on the second draft. They have been shared with the representatives of MECR on 20 August 2018 and are summarized below.

Despite the improvements made to the draft regulation, following the cooperative dialogues with the STEs, the current legal and proposed regulatory framework for the circulation of cultural goods are still not completely satisfactory, and some of its provisions appear problematic, especially for citizens, interpreters and public administrators. In particular, this concerns the lack of a time- and of a value- threshold and the lack of adequate detail of the competences of the MECR. The recommendation concerning the creation of an Export Office within the structures of the MECR remains valid. In order to reduce the burden of its work, the Office can rely, whenever necessary, on the expertise of the staff of other public institutions, such as museums, the ICH, the NAA, only to name a few. If such an Export Office were to be established, all competences should be attributed to it, which -in brief- will be tasked with examining works asked for export/ import and releasing certificates authorizing exportation and importation of cultural goods, elaborating and keeping statistic on the trafficking of cultural objects and providing also training for customs officers.

The system in force and further detailed through the draft regulation appears problematic, especially for what it concerns key duties related to importation-exportation operations and for the inherent responsibilities.

At the same time, there is not any provision on precise obligations to be imposed to antique dealers, required to inform clients on the cultural property export prohibitions.

It is also important to underline that in the Moldovan legislative system there are several and different definitions of cultural goods; and the cultural items listed in the draft Regulation are not always the same as indicated in other existing legislation. In particular, it is important to insert a time and an economic value threshold, which is specifically requested by the recently approved Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State and of the Regulation 116/2009 on the export of cultural goods.

At the same time, the present normative system seems rather complicated. The legislation in force, in fact, divides cultural goods into 4 categories, that is: 1) Cultural goods of national exceptional value (treasures); 2) Cultural goods of national special value (funds); 3) cultural goods of normal value (not classified); 4) contemporary cultural goods which in turn can be of national exceptional/special/normal value. However, their protection does not appear sufficiently graduated and distinct.



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Further, certificates of exportation should be released following closely the requirements as established by the model export certificate that has been jointly developed by UNESCO and the WCO. In particular, it is of utmost importance that in the template the applicant is required to specify: (i) If the object is part of a collection; (ii) where the object will be imported (country of destination); (iii) The value of the object, in order to establish, via primary legislation, the preemptive rights by the State.

In order to improve international cooperation and help foreign customs offices to detect illicit import-export operations, the final export certificate should be translated in the language of the destination country. Moreover, the procedures for the release of the exportation licenses should contain provisions allowing the time limits to be suspended and/or prolonged in specific situations (for instance, examination of the item and verification of documentation everywhere there are difficulties, observations to be discussed with the applicant, etc.).

There could be also provisions regarding modern way of promoting schemes that reduce the costs of mobility of collections/single goods (for instance, indemnity schemes; avoiding the cost of commercial insurance; shared liability for loans; avoiding loan fees). There could be also provisions on the release of declarations by the foreign competent authorities that the object shall be considered immune by restraining orders during the loan-period (a special approval by the Minister of Education, Culture and Research shall be necessary when such declaration is missing).

The validity of the temporary export certificate could exceed the time established by the present legislation only when the exportation office is allowed checking the cultural good conditions and state of conservation. To properly make this possible, the object shall be put at disposal of officer of the exportation administration and the cost of the service shall be paid by the applicant.

In line with a sound policy for loans, as recommended by the international normative system, the extension of the period for which the temporary export certificate shall be issued, could be prolonged.

The sanctioning of illegal import-export operations should be well structured, harmonizing administrative/penal customs violations with other criminal specific sanctions. Not only. The confiscation of the object involved in illicit exportation and importation attempts should be mandatory and imprescriptible. There should be also the shifting of the *onus probandi* from the controller to the exporter/ importer / applicant, and confiscation orders could be enacted -as appropriate- without final conviction and ordered when the value of the property is disproportionate to the lawful income of the convicted person and the property in question is derived from criminal conduct. Confiscation from a third party could be also possible if third party knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value. In case the object shall not be subject to confiscation, the exporter and the owner shall be liable to pay the amount value of the object. Obviously, such structural reforms need a primary legal tool, and cannot be stipulated in the frame of a regulation.

The draft should be amended, and photos of the object should always accompany the object itself. Further, an electronic database should be created and include export certificates issued, denied and of the objects that are spotted abroad, being illegally exported.



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Furthermore, there is not a clear definition of contemporary cultural goods which is a fourth category of cultural goods. At the same time, the legislation in force is too demanding and require much formalism. All this could hinder the free circulations of artists, at the same time limiting incomes resulting in tourists spending in art products.

Details of the suggested amendments are provided at the end of this report in the chapter “List of the relevant laws, regulations and bylaws with insufficient provisions or in need of amendments”.



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LAW ON MUSEUMS N. 262/2017

The Law on Museums provides for the legal framework governing the establishment and functioning of Museums in the Republic of Moldova. The present Law replaces the former *Lege muzeloor* n.1596 of 27.12.2002. The act has been approved by the Parliament on in December 2017 and entered into force on 12th April 2018. Even if very similar by structure with the previous law, there are many relevant differences. Comparing the summary is useful to the purpose.

The new act consists of 27 articles structured in 9 different chapters and outlines the conceptual, juridical administrative framework for museum.

Below a table comparing the structure of the previous Law n. 1596/2002 and the Law in force n. 262/2017 is provided as a reference for the observations that emerge from the analysis of the two texts.

Old Law		New Law	
Romanian version	English version	Romanian version	English version
<p>Lege Muzeelor n. 1596 din 27.12.2002 [omissis]</p> <p>Capitolul I DISPOZIȚII GENERALE Art.1. - cadrul juridic general a muzeelor în Republica Moldova. Art.2. - condiții egale Art.3. - (1) Legislația în domeniul muzeelor Art.4. - noțiuni</p> <p>Capitolul II MUZEELE Art.5. - Muzeele Art.6. - Muzeele exercită funcțiile</p> <p>Capitolul III PATRIMONIUL MUZEAL Art.7. - (1) Patrimoniul muzeal Art.8. – tipul patrimoniului muzeal Art.9. – categorie muzeelor Art.10. - Completarea patrimoniului muzeal Art.11. - Se transmit muzeelor aflate în proprietate publică a statului, în modul stabilit de lege: Art.12. - Completarea patrimoniului muzeal aflat în proprietate privată Art.13.- (1) Registrul de stat al patrimoniului cultural mobil Art.14. - Restaurarea bunurilor culturale din patrimoniul muzeal Art.15. - (1) Utilizarea bunurilor culturale din patrimoniul muzeal</p> <p>Capitolul IV ORGANIZAREA ȘI FUNCȚIONAREA MUZEELOR Art.16. - Organizarea muzeelor Art.17. - Factorii constitutivi ai unui muzeu Art.18.Registrul muzeelor din Republica</p>	<p>Law of Museums No. 1596 of 27.12.2002 [omissis]</p> <p>Chapter I GENERAL DISPOSITIONS Article 1. –scope and purpose of the law Article 2. –equality of conditions. Article 3. - (1) The legislation in the field of museums Article 4. - Definitions</p> <p>Chapter II MUSEUMS Article 5. - Museums definition Article 6. - Museums functions</p> <p>Chapter III MUSEUM PATRIMONY Article 7. - (1) The museum heritage Article 8. – Types of museum heritage Article 9. –categories of museums Art.10. - Completion of the state-owned museum heritage Art.11. –further methods of acquisition of state museum heritage Art.12. - Completion of the private property heritage Art.13. - (1) State Register of Mobile Cultural Heritage, Art.14. - The restoration of cultural goods from the Moldovan heritage Art.15. - (1) The use of cultural goods in the museum heritage</p> <p>Chapter IV ORGANIZATION AND FUNCTIONING OF MUSEUMS Art.16. - The organization of museums Art.17. - The constituent factors of a museum Art.18. Register of Museums</p>	<p>Lege Muzeelor n. 262 din 7.12. 2017 [omissis]</p> <p>Capitolul I DISPOZIȚII GENERALE Articolul 1. Obiectul legii Articolul 2. Noțiuni principale</p> <p>Capitolul II MUZEELE Articolul 3. Organizarea muzeelor Articolul 4. Funcțiile muzeelor Articolul 5. Clasificarea muzeelor</p> <p>Capitolul III ÎNFIINȚAREA ȘI ACREDITAREA MUZEELOR Articolul 6. Înființarea muzeelor Articolul 7. Înregistrarea instituției muzeale Articolul 8. Acreditarea instituțiilor muzeale Articolul 9. Revocarea acreditării, reorganizarea și desființarea muzeelor</p> <p>Capitolul IV PATRIMONIUL MUZEAL Articolul 10. Drepturi asupra patrimoniului muzeal Articolul 11. Categoriile patrimoniului muzeal Articolul 12. Formarea colecțiilor muzeale proprietate publică Articolul 13. Condiții specifice de completare a colecțiilor muzeale proprietate publică Articolul 14. Formarea colecțiilor muzeale proprietate privată Articolul 15. Restaurarea patrimoniului muzeal Articolul 16. Circulația patrimoniului muzeal</p> <p>Capitolul V</p>	<p>Museum Law n. 262, of 7.12.2017 [omissis]</p> <p>Chapter I GENERAL DISPOSITIONS Article 1. Subject matter of the law Article 2. Main notions</p> <p>Chapter II MUSEUMS Article 3. Organization of museums Article 4. Functions of museums Article 5. Classification of museums</p> <p>Chapter III ARCHITECTURE AND ACCREDITATION OF MUSEUMS Article 6. Establishment of museums Article 7. Registration of the museum institution Article 8. Accreditation of museums Article 9. Revocation of accreditation, reorganization and the abolition of museums</p> <p>Chapter IV MUSEUM PATRIMONY Article 10. Rights on museum heritage Article 11. The categories of museum heritage Article 12. Formation of public property museum collections Article 13. Specific conditions for the completion of public museum collections Article 14. Formation of privately owned museum collections Article 15. Restoration of museum heritage. Article 16. Circulation of museum heritage</p> <p>Chapter V</p>



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<p>proprietatea publică a statului Art.29. - (1) Finanțarea muzeelor aflate în proprietatea publică a Autorităților administrației publice locale</p> <p>Capitolul X REORGANIZAREA ȘI LICHIDAREA MUZEELOR Art.30. - (1) Reorganizarea și lichidarea muzeelor</p> <p>Capitolul XI RESPONSABILITATEA PENTRU ÎNCĂLCAREA PREZENTEI LEGI Art.31. –</p> <p>Capitolul XII DISPOZIȚII FINALE Art.32. - Guvernul, în termen de 3 luni, va aduce actele sale normative în conformitate cu prezenta lege.</p>	<p>Art.29. - The financing of local public museums</p> <p>Chapter X REORGANIZATION AND LIQUIDATION OF MUSEUMS Art.30. - (1) Reorganization and liquidation of museums</p> <p>Chapter XI RESPONSIBILITY FOR BREACH OF THIS LAW Art.31. –</p> <p>Chapter XII FINAL PROVISIONS Art.32. - The Government will, within 3 months, bring its normative acts in accordance with this law.</p>		
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Preliminary observations and recommendations

In providing an analysis of the present law, it is assumed that its aim would be to provide a legal framework to enable museums' maintenance and development according both ICOM ethical principles and international agreement, as well as national related legislation. Furthermore, it would be desirable that it encourages museums to a more effective role as a driver for a sustainable place based, local development.

Compared to the former law, the new text seems to overlook conceptual issues and to focus more on procedure and relations involving different competent bodies and authorities: definitions and principles are given less weight than in the previous law, regrettably no mention of international principles, conventions and criteria is provided in the new law, whilst the previous one was careful in mentioning them and in clarifying that, in case of national provisions not compliant with international conventions or other legal/methodological texts which the Republic of Moldova adhered to, their provisions would prevail. Even if what is now stressed should be by implication applied to the provisions of this law.

Despite the reduced number of articles (27 against 32), the new Law contains more provisions than the previous ones, due to the high number of paragraphs included in each article. A new chapter on the accreditation of museums is introduced as well as detailed provisions on the selection of the staff, which were previously missing.

As a general remark, the designed system seems to be too complex, considering the dimension of the phenomenon and the available human and financial resources of the museum sector at present and probably also in the medium - term, and, at the same time too detailed and rigid, when it comes to definition and authorities, too schematic and undefined referring to following steps in the process or to related relevant topics.

The logical framework of the Law appears complicated and a little confused as far as some specific topics are concerned, because they are scattered in different chapter and articles, i.e. the juridical status of museum patrimony and the reading of the whole text is difficult.

The absence of a consolidated act on cultural heritage and several laws on different categories of cultural heritage demands a special attention with regard to inconsistencies and cross effects of distinct legal measures. This approach to law-making based on separate acts risks to miss the focus with a plenty of additional related regulations and negatively affecting the understandability of the whole frame and rationale.

The main cause of concern, with regard to the Law on Museums, however, is that the new administrative system is likely to lead to an unnecessary and unwanted increase of bureaucracy in the management of museums, and, as often happens in the Moldovan system, in the scattering of the individual responsibilities.

The potential consequences of some provision are not assessed with due attention, i.e., the revocation of accreditation and liquidation. Some provisions also seem to lead to some inconsistency, i.e. about museums' goods movement and deaccessioning and about museum property registration.

Unclear rules allow differing interpretations, thus also contributing to the problem. Diverging legal interpretations may result from the lack of clarity of some of the proposed provision.

The ongoing definition of the regulations system that stems from the law will be crucial to ensure a better understanding and implementation of the new legal framework.



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Continuous changes in the regulatory framework of a sector are not desirable, as they have a negative impact on the functioning of the whole system, therefore, specific amendments are more advisable than a general revision of the Law. A very careful drafting of regulations may help clearing some pointed deficiencies.

Some considerations concerning the structure and specific articles are provided below.

Chapter 1 – GENERAL DISPOSITIONS – defines the scope and main notions for the purpose of the law. Notions and definition generally refer to international ICOM principles and definitions. A more accurate analysis points out some critical issues that should need amendment a deeper elaboration in the ongoing regulations.

A major remark relates to the definition of Museum, which does not reflect ICOM definition because of two missing adjectives: non-profit and permanent. See below:

ICOM: A museum is a non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment

On the other hand, the definition included in the new law reads:

MD muzeu – instituție de cultură aflată în serviciul societății, care achiziționează, conservă, cercetează și valorifică, cu prioritate prin expunere, patrimoniul material și imaterial, în scopul cunoașterii, educării și recreării publicului larg;

EN: Museum - a cultural institution in the service of society, which acquires, preserves, researches and capitalizes, in particular through exposure, the material and immaterial heritage for the purpose of knowledge, education and recreation of the general public;)

Compared to the previous act the new museum definition more clearly refers to duty in service of society and highlights relations with immaterial heritage even though a better definition intangible cultural heritage could have been used.

Another critical point appears the definition of “restoration” as “*the set of measures aimed at regaining the appearance or the initial structure of the cultural goods that have undergone a process of alteration or degradation*”. This approach focused on *regaining the original appearance* and appear somehow simplistic in relation to the complexities of the restoration activity, although it is true that a number of international texts understand restoration in this perspective. In this regard it might be advisable to use the more general definition of conservation, which encompasses

A further weakness, in comparison with the former law n. 1526, is the absence of any mention to international agreement and treaty and to State commitment to guarantee the condition for museums’ existence and development.

CHAPTER II - MUSEUMS (Art. 3-5) - establishes museum’s organization, functions and classification. According to art. 3 museum are *institutions with or without status of legal person*. The following statement specifies “filials” and “sectie” may be considered autonomous museum entity even though they have not an autonomous status of legal person.

Basic functions of museums are listed in article 4. There is a lack of emphasis on significance of collection and museum specificity and collection policies- the main attention is on territorial relevance (national



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museums, district and ATU - Gagauzia museums, local museums and institutional museums) and in museum collection's category. This article is very concise and condensed. Mission and collection policies should be given due consideration an explicit mention in order to encourage museum as a lever for local development.

The status of each museum is attributed by founder's decision, whilst National museum status is attributed by Government decision at the proposal of the MECR. This classification ratio focused on territorial relevance always suits both relevance and ownership. This is a little confusing considering the issuing process and the present register, recording ownership with regard to institutional level, not relevance.

The majority of Moldavian museums are local museum and were founded, as a territorial grid, during the soviet regime according to a specific policy, both cultural and socio political. This origin features a significant amount of little local museums, which tends to look like all the same or very similar to one another, always originated as mere collection of local cultural goods without a deliberate mission and acquisition policy. Nevertheless, even unconsciously, those museums preserve a plenty of material evidences of the geographical, ethnographical, historical diversity in Republic of Moldova, which is a richness that must be understood as such and enhanced through appropriate and captivating narratives.

This classification is properly useful to describe juridical status and useful as a museum register data base, but seems too schematic and rigid to describe museum relevance and in order to address museums to exploit their potential to testify and illustrate national and supranational. This classification assumes a univocal relations between ownership and relevance and consequently denies or deters development policies.

This is a critical issue that need to be addressed through the regulatory system.

Further classification's criteria are based on the different location- indoor and outdoor -and specificity of museum heritage.

Article 5, paragraph 7 establishes that can be considered museum also sites and cultural reserve: these consist of land and associated buildings, as well as indoor permanent exhibitions. Museum reserves are a powerful inheritance of the soviet system and have survived as functioning institutions in many countries in the post – soviet epoch, therefore it seems logical to preserve them in the Moldovan museum system. However, their inclusion in the museum system conflicts with the categorization of museums based on their collection specificity: archeology, art, literature, ethnography etc. Even if this distinction may be appropriate to a large average of museum, it may be inadequate to several museum, i.e. National Museum of Ethnography and Natural History, certainly for cultural reserves or sites. It could be a useful amendment add "mixed" to the list.

Furthermore, considering ICOM ethical principle focused on museum mission and in a territorial perspective such a schematic approach to museums may be undesirable in order to develop thematic museum and an updated narrative for each museum.

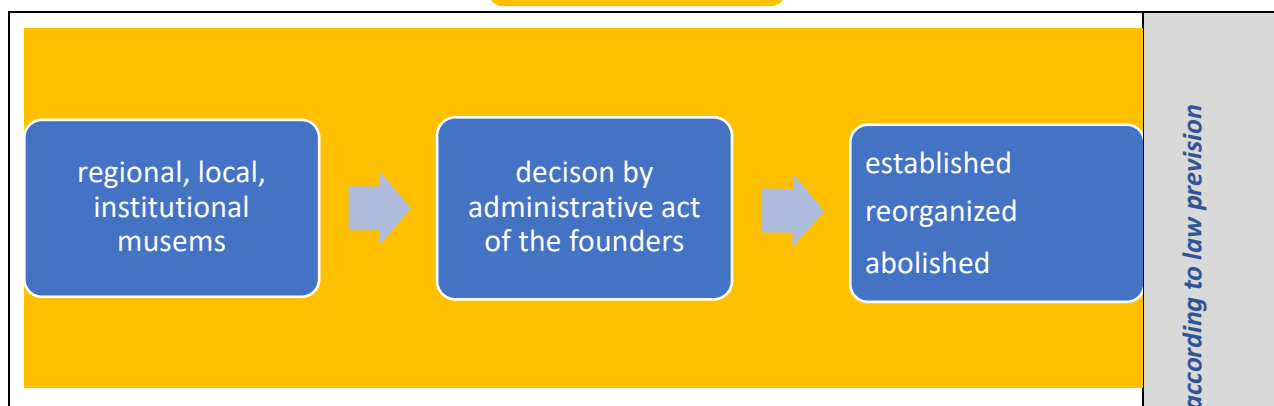
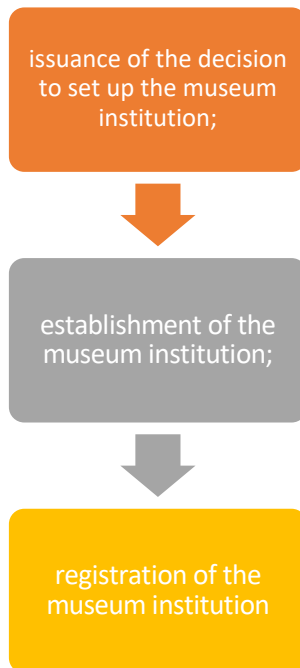
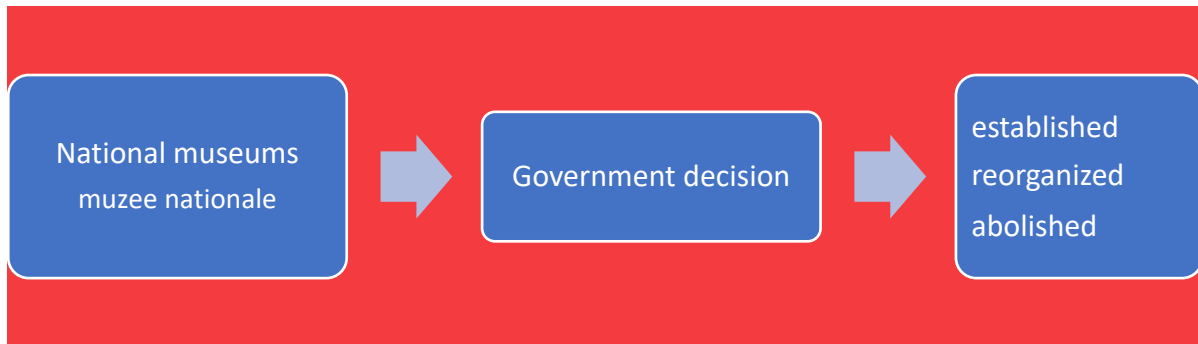
Chapter III - ARCHITECTURE AND ACCREDITATION OF MUSEUMS (art.6-9) -is the most innovative in the Law and rules the cycle of museum life. Regulations must be set within 12 months since law entered into force, which means that by March 2019, these regulations ideally should have been elaborated and entered into force.

The stages of the establishment of the museum institution are graphically outlined in the graphic below:



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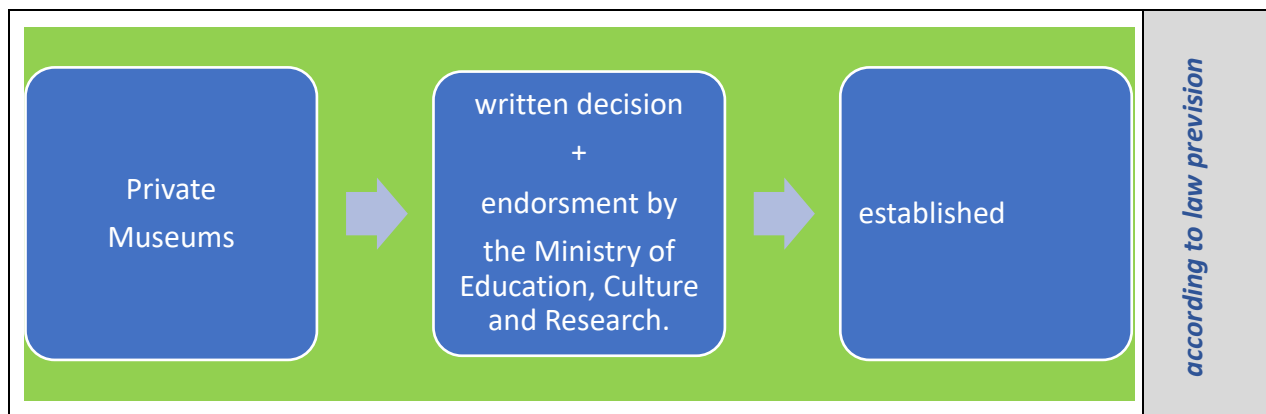
Under art. 6, the law regulates who is allowed to found a museum and how. Different establishment processes are set according to relevance and founder's status



according to law prevision



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The Law defines the compulsory activities necessary to the establishment of a museum:

- the accumulation and documentation according to the legal requirements of the cultural heritage intended for museography;
- elaboration and approval by the guardianship authority of the organization and functioning regulation of the museum institution;
- identifying and hiring the necessary staff for the museum;
- real estate insurance / spaces for the museum;
- ensuring the economic and financial mechanism
- Identifying and declaring mission are not in the list. This is a very remarkable and sensible weakness point emerging all through the text: there is a very weak awareness that according to ICOM ethical principle statement of the mission is an enabling documentation.

“Article 7. Registration of the museum institution” regulates one of the compulsory stages to establish a museum. According to the law, the MECR establishes and manages the Register of Museums and sets out their regulation. The present law reorganizes and develops the current “registrul muzeelor”. Definition of registration file will be crucial for the basilar knowledge of the present state of Moldavian museums. Compulsory registration file will determine the efficiency query of the system thus addressing museums’ development policies.

In order to comply with ICOM Ethic Principles is highly recommended to include mission statement as compulsory documentation.

“Article 8. Accreditation of museums” sets out an accreditation system administrated by Ministry of Culture, according to many international experiences. All registered museums are subject to accreditation. The provision unfortunately does not clarify sufficiently the distinction between registration and accreditation and why both registration and accreditation are required, as they are generally assumed as equivalent evaluative schemes in many international experiences.

The absence of a definition for both terms makes it unclear the distinction between accreditation and registration. The expected Regulation will have to clarify and to set out the differences, relations and linkage between registration and accreditation.



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In accordance with art. 8, the MECR is the competent administration which assesses and eventually issues the accreditation for all registered museum, whilst the NCMC has an advisory role. Accreditation is done every 4 years. The accreditation assessment of all registered museums shall be completed into 4 years.

“Article 9. Revocation of accreditation, reorganization and the abolition of museums” regulates the withdrawal of the accreditation. It is unclear if the revocation of accreditation determines also the liquidation of museum collections as the law at art. 9, paragraph 3 states that “In case of revocation of the accreditation, reorganization or dissolution of the public museum, the museum pieces shall be submitted, upon proposal of the NCMC, to the management of the national museums or other museums according to their type.”

On the other hand, the provision concerning “*transferring museums goods*” might have a better settlement under a specific section.

Chapter IV - MUSEUM PATRIMONY (art 10-16) – contains few articles that weakens the logical structure of this section. For instance, Article 10. Rights on museum heritage regulates the law under which the patrimony of the museum is subject - public or private law - according to ownership. Article 12. Formation of public property museum collections deals with a range of different and patchy topics, from registration to dismissing. However, this article does not provide for any registration procedure for movable museum goods, notwithstanding the provisions of Article 11 and considering that even for sites which are, by law, museums, registration should be provided for immovable cultural property, .i.e., archaeological structure, historical building, and memorial according to different registry regulation.

A relevant question concerns the scope of established registration if, despite its name, the article rules registration for all museum, public and private, collections.

Furthermore, museum collections’ registration should be provided for all museum heritage not only for movable goods. This is an issue to be amend as far as one of the purposes of the present law is to avoid the closure of many local museum to exploit real estate value.

Despite the fact that, under art 10, heritage of public museums is inalienable, art 12 further reiterates that “the return to cultural or physical persons of cultural goods registered in the “treasure” collection register, in the “Fond” collection register and in the Register of the collections of museums is forbidden.”

Transmission of goods is allowed among the collections of the same founder’s upon approval of the National Commission of Museum and Collection. It would be desirable a more general provision concerning “transmission” as far as reorganization of museum collection may involve different founders both private and public.

“Art. 14 -Formation of privately-owned museum collections” only focuses on means and appears deficient in several aspects of collection management in what it concerns, for instance, the registration procedure of the museum heritage.

“Article 15. Restoration of museum heritage” correctly establishes that restoration is carried out only by accredited specialists even though no reference to existing or to-be-developed regulation via secondary legislation is made. Moldovan specialists of the sector consider this a very crucial point. According to the list of accredited specialist on MECR web site (<https://mecc.gov.md/ro/content/registrul-restauratorilor->



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acreditati-domeniul-patrimoniului-cultural-national-mobil) accredited specialist are 15 (Cap. VII, art. 23 alin. (2) din Legea cu privire la protejarea patrimoniului cultural național mobil).

“Article 16. Circulation of museum heritage” provides a concise text which simply and appropriately recalls that movement of cultural goods is regulated under the provisions of law 280/2011, including secondary legislation, currently under development.

Chapter V-TECHNICAL-MATERIAL BASE AND FINANCING MUSEUMS (art 17-18) - focuses on the above mentioned (see art.12) problem of local museum dispersal, even though the title may be misleading. The declared effort is to persuade local authorities to their responsibilities in local museum management, despite the economic crisis.

“Article 17. The technical-material basis of museums” lists what has to be considered the ‘assets’ of a museum: all the real estate, such as buildings, premises, land, etc.; movable material transmitted to museums in operative management. The article sets out appropriate restriction to collection displacement.

Assuming as relevant to preserve many historical buildings as museum and assuming as very commendable the rules established by art. 17 .4., a stronger attention to the potentially existing linkage between museum collections and building or site facilities could be very appropriate and highly recommended. As mentioned above, the lack of awareness on the key function of Museums’ mission statement seems to underlie many of the critical findings in the present act.

According to “Article 18. Financing the activity of museums”, financial means include budgetary, from responsible authority, and extra budgetary resources, from revenues and collections. Public responsible authorities’ allocations shall guarantee financial (budgetary) means necessary for salaries, maintenance of the edifices, for the guarding and the technical endowment, of the persons with disabilities, acquisition, preservation and restoration of the cultural goods held by them.

Public responsible authorities may allocate, on a project-based basis, financial means for:

- research activities
- enhancement/ valorization of museum heritage,
- sociological research of the public, field research,
- archaeological investigations,

Central end local authorities define prices and tariffs of subordinated museums.

However, the law does not specify how the revenues of museums are redistributed among the museum system. This lack of clarity does not serve the purpose of increasing effectiveness and efficiency of museum in performing their mission.

For example, if the main revenue comes from ticketing, and the assignment of resources from the state or local budget were calculated on direct proportion of the revenues obtained by that particular museum, this would be a very important factor to stimulate the staff to improve the service and, thereby to obtain more funds. As a matter of fact, in order to support the Museums sector and to motivate the staff, the principle "more tickets, more funds for the museum!" may assist in creating a virtuous circle in the service staff and it generates a permanent research of potential new public.



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Consideration should be however given to the increase of the ticket fees, which today are very low and could not form a reasonable basis for the museum sector financing, and, on the other, to mechanisms that guarantee the access to museums to all Moldovan citizens, many of whom suffer from poor incomes. For instance, in many countries tickets have a different price, and foreign people pay much more than citizens.

Another gap in the legislation concerns the lack of tax relief through the transfer of assets to the state, e.g. as it happens in France through the *dation* formula¹³.

Both proposals however, have to be discussed and agreed with the Ministry of Finance: in other countries, the *dation* and the total redistribution of museum revenues to museum system have been accepted as their revenues present a minor financial entry for this ministry.

Chapter VI - MUSEUMS ADMINISTRATION (Art 19-22) -sets some clear and basic criteria for museum management, partly by giving a legal framework to existing body. An analytical review and analysis on provisions of Chapter VI seems useless before the establishment of the relevant regulation. The effectiveness of its provisions strongly depends on the ability to design an appropriate management system, thus suitable for the variety of Moldovan Museum.

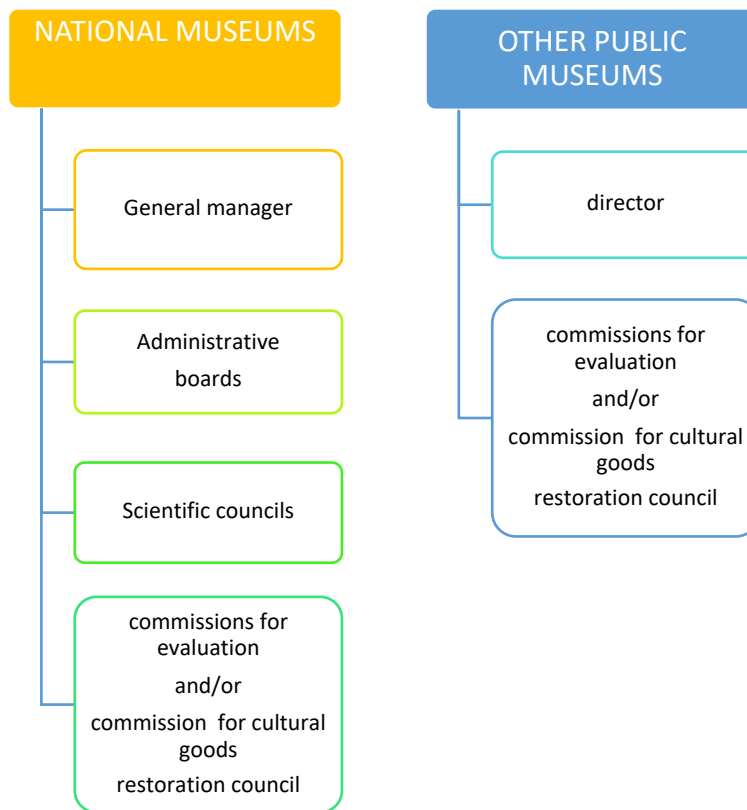
According to art. 6 every founder must identify and hire the necessary staff for the museum as an enabling action related to its establishment. Setting rules on management, the law provides additional detailed norms concerning the selection and management of public owned museum, which were missing in the previous Law n. 1596/2002.

The Law sets out different compulsory management obligations for National museum and other public museums, and it designs management as follow:

¹³ The "Dation" is an exceptional form of payment consisting in giving the creditor something other than the very object of the debt (for example payment in kind of a debt in money). Desired by André Malraux, then Minister for Cultural Affairs, Law No. 68-1251 of 31 December 1968 "to promote the conservation of the national artistic heritage" devoted the dation in tax law by introducing a special provision in application of which the inheritance taxes may be paid by the return to the State of works of art, books, collectibles or documents of high artistic or historical value (article 1716 bis of the General Tax Code). This option was extended in 1982 to the payment of the transfer duties due in respect of inter vivos gifts and the right of partition (Article 1131 CGI) and in 1988 to the payment of the solidarity tax on wealth (1723 ter OOA, CGI). The decision to accept the offer of dation is made by the Minister of the Economy and Finance, on the proposal of the Minister concerned by the assignment, after consulting the Interministerial Accreditation Commission. This body, made up of representatives of the different ministries concerned, decides on the artistic and historical interest of the goods as well as their value. The taxpayer may intervene at any time during the procedure to withdraw his offer. As a method of payment of the tax, the dation must be granted unconditionally and remain, in principle, anonymous. Original way of enriching the national heritage, this procedure has contributed in particular to the entry in the public collections of many works of modern art (the most famous dations being those of the heirs of Pablo Picasso who allowed the creation of the museum Picasso at the Salé hotel in Paris, and numerous depots in classified and controlled museums, or the dations by Chagall's heirs) but also, to mention just a few examples, of "L'Astronome" by Vermeer, royal furniture eighteenth century, tapestries Flanders, a Limoges enamel shrine dating from the late twelfth century, the Louvre, two paintings by Paul Cézanne, L'Oncle Dominique lawyer and Portrait of Ms. Cézanne, d Claude Monet's painting, Les Déchargeurs de charbon, from The Origin of the World by Gustave Courbet at the Musée d'Orsay (source: <https://www.universalis.fr/encyclopedie/dation-oeuvres-d-art>).



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“Article 19. Museum management and staff.” Provides for basic standards on staff and management, however staff specialization is not specified, only positions are indicated, then defines attributions and modalities for recruitment. Selection of the staff must be through public contest organized by responsible authority.

In this regard, more attention to key specializations for museum management and functioning would be necessary. Some improvements may be achieved through amendments to the Law and, then, through solid and detailed regulation, which should carefully rule on the updating and checking of the specialization of the museum staff.

Senior staff, specialised staff and maintenance staff ensure museum activities, whilst a director or a general manager guarantees the management. A considerable issue is represented by the fact that the selection of the manager/ director is under the responsibility of the public administration under the jurisdiction of which the museum falls and it is made on the basis of a managerial project contest. The procedure, and the assessment for the selection, may be overly complicated for many local administrations and it appears a little surprising since no article in the text recalls museum mission statement, without which it might be difficult to identify the right professionals to run the museum.

“Article 20. Museum Management Boards” defines the boards as are deliberative leading bodies and envisages a regulation, which is to elaborated by MECR, establishing the composition, attributions, organization and functioning of the boards of directors. As stated, management boards may be more than one in each national museum.



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The main recommendation for the forthcoming regulation is to pay due attention to the real situation of human and financial resources. A clear, balanced governance is fundamental as well.

“Article 21. Museum Scientific Councils” introduces these consultative specialized bodies, which are composed of specialists, a provision which is compulsory for national Museums. The composition, attributions, organization and functioning of the scientific councils shall be established by a regulation of organization and functioning elaborated and approved by the MECR.

Any assessment of their usefulness is impossible at this stage, in the absence of the regulation, however, it sounds amazing that Councils are introduced in the Law without any mention of their functions and working methods.

Chapter VII- AUTHORITIES WITH ATTRIBUTIONS IN THE FIELD OF MUSEUMS (art.23-25) – regulates the authorities responsible for museums. They are, MECR, NCMC and LPAs. Their specific attributions are listed in different articles.

“Article 23. The central public authority with attributions in the field of museums” establishes that MECR is the central authority of the public administration with attributions and competences in the field of museums. The Ministry has representative, legislative administrative, management and assistance roles.

One can notice that a great responsibility derives from the accreditation system, which, in the absence of any monitoring body to guarantee an evidence-based knowledge on phenomena, may lead to excessive discretionary power in the issuance and withdrawal of the accreditation.

MECR’s broad attributions appear very difficult for MECR to manage effectively, in the current situation of great changes and still dire need of numerically and technically adequate staff and salaries to meet the challenge.

“Article 24. The NCMC regulated the functioning of this body which is a former existing subordinated consultative body of Ministry with a crucial role in the field.

The numerical and nominal composition is approved by order of the minister of education, culture and research for a period of 4 years, the president is appointed by the Minister.

According to provision of art 27 on 18.05.2018 Minister approved amendments to Regulation on the organization and functioning of the NCMC (https://mecc.gov.md/sites/default/files/regulamentul_comisiei_nationale_a_muzeelor_si_colectiilor.pdf) and the composition of Commission (https://mecc.gov.md/sites/default/files/componenta_nominala.pdf) Currently members are 12. No specialist from abroad is member of the Commission, despite the regulation would allow so. The Commission meets every three months or when necessary and supports the MECR in the elaboration of research and development strategy; elaborates proposal i.e. regarding museum regulations; approves i.e. normative acts development priorities of museums subordinated to MECR, training programs of specialists; issues i.e. prior opinion on museum establishment accreditation and revocation, submit i.e. proposal of awarding distinctions to persons; endorses i.e. regulations governing the organization and functioning of public and private museums

“Article 25. The attributions of LPAs in the field of museums” regulates the tasks of local authorities in relation to their subordinated Museums: they designate and revoke the management of museums; ensure the



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financing of museum activities; ensure the development of museum collections, exhibitions and museum security; monitor the activity of museums. The Law allows specific power in the field of local subordinated museum to the People's Assembly of ATU Gaguzia, in compliance with the provisions of law.

Chapter VIII - LIABILITY FOR BREACH THE PRESENT LAWS – includes only one article stating that infringement of legal provisions entails disciplinary, civil, contravention or criminal liability.

Any further detail or reference is missing, thereby leaving uncertainty with regard to what provisions, if breached, imply a form of legal consequence or not, especially considering the specialized sector of intervention of this law, whose targets are -so far- not always contemplated in the ordinary civil, administrative or criminal legal framework.

Chapter IX- FINAL AND TRANSITORY PROVISIONS – contains one article listing the regulatory framework to be developed and the corresponding timeframes.

Within 12 months of its entry into force, the Government shall align its normative acts with the present law and submit to the Parliament the drafts for the modification and completion of the following laws:

- Law no. 280/2011 on the protection of the national mobile cultural heritage;
- Criminal Code of the Republic of Moldova no. 985/2002;
- The Contravention Code of the Republic of Moldova no. 218/2008.

Within the same timeframe of 12 months, the Government shall also approve the following regulations:

- the framework regulation for the organization and operation of museums;
- the museum accreditation regulation;
- the regulation on the recording and preservation of museum heritage;

and abrogate the Government Decision no. 1111/2003 on the approval of the regulations for the implementation of the Law on Museums no. 1596-XV of 27 December 2002.

On its side, the MECR, within 6 months from the date of publication of this law, shall develop and approve the following regulations:

- the Regulation on the Museum Register;
- the framework regulation for organizing the competition for the position of director of the museum;
- the framework regulation for the organization and functioning of museum management boards;
- the framework regulation for the organization and functioning of the museum's scientific councils;
- the framework regulation for the organization and functioning of the evaluation commissions and / or of the cultural goods procurement commissions within the museums;

it shall also prepare proposals for amending the Regulation on the organization and functioning of the NCMC.

Some regulations have been established i.e Regulation on the organization and functioning of the NCMC.

The NCMC approved on March 3rd the following regulation drafts:

- framework regulation for the organization and operation of museums (Regulamentul cadru de organizare și funcționare a muzeelor)



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- the framework regulation for organizing the competition for the position of director of the museum (Regulamentul organizării concursului pentru ocuparea funcției de director al instituției muzele de drept public)
- the Regulation on the Museum Register (Regulamentul cu privire la Registrul muzeelor din Republica Moldova)
- the Regulation on the organization and functioning of the National Commission of Museums and Collections (Regulamentul de organizare și funcționare a Comisiei naționale a muzeelor și colecțiilor)
- the Regulation on the Museum Register (Regulamentul Registrului Patrimoniului Cultural Național Mobil din Republica Moldova)

Further regulations are under development.

The amount of regulation to be elaborated is emblematic of the over complex and vague system set by the law.

Therefore, the approval of this law has triggered further extensive work for the MECR administration, in that ideally, by November 2018, MECR is expected to approve five regulations and to support the Government in its task, by preparing three draft regulations, the approval of which falls under governmental responsibility and by law, they are to be approved by early April 2019. Additionally, amendments to three Laws are expected by the same deadline.

A prioritisation of the most urgent regulations to be adopted for the effective implementation of the new Law would be beneficial, considering the constraints of the MECR administration in term of staff units.



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DRAFT LAW ON PROTECTION OF HISTORIC MONUMENTS (VERSION OCTOBER 2017)

The Twinning project began its implementation in September 2017, at the time when a number of draft laws or amendments to existing laws were being finalised and shared with the MS STEs. The Twinning has dedicated particular attention to the draft Law on historic monuments, in that this was the last law that, if approved, would have replaced the Law n. 1530/1993, putting an end to the first season of post – independence legislation concerning the protection of cultural heritage in the Republic of Moldova.

The proposed draft (version October 2017) contained ten Chapters and 51 articles, most of which comprising several paragraphs.

Chapter I – General provisions – contained 8 articles setting out the object and purpose of the law (art. 1), the definitions of what is meant by historic monument as well as of basic notions for the purpose of the law (art. 2 and 3). Article 4 defines the principles, criteria and main obligations related to the protection of historic monuments, and it includes several paragraphs, dealing with general principles as well as with specific matters, art. 5 introduces the notion of the right of pre-emption by the State and regulates the matter in general manner; art. 6 introduces the obligation to mention the protected status of the monument in any legal act concerning transfer of ownership or loans, leasing, concessions; article 7 introduces the obligation to position a plaque on the protected monument, to make it known to all its protected status; article 8 establishes the principle of collaboration between the State and non – governmental organisations, public and religious associations for the purpose of protecting historic monuments.

Chapter II – Evidence and classification of historical monuments – contains eight articles dealing with the establishment of National and Local registers of historic monuments, and the procedure for their adoption and entry into force, which for the national register rests with the Parliament, upon proposal of the Government, on the basis of documentation prepared by MECR; art. 10 sets out that historic monuments can be of national or local importance, the classification of monuments falling under the latter category rests on Level II local authorities (districts and larger municipalities); art. 11 sets out the procedure for classification: ex- officio classification is only envisaged for monuments in public ownership or owned by religious organisation, whilst assets privately owned can be protected upon request of the owner, other subjects that can propose the classification of a monument include the mayors of the localities in the territory of which the asset is located, associations and foundations devoted to the protection of cultural heritage, the national NCHM and other public institutions with attribution in the field; the content of the classification documentation is referred to ad – hoc regulations concerning classification. Art. 12 regulates the triggering of the procedure, which, as a prudential measure, establishes that object under the classification procedure enjoy a special protected status until the procedure is completed. Art. 13 regulates the declassification of protected monuments, introducing a variety of cases not always clear in their consequences; art. 14 introduces and regulates the emergency classification procedure, whilst art. 15 and art. 16 deal with the inventory of the historical monuments, which is meant to gather and accumulate all information, documents, studies and research on historic monuments as well as on those that are likely to be classified; art. 16 specifies that for religious assets where immovables comprise and preserve movable objects that are part of the



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historic and cultural context of the monument, these movable need to be considered as integral part of the monument and documented as part of it.

Chapter III – Intervention on historic monuments and their protection areas– comprises seven articles that aim to detail the protection of monuments: art. 17 prescribes that the land, that is the parcel of land, on which the monument is built is also covered by protection, it then describes in length the motivations for which the land should be included and how this can be identified, transitionally and definitively; the definitive delimitation of the boundaries of a monument are to be established on the basis of a thorough study in accordance with methodological norms transferred to secondary legislation. Art. 18 establishes that a protection zone must be established for historic monuments according to specific regulations. The protection zone is by law established in an area circumscribing the monuments based on a radius of 100m for urban settlements, 200m for village and 500m for rural area, however the exact perimeter may be revised on the ground of a study and a project for the protection area. Protection areas are to be included in the cadastral documentation, urban plans and other regulations by the local public authorities. Art. 19 introduces the obligation to protect the classified monument, which is a document that specifies the conditions of use, the conservation works, and other activities that may be needed for the protection of the monument. The document is notified to the owner of the classified object within 90 days since the publication in Official Gazette of the decision granting the status of historic monument. Art. 20 outlines what is meant by intervention on an historic monument and details several specifications, also establishing that for historic monuments, the legal opinion of the Ministry is preliminary and indispensable to obtain the certificate of urbanism and the building permit. Art. 21 establishes that all intervention, exception made for the change of use, maintenance or repair, must be inspected by MECR, and that all interventions must be designed and carried out by accredited professionals, the norms in force for normal construction are to be applied only if they do not cause damage or impair the cultural significance of the monument; (however the draft does not set out anywhere that this issue has to be addressed through ad- hoc regulations and technical norms to be developed within a specific timeframe) the article also regulates interventions on the land of the monuments. Art. 22 further specifies the interventions eligible for ‘built-up monuments’ in the form of methodological guidance, art. 23 introduces the category of historical and cultural reserves and briefly defines how they can be established and regulated.

Chapter IV – institutions and specialised bodies with attributions in the protection of historical monuments– contains nine articles which identify the main institutional actors in the protection of cultural heritage and list their duties/ attributions: these are MECR, NICH, NAMSI, NCHM.

Chapter V – attribution of the central and local authorities in the field of protection of historic monuments– contains seven articles that identify other relevant central and local authorities to which responsibilities / tasks are assigned for the purpose of monument protection. These are: the MEI, which is tasked to gather information on the economic value of historic monuments, to take into account the specific character of the built cultural heritage in developing sustainable development policies for the country, ensures that these policies respect the cultural significance of the cultural heritage, promoting the use of traditional techniques in the interventions of historic monuments; the MARDE, which is called to ensure the inclusion of preservation, restoration consolidation, renovation and upgrading of historic monuments among the major elements of state policy on spatial planning; local authorities and ATU Gagauzia have the duty to cooperate with MECR and other specialised bodies devoted to the protection of monuments, cooperate with owners



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and administrators of historic monuments, associate with other local authorities for the purpose of carrying out conservation programmes, take the necessary measures to prevent degradation of monuments, establish services within their structure dedicated to the protection of historic monuments, and, more importantly, they shall elaborate and apply local construction regulations for the protection areas of level A classified monuments on the basis of the terms indicated by MECR. Art. 36 regulated the duties of level I local authorities, which were expected to cooperate with Level II and the State administrations, in the revision of the local urban plans, ensures the development of the documentation and delimitation of protection zones of grade B monuments and the inclusion of the documentation of the protection zone of grade A monuments, prepared by Level II authorities, elaborate the urban regulations of the protection zones of the monuments and of protected historic sites and approve them, taking into account the opinion of MECR; respect the terms issued by MECR for the issuance of the certificate of urbanism or the building permits, elaborate budgetary or fiscal programmes or measures to prevent degradation of historic monuments. Art. 37 outlines the powers of the mayors, which, among other duties, include ordering the halting of any construction or demolition works on the ground of the historical monuments in case of discovery or archaeological vestiges and organises the guarding of the discovered remains. Specific attributions of level II and ATU Gagauzia include the keeping of the registers of monuments of local importance, initiate the expropriation procedure for public utility for the protection of the historic monuments, in the situations and in compliance with the conditions stipulated by the law (not better clarified, however), notify the MECR about the discovery of archaeological remains during construction or demolition works.

Chapter VI - obligations of the owner of historical monuments– comprises one article recapitulating all obligations for the owner and holder of a historic monument that stem from the provisions of the law.

Chapter VII – Financing protection activities of historical monument– comprises seven articles which set out the funding system and strategy for supporting the protection of historic monuments. Art. 42 states that first responsibility for allocating funds for the protection and conservation of the protected monuments rests upon the owner, although co-funding from the Fdm2 state or local authorities is envisaged and that publicly funded research, expertise and interventions are subject to the legislation for public works/ procurement. Article 43 establishes that central and local authorities are all obliged to include in their budgets allocation for the protection and conservation of historic monuments. In particular the budget of MECR should distinguish among budget allocations for funding and co- funding of works on A-graded monuments in public ownership, for funding and co- funding works on A-graded monuments in private ownership. Art. 44 details on how the contribution of the State or of local authorities is provided and what can cover (the article covers many cases but does not seem sufficiently detailed in distinguishing the real differences), a 10-year real estate guarantee is introduced: in case of sale of the monument before the 10 years, the sum of the guarantee is paid to the public administration which funded or co- funded the works. Art. 45 specifies that interventions included in government adopted programmes take on national interest and therefore are exempted from the mandatory obligation to provide the 10-year guarantee and from paying the fee for the urban certificate and the building permit. Art. 46 regulates the possible tax exemptions that may be enjoyed by the owners of historic monuments; they include the exemption from the building tax, if no commercial activity is carried out therein from the land- tax on the grounds of historic monument. Local councils are allowed to reduce the tax on unbuilt areas comprising the grounds of historic monuments, when these are put at the disposal of state institutions for research purpose, in proportion to the size of the area affected



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and to the period for which the land remain subtracted to potential development. Reduction of leasing fee if envisaged in case the holder of a lease contract has carried out at his/ her own expenses works on the leased historic monuments. Art. 47 provides for the establishment of ad – hoc allocations in the ministerial budget to implement its pre-emption right. Art. 48 envisages the possibility to establish a public or private fund for the implementation of the State policy in the field of protection of historic monuments.

Chapter VIII – Liability for violating the law– includes one article that refers to the provisions included in the civil, contraventional and penal legislation in case of breaching the provisions of this law. A preliminary reading of the norms included therein suggest that these are insufficient to deter anyone from violating the law.

Chapter IX – application of international conventions– contain one article that recalls the obligations deriving from international conventions and establishing that in case their provisions are different from national provisions, the former ones prevail on the latter.

Chapter X – transitional and final provisions- contains one article summarising the secondary legislation instruments to be elaborated and approved. They include six regulations to be adopted by the Government, four regulations to be approved by order of the Minister, amendments to four laws, within which the penal code is not included.

Preliminary comments and recommendations for improvement (date: November 2017)

The text below summarizes the main findings and observations made to this draft law. The detailed comments provided for each article can be found in the text of the draft, in the Annex.

A new law devoted to the protection of the Moldovan historic monuments and sites – the only categories that have yet to see the framework and provisions for their protection reformed, after the approval of the laws for the protection of archaeological heritage, of movable goods, of intangible heritage, of the monuments in public space and, eventually, of museums, would not only be welcomed but also necessary. The efforts accomplished by the authors of this draft represents, undoubtedly, an important step and indicates a real commitment to improve the effectiveness of heritage protection in the country.

However, in order to progress towards the enactment of an effective legislation, it is opportune to draw the attention of the legislator on the following aspects.

- In an urgency to respond to the several weaknesses in implementing the existing law, the current draft gathers together provisions that have different juridical hierarchy: some articles contain provisions that have constitutional rank, whilst many other detail technical aspects that should be rather addressed at the secondary legislation level, if not in technical norms and standards – there is a clear need to clarify the hierarchy of the provisions that should be inserted in the primary legislation
- The draft not only contains provisions regulating the use of protected monuments but also include provisions concerning the tasks of the ministerial and affiliated agencies/ institutes with regard to heritage stewardship: this appears to be inappropriate because the law on the protection of monuments must set out the principles, obligations and measures for legal protection, whilst the tasks of the responsible institutions should be dealt with in a separate legal instrument – usually a



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secondary legislation descending from primary legislation e.g. the institution of a new administrative body or entity.

- The provisions concerning the tasks of the MECR and related institutions appear to overlap and from the text it looks like the MECR will be delegating most of its functions to other external – although related – institutions. This appears problematic, especially for what it concerns the key duties of heritage stewardship, that is inventorying, documentation, protection, monitoring: it would be advisable that key tasks remain within the ministerial structure. If this is not the case and the institutions represent structural organisms within the ministry, this needs to be clarified and made explicit.
- Currently it is not clear the full organization of the MECR and the tasks of its articulations. It is crucial that the whole structure of the MECR and its related agencies and institutions is developed at one time and in parallel with the reform of the law on Monuments and of any other cultural heritage sector. Two options with related organizational charts have been prepared by the ministry but it is not clear the links between them and provisions in the draft law.
- Many tasks appear also to be transferred to the local administrations with regard to inventory, designation, protection, conservation of cultural heritage of grade B (local value): this appears extremely dangerous as currently local administrations in Moldova (but it is true also in countries where heritage protection has a much longer and uninterrupted tradition) do not seem equipped with the necessary cultural, professional and organizational resources to tackle with this task. While it is important to set out the principle that municipality must contribute to the protection, enhancement and safeguard of cultural heritage, this should be stated in general terms and possibly in the Constitution and should be based on an accompanying process governed by the state and state level administration, namely the MECR.
- The point above makes clear the need for developing coordination provisions between the State and the regional/ district and municipal levels, the State playing a major role in standards setting and overall monitoring and supervision through its participation in administrative processes at the local level. Nothing of this kind is currently envisaged in the present draft.
- There is a need for clarity with regard to what articulations of the Ministry should be given the responsibility to issue compulsory opinion/ approval on projects and activities to be carried out within and on protected heritage items. Currently it is the BCHM, which seems to be an advisory body to the Ministry / minister which are trustily appointed by the minister, that issues these approvals. It is the opinion of the Project that this is not in line with EU principles: an advisory body should have a completely different role than the one of a branch of the ministerial administration and should provide advice, even technical advice, but not issuing administrative acts. The issuing of project approvals should be entrusted to administrative structures within the ministry that enact with the necessary technical administrative autonomy the provisions of the Law and its regulations.
- Another key point concerns the inappropriateness of the provisions on the role of the Parliament in approving/ issuing heritage protection status or concessions of protected heritage sites in state ownership. The function of the Parliament is legislative in nature, that is to say deals with the general law, heritage protection designations are executive decisions, as they deal with the particular of each heritage item. In this regard, it would be better to envisage that these decisions are entrusted to the Minister (i.e. minister's decree or order) or to the Government (i.e. governmental decisions). this



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would also avoid politicization and delay of decisions on heritage protection. This provision is probably an inheritance of the previous law but if a reform is envisaged, it would be better to improve this aspect.

- With regard to protection, there is a need to reinforce the current provisions in the draft law, by introducing criminal protection of cultural/natural heritage and reaction to its trafficking/destruction should be an utmost priority, especially when one considers that many protected heritage buildings have been demolished intentionally since independence. These trends seem to have slowed down but misuse, abandonment, lack of maintenance are still key issues. Therefore, the Moldavian legal system should focus its attention on the possibility [to provide in a broader legal framework for: 1. Specialized law enforcement bodies or units, having opportune procedural arrangements; 2. Targeted and detailed sanctions and new statutes of limitations for criminal and administrative offences; 3. A different *onus probandi*, making mandatory the reporting of suspected cases; 4. Inventories, databases and statistics on trafficked cultural property; 5. Codes of ethics for all the stakeholders and a register system for dealers; 6. Limiting the trafficking in cultural property via the Internet and via auction houses; 7. Definition of movable and immovable cultural property. As far as the respect of existing legislation is concerned, this might be assured by creating an autonomous sanctioning system, and: (i) Criminal sanctions could be envisaged when the protected item is exposed at risk; and (ii) Special administrative sanctions such as electricity bar and nullity of contracts could be imposed.

In brief, the draft now under examination represents a useful and an appreciated commitment. Notwithstanding, it does not face adequately manifold aspects, which are further specified below, and in its sector of intervention need improvements. Indeed, far from solving problems of overlapping provisions, holes and problematic interpretations, the draft raises a number of issues that might hinder the intentions behind the reform of the current law n. 1530/1993, which, despite many weaknesses, has the merit to be more straightforward and consistent with the structure of primary legislation.

Further general remarks

Firstly, a shift from procurement to management should be fully realized by Moldavian legal framework, and legal instruments should be amended in order to enact new systematic provisions: (i) On a participatory process; (ii) On full transparency and information; (iii) On the training in management of cultural officers.

In this prospective, the role of municipalities and of other local entities should be enhanced via improvements to and full implementation of primary existing legislation; and these provisions should be accompanied by appropriate secondary legislation. In particular, a new secondary legislation should rule on municipalities and districts competences and equip them with local cultural infrastructure and spaces. The local self-government bodies should be actively involved in the planning phase as well in its management.

Urbanization policies and programs require, indeed, a more stringent coordination among different players, and the European legal framework is a trail the Moldavian legal system could somehow follow. In particular, more attention could be directed towards: (i) The EIA Directive (85/337/EEC) as amended and codified in the EIA Directive 2011/92/EU, further amended by Directive 2014/52/EU ; and (ii) The Directive 2001/42/EC on



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the assessment of the effects of certain plans and programs on the environment (SEA Directive). In brief, measures concerning physical urban renewal must be always combined with those promoting education, economic development, social inclusion and environmental protection.

Further, it is in the interest of the Moldavian legal framework on landscape protection to fully consider the principles set up by the European Landscape Convention. Therefore, the Moldavian legislator is called to improve the existing normative system and fully provide: (i) The drawing up of specific landscape policies based on the quality of all living surroundings; (ii) a definition of and experience with new forms of collaboration between the various bodies and the various levels of administration; (iii) a new approach to observing and interpreting landscape, which should henceforth: a. View the territory as a whole (and no longer just identify places to be protected); b. Include and combine several approaches simultaneously, linking ecological, archaeological, historical, cultural, perceptive and economic approaches; c. Incorporate social and economic aspects.

With regard to the restoration and protection of historical and cultural monuments: A more stringent coordination should be realized. In fact, there is the necessity of: (i) providing for a coherent and comprehensive organization of the MECR in its central and peripheral branches and related supporting Agencies; (ii) reinforcing the regulatory framework, defining procedures for joint commissions, their timing to issue the joint advice, for lease and sale, for ensuring a common basis of assessment, transparency in judgment and guidance for applicants and assessors; (iii) properly ruling on the qualifications of enterprises intervening on historic and cultural monuments.

Procedures for planning and implementing restoration works could take some advantage by the European legal framework on these themes, that is the Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as replaced by the Directive 2014/24/EU, entered into force on 18.4.2016. In order to abide this normative framework, the starting point should be the definition of the object deserving protection, also considering its buffer zone. This also entails revision of the list of cultural areas/goods; definition of the object and contract configuration or granting; verification of the specific qualification; award criteria; greater amplitude in the use of variants; rigorous testing realization; levels and specification of design and project schemes and special qualification of the operators.

Not only. The Moldavian legal framework could also take advantage by the EU acquis related to the education standards, that is: a. the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, i.e. the Lisbon Recognition Convention; b. the Council Recommendation 98/561/EC/EC of 24/09/1998 on European cooperation in quality assurance in higher education; c. the Recommendation n. 2006/143/EC of European Parliament and of the Council on further European cooperation on quality assurance in higher education; d. the Directive 2005/36/EC on the recognition of professional qualifications that is completed with the European Qualification Framework; e. the principles of European Higher Education Area (EHEA), and f. the outcomes of the Bologna Process.

Furthermore, the improvement and expansion of culture services shall require specific provisions in order to promote: (i) A single Moldavian portal dedicated to tangible and intangible cultural and natural heritage. With regard to this, there should be improvements with regard to the registration of natural heritage and of movable and immovable cultural goods in comprehensive inventories/databases including all publicly owned



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cultural/natural properties, as well as private collections and properties. Other provisions should translate local, regional and national inventories into digital databases, establishing a common infrastructure, allowing access through a single online portal to all national inventories and databases of cultural property to connect to international ones. This database should also have regard to criminal offences and administrative violations; (ii) Studies, research and pilot measures should be properly envisaged, creating appropriate indicators and benchmarks for the heritage; (iii) Cultural and social innovation adequately integrated into local settings; (iv) Small-scale cultural initiatives could be also properly studied and implemented.

The Moldovan legal system could be also improved in matters such as tax incentives, percentage legislation, vouchers, tax relief for sponsorship, tax relief for individual and corporate donations, lottery-based private funding, earmarked taxes, banking schemes, arts and business forums, digital approach (crowd funding), venture philanthropy donations, sponsorships, patronage, promotion, advocacies and other acts of liberality.

On a complementary side, criminal protection of cultural/natural heritage and reaction to its trafficking/destruction should be an utmost priority. Efforts in this field are never out of proportion, particularly if one considers the damage caused by criminals who deprive nations and peoples of the world of the opportunity to understand and learn from their irreplaceable sources. Therefore, the Moldovan legal system should focus its attention on the possibility to provide for: 1. Specialized law enforcement bodies or units, having opportune procedural arrangements; 2. Targeted and detailed sanctions and new statutes of limitations for criminal and administrative offences; 3. A different *onus probandi*, making mandatory the reporting of suspected cases; 4. Inventories, databases and statistics on trafficked cultural property; 5. Codes of ethics for all the stakeholders and a register system for dealers; 6. Limiting the trafficking in cultural property via the Internet and via auction houses; 7. Definition of movable and immovable cultural property.

As far as the respect of existing legislation is concerned, this could be assured by creating an autonomous sanctioning system: (i) Criminal sanctions could be envisaged when the protected item is exposed at risk; and (ii) Special administrative sanctions such as electricity bar and nullity of contracts could be imposed.

Summing up, the Moldovan legal framework is called to fully implement the ad-hoc provisions of : (i) The European Cultural Convention, Paris, 1954, ratified by the Parliament of the Republic of Moldova on May 24, 1994; (ii) The European Convention for the protection of the archeological heritage adopted at Valetta on January 16, 1992, ratified in December 2001; (iii) The Convention for the protection of the architectural heritage of Europe of October 3, 1985, ratified in December 2001; (iv) The European Convention of landscape, adopted in Florence, 2000, ratified on 14.03.2002; (v) The Convention concerning the protection of the cultural and natural heritage (UNESCO, Paris, 1972), ratified in June 2002; (vi) The Convention concerning the protection and promotion of diversities of cultural expression, Paris, 20.10.2005, ratified on 27.07. 2006; (vii) The UNESCO convention concerning the safeguarding of immaterial cultural heritage, adopted in Paris, 2003, ratified on 24.03. 2006; (viii) The Convention-plan European Council concerning the value of cultural heritage for society, adopted in Faro, ratified on 1.12. 2008; (ix) The UNESCO convention over the measures that follow to be taken for the prohibiting and impeding unlawful operation of import, export and property transfer of heritage goods, Paris, 04.11.1970, adhered on 14.09.2007; (x) The Convention for protecting cultural goods in case of armed conflict, along with Regulations of executing, adopted in The Hague, on May



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14, 1954 and the Protocol at The Hague Convention, 1954, adhered on 09.12. 1999. The existing Operational Guidelines of these Conventions should be also pondered in each of their suggestions.

In brief, the draft now under examination represents a useful and an appreciated commitment. Notwithstanding, it does not completely tackle with the manifold above-mentioned issues, and in its sector of intervention need substantial improvement. Indeed, far from solving problems of overlapping provisions, gaps and ambiguous interpretations, the draft is still subject to the following specific remarks.

Specific remarks

In Article 1, it is stated that: “The state maintenance of the historical monuments includes activities, measures and decisions by which the institutions and bodies responsible for the protection of monuments, in accordance with the needs of society....”. As Moldavia has ratified the Faro Convention, this provision could be improved and make clear that administrative bodies obligation should include all aspects of the environment resulting from the interaction between people and places through time, undertaking to: a) Promote cultural heritage protection as a central factor in the mutually supporting objectives of sustainable development, cultural diversity and contemporary creativity; b) Recognize the value of cultural heritage situated on territories under their jurisdiction, regardless of its origin; c) Develop the use of digital technology to enhance access to cultural heritage and the benefits which derive from it; d) Maintain, develop and contribute data to a shared information system, accessible to the public.

In Article 2, it is stated that: “Historical monuments represent a distinct genre of immovable assets of cultural patrimony located above ground, underground and underwater, having historical, architectural, urban, archaeological, artistic, ethnographic, religious, social, scientific and/or technical of the period and past civilizations, which fall into the following categories”. The mentioned categories do not seem, however, exhaustive, and a more general provision encompassing as much immovable heritage manifestation as possible should be envisaged. Therefore, it would be advantageous to reframe this provision. On the other hand, there should be a clear distinction between archaeological sites, monuments and other cultural goods, as different laws rule on them and their provisions often overlap creating legal uncertainty. Obviously, a coordinated text or code should be the target to which the Moldavian legal system should aim.

Article 3 should be improved and amended in some of its provisions. For instance: (i) The definition of “enhancement” should be reframed, stating that enhancement consists in the exercise of the functions and in the regulation of the activities aimed at promoting knowledge of the cultural heritage and at ensuring the best conditions for the utilization and public enjoyment of the same heritage. Enhancement also includes the promotion and the support of conservation work on the cultural heritage. Enhancement is carried out in forms which are compatible with protection and which are such as not to prejudice its exigencies. It is also opportune to state that the Republic shall foster and sustain the participation of private subjects, be they single individuals or associations, in the enhancement of the cultural heritage; (ii) In the historical site-type monuments a special consideration could be paid to the living heritage or people centered heritage, that is the heritage lived in and for by people; (iii) It is also opportune to state that the historical-architectural environment includes sufficient areas immediately adjacent to the area of cultural value in order to protect the property's heritage values from direct effect of human encroachments and impacts of resource use



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outside of the nominated area. Wherever necessary for the proper conservation of the property, an adequate protection area is to be provided; (iv) Opportune consideration could be given to the concept of regeneration, which should be performed only on the basis of complete and detailed documentation and to no extent on conjecture; (v) The concept of authenticity could be also reframed, and it would benefit from a further reflection on the Nara document on authenticity. In other words, knowledge and understanding of information, in relation to original and subsequent characteristics of the cultural heritage, and their meaning, are the requisite bases for assessing all aspects of authenticity. Therefore, cultural heritage should be considered and judged primarily within the cultural contexts to which it belongs. To meet the conditions of authenticity, truthfully and credibly, its characteristics shall be expressed through a variety of attributes including: (a) Form and design; (b) Materials and substance; (c) Use and function; (d) Traditions, techniques and management systems; (e) Location and setting; (f) Language, and other forms of intangible heritage; (g) Spirit and feeling; and (h) Other internal and external factors. The combined use of all these sources shall permit elaboration of the specific artistic, historic, social, and scientific dimensions of the cultural heritage being examined. These sources are composed of all physical, written, oral, and figurative sources, which make it possible to know the nature, specificities, meaning, and history of the cultural heritage; (vi) It is also opportune to consider the other relevant concept (utilized, indeed, in several steps of this draft), that is that of integrity. As it is known, integrity, is a measure of the wholeness and intactness of the cultural heritage and its attributes. Integrity shall require assessing the extent to which the property: (a) Includes all elements necessary to express its value; (b) Is of adequate size to ensure the complete representation of the features and processes which convey the property's significance; (c) Is not affected by adverse effects of development and/or neglect. In brief, it is opportune to reframe some the existing definitions, and others that are scattered in other part of the draft should be indicated in this Article 3.

Part of Article 4 could have constitutional dignity, and the solemn declaration on State's guarantees for historical monuments and their functions as testimonies of history and culture would have a better place in the Moldavian Constitution that take into consideration cultural goods protection only in Articles 33 and 59. It is also opportune to amend Article 4, in order to clarify some of its provisions. For instance: (i) In the appropriate part of this draft, it is an improvement to indicate what could be sustainable development in relation to cultural heritage protection; (ii) An accreditation system for ensuring the quality of the interventions within the historical monuments and their protection areas could be bettered. Primary and secondary legislation is called to provide full guidance on the content of the documentation to be prepared for any project, to be developed on the basis of guidelines, which could reflect the European legal frame work, that is the Directive 2014/24/EU, entered into force on 18.4.2016. In such a way, some questionable situations could be avoided, as those creating a monopoly for those who had the chance of getting a master on conservation abroad; (iii) Clarity is also necessary with reference to the fact that historical monuments may be the object of servitude of public utility. In these cases, a coordination meeting between the competent administrations (obviously, including the Ministry of Education, Culture and Research) should be arranged; (iv) Limits to be detailed by the competent administration should be imposed to private owners starting works of preservation, maintenance, consolidation, restoration and valorization of historical monuments; (v) Issues related to the change and/or modification of address of the historical monuments should be better addressed via amendments to the cadaster organization. Transitionally, it could be sanctioned whoever attempt to bypass the historical monuments protection system, creating typical behaviors to be punished as criminal or administrative offences; (vi) Historical monuments, which are on the



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territory of the Republic of Moldova and which are owned by other States, should be protected under the present law and according to international treaties too.

It would be better to split Article 5 into two provisions: the first one on public and private ownership; the second one on the preemption rights of the State. Not only. The fact that the concession of the public historical monuments is made under the law, by a decision of the Parliament seems too political and the procedures become burdensome, complex and causes delays. The law should, in fact, rule on the general principles for allowing concession of historical monuments in public or private hands; while each concession should be granted and supervised by the competent administrative authorities. In case of local authority, such as civil circuit or other territorial or religious entity, there should be a coordination meeting system between them, other stakeholders (NGOs etc) and the central authority, in order to avoid that local/religious authorities come to be too keen on private interests. Further, preemption procedures of historical monuments owned by natural or legal persons could be ruled in details, and it is better to contemplate other provisions for private historical monuments that are in common ownership, imposing to anyone to fully respect the historical importance of the monument.

Article 6 could be more detailed and the draft is called to single out all the obligations. Secondary legislation (decree, orders, guidelines, etc.) could, then, accompany such provisions which require, in fact, the flexibility of internal norms defining steps, standards, criteria and timeframe for all procedures envisaged by the law. In other words, what is opportune to create is a comprehensive set of regulations and standards for each and every procedure. Further, heritage status of any protected monument is to be inserted in the cadaster registry of each property.

In Article 8, the collaboration with NGO requires provisions fully respecting participatory processes, transparency and information. The actual implementation of a participatory governance of the culture sector can be based on a wide range of models. International best practices demonstrate that the most successful culture management requires, along with the efforts of State bodies and municipalities, the participation NGOs and private entities, that are called to cooperate and organize the effective use of cultural objects, adhering to the principles of state culture policy, with application of innovative management tools and prevention of monopolies. In particular, cooperation of the “bottom-up-type” with local self-government bodies and NGO is upheld by the Council of Europe, which has made several recommendations as highlighted in the European Neighborhood Policy (ENP). In brief, NGOs should be fully involved in the preparation of State programs and closely participate in the work of public commissions. Government agencies and NGOs relations should be encouraged and -where they exist- they should be deepened, while the number of NGOs in local entities should increase and their material technical base should be strengthened. Indeed, the Recommendation CM/Rec(2007)14 of the Committee of Ministers to Member States on the legal status of NGOs in Europe (Adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers’ Deputies) could be fully considered by the Moldavian legal system.

The first comma of Article 9 is called to give a clear definition of monuments that are in group A, with reference to other monuments that should be classified in group B. It is, then, opportune that the draft is integrated by secondary legislation, as such definitions could require the flexibility of internal norms and/or administrative decisions. The same flexibility is to be required for the national and local registers whose updating could be in the competence of the MECR, acting in coordination with territorial/religious entities in



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case of monuments of local/religious relevance. In this respect, it could be envisaged the so-called conference of services, whose aim is to facilitate the acquisition by the competent administrative body of decisions, acts and other measures that are reached/enacted/prepared by means of convocation of a special collegial meetings (the so-called conference). It can be seen both as a procedural simplification process, and as a tool for coordinating the plurality of interests involved in order to weigh and aggregate them. Service conferences are intended to speed up the conclusion of an administrative procedure, and their types are as it follows: (i) Preliminary conference, where it is appropriate to carry out a simultaneous examination of various public interests involved in an administrative proceeding; (ii) Decisive conference, which is convened to create a decision base that replaces all the preliminary acts to the final decision. This type of conference can be mandatory, for instance when the administration is required to acquire opinions, agreements, authorizations, or other administrative acts by other designated public administrations, or where the private activity is subject to several acts of assent, however named, to be adopted at the conclusion of distinct procedures, falling within the competence of several public administrations. The decisive conference can also be: a. A simplified conference in asynchronous mode, which involves the submission of documentation and acts of consent by telematic means; b. The simplified conference in synchronous mode, that is, the traditional meeting with the simultaneous presence of the representatives of different administrations. Coming back to the analysis of Article 9, it appears opportune to amend comma 4 of the draft. In brief, the legislator is called to consider avoiding that decisions, administrative in nature, have a highly political level and that the whole process becomes inefficient and potentially not more effective in its outcomes. In fact, administrative decisions could better allow the early and automatic updating of the registers, whenever a new immovable good comes to be protected, without resorting to two phases process creating inefficiencies and delays.

Article 10 is to be amended considering the remarks as proposed under Article 9. In particular, the legislator is called to consider avoiding that decisions, administrative in nature, have a highly political level, and it appears not fully opportune that the classification of historical monuments in group A is to be made by a decision of the Parliament. Rather, flexibility is to be accorded either for the national registers and for the local ones, whose updating could be better in the competence of the Ministry of Education, Culture and Research, acting in coordination with territorial/religious entities in case of monuments of local/religious relevance.

Article 11 is to be amended taking into consideration the remarks that have been done in Article 9 and 10. Therefore, the legislator is called to consider avoiding that decisions have a highly political level, and the classification either for the national and for local/religious monuments could be better in the competence of the MECR, acting in coordination with territorial/religious entities in case of monuments of local/religious relevance. Secondary legislation is to be enacted to accompany such a draft, as procedures and their different stages/outcomes (digitalization of the data/information) could require the flexibility of internal norms and/or administrative decisions. Ad hoc provisions could assure that the quality of the historical monument of the immovable property shall be at all time registered by the Territorial Cadastral Offices, free of charge, in the Register of Real Estate.

Article 12 could be amended, as the date of commencement of the classification procedure can well start when the obligation to notify the owner, the holder of the right of administration or the holder of another real right on the immovable property has been carried out.



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The explanatory part of Article 13 could be inserted in Article 3. Article 13 is also to be amended taking into consideration the remarks that have been done in Article 9 and 10. Therefore, the legislator could consider avoiding that decisions have a highly political level, and the demolition of the historical monument either for the national and for local/religious monuments could be in the competence of the Ministry of Education, Culture and Research, acting in coordination with territorial/religious entities in case of monuments of local/religious relevance. In case of degradation caused through intent or negligence by private owner/manager with any legal title, sanctions could be either the obligation to reconstitute or to bring the monument to the original state and the confiscation of the area.

Article 14 is to be amended taking into consideration the remarks that have been done in Article 9 and 10. Therefore, emergency classifications either for the national historical monuments and for local/religious ones are better in the competence of the MECR, acting in coordination with territorial/religious entities in case of monuments of local/religious relevance. Secondary legislation is to be enacted to accompany such a draft, as procedures and their different stages/outcomes (award criteria, preference for qualitative and disfavor criteria for the maximum discount, “utmost urgency” etc.) could require the flexibility of internal norms and/or administrative decisions.

Article 15 would better take into consideration that the improvement and expansion of culture services shall require specific provisions in order to fully promote: (i) A single Moldavian portal dedicated to tangible and intangible cultural and natural heritage. With regard to this, it would be opportune to create an adequate system on the registration of natural heritage and of movable and immovable cultural goods in comprehensive inventories/databases including all publicly owned cultural/natural properties, as well as private collections and properties. Other provisions (of secondary legislation level) are called to fully translate local, regional and national inventories into digital databases, establishing a common infrastructure, allowing access through a single online portal to all national inventories and databases of cultural property to connect to international ones. This databases should also have regard to criminal offences and administrative violations; (ii) Studies, research and pilot measures, creating appropriate indicators and benchmarks for the heritage; (iii) Cultural and social innovation integrated into local settings; (iv) Small-scale cultural initiatives. Obviously, this radical and necessary reform should be completed as soon as possible and triggered via primary and secondary legislation of which a trace should be in the draft.

It is opportune that the Article 16 provisions are extended to all the historical monuments and their furniture, rather to be limited to liturgical objects or other historical accessories. It is obviously important to protect such objects, thus preserving sites and monuments where they are located. Movable objects included in historical buildings are, in fact, essential for contextualizing such buildings in their age. They improve their integrity, authenticity, value and significance as testimony of the historical period in which they served the daily life of people.

Amendments to Articles 17 and 18 could be required in order to contemplate better rules on the so called buffer zones, that is areas surrounding the historical monument which have complementary legal and/or customary restrictions placed on their use and development to give an added layer of protection to the property. Wherever necessary for the proper conservation of the property, an adequate buffer zone is to be provided, not limited to the areas indicated in the draft. In brief, through primary and secondary legislation, it is opportune to rule on the immediate setting of the cultural property, its important views and other areas



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or attributes that are functionally important as a support to the property and its protection. With respect to the buffer zone generally established via law (immediately operative), there should be a specific area to be determined in each case through appropriate mechanisms by the Ministry of Education, Culture and Research, acting in coordination with relevant territorial/religious entities in case of monuments of local/religious relevance. Details on the size, characteristics and authorized uses of a buffer zone, as well as a map indicating the precise boundaries of the property and its buffer zone, are to be of immediate registration into the cadastral maps. It is also opportune a clear explanation of how the buffer zone protects the property. Modifications to the buffer zone are to be approved by the administrative bodies that determined it. Where no buffer zone is proposed, the registration process is called to include a statement as to why a buffer zone is not required.

It is also opportune to amend Article 19, and from the date of notification of the triggering of the classification procedure the owner of the historical monument should be called to abide the specified conditions and rules of use/exploitation, of the monument. These obligations are to be drawn up by the MECR, acting in coordination with relevant territorial/religious entities in case of monuments of local/religious relevance. When notifying the classification procedure, the Ministry will enter such obligations into the cadaster register. Obviously, guidelines and directive can be approved by a Government decision.

It is opportune to amend Article 20, and interventions (including their certificates, permits, authorizations and related procedures) on historical monuments are always to be in the competence of the MECR, acting in coordination with relevant territorial/religious entities in case of monuments of local/religious relevance, and releasing authorizations in this respect. The explanatory part of Article 20 considering the various aspects of term “interventions” is better inserted in Article 3 and detailed through secondary legislation.

It would be better to split Article 21 and rule separately on the different themes dealt in. This Article is also to be amended and all the interventions (including the change of function or destination, maintenance or repair) are to be made under inspection and control of the MECR, acting in coordination with relevant territorial/religious entities in case of monuments of local/religious relevance. Detailed provisions could be enacted on preventive archaeological research of the land of the historical monument and on the public ownership of the archaeological objects retrieved. Furthermore, provisions dealing with procedures for planning and implementing restoration works could take advantage from and fully consider the European legal frame work, in particular the Directive 2014/24/EU, and the Moldavian legislator could fully take into account the EU acquis related to the education standards.

It is advisable to amend Article 23, and historical and cultural reserves are better in the competence of the MECR, acting in coordination with relevant territorial entities in case of reserves of local relevance.

The above-mentioned remarks make clear that Articles 24 and 25 on the competences of the MECR are to be amended. In particular, it seems opportune to reframe these Articles on the: (i) Coordination of the Ministry activities with relevant territorial/religious entities in case of monuments of local/religious relevance; (ii) Parliament competences; (iii) Buffer zones etc.

Chapter IV contains the provisions for the revision of the institutional framework: it is noticed that the reform provides for the unification of the existing agencies NAA and AIRM: given the structural weaknesses of AIRM in term of staff units and specialised professionals this unification may be useful to strengthen the capacity of this Agency, although it would be a delicate process which should be carefully guided by a capable and



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dedicated director, with strong technical background and solid knowledge of the administrative machine and work in all its details to avoid that, in the process, the high level capacities of NAA staff may be diminished in the effort to increase those of AIRM. A careful monitoring by MECR of the process of fusion has to be envisaged, accompanied by ad- hoc training and capacity building activities.

The main criticism to this institutional architecture resides in the high number of competences assigned to the newly created NICH – which should result from the reformation of the existing ICH, formerly part of the Academy of Sciences and now under the aegis of MECR – at the expenses of the tasks so far assigned to the Agencies. This approach privileges one single institution, which so far has essentially conducted ‘fundamental’ research activity and therefore is staffed with highly specialised professionals, who however, have no competences or experience (and potentially no interest) in the fields they will be called to work on, namely applied research, criteria building, standard setting for cultural heritage documentation, protection and conservation, inventorying, classification, register- keeping, intervention project development, etc. on the other hand, the unified Agency would be reduced to an inspection body, losing almost all other functions, particularly those related to documentation of archaeological or monumental heritage, research, conservation tasks. Whilst this choice is on the one side, motivated by the very poor implementation of their functions by the Agencies, in particular by the AIRM, and, on the other side, by the need to resolve certain conflicts of competences, that relates mainly to the NAA and its double role of controller and controlled body when it comes to preventive archaeology, it appears as very unsatisfactory in terms of expectable improvement in the effectiveness of implementation of the protection system. The subdivision of competences between the NICH and the NAMSI appears ill- conceived in the October 2017 reform for the following main reasons: concentrating all functions apart from inspection/protection implementation in one single institution will break the ‘heritage cycle’, which is based on four major moments which are all connected: it begins with understanding (that is to say, knowing, studying, inventorying), it continues with valuing (that is to say, selecting for classification, protection), and then with caring (that is to say, preventing damages or destruction, preserving, controlling, limiting uses or transformations, maintaining, repairing, conserving, enhancing, promoting, interpreting, communicating...) with a view to make heritage understandable and enjoyable. Separating inspection from the rest would be like separating one part of the ‘caring’ component from the rest, thus depriving it from its sense, reducing it to a bureaucratic burden and a difficult and least rewarding one. Assigning only inspection to the NAMSI would undermine the meaning of this activity, would penalise the staff of the NAMSI, who will deal only with the hardest part of heritage protection, leading to stress and frustration, thereby favouring the frequent turn-over of the staff, who will not mature any experience in the job. Additionally, with no opportunity to grow in the profession through the implementation of conservation or rehabilitation interventions, the staff of the agency will not be able to provide technical support or advice when inspecting building sites or protected monuments to assess their conditions: their inspection will become only administrative / bureaucratic routine and not occasions through which exercise protection in a meaningful and technically based manner.

It seems useful to amend Articles 33, 34 and 37 devoted to the attributions of the MEI, of MARDE, and MIA. Coordination of their competences should be enhanced through ad – hoc provisions. Furthermore, the draft could be improved and take into consideration that -when conducting impact assessments of projects and plans- several EU directives have been enacted, such as the Environmental Impact Assessment and Strategic Environmental Assessment Directives: nothing in this regard is contemplated in the current draft, therefore



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missing the opportunity to harness the potential offered by these procedures to anticipate since the planning process the assessment of the impacts of plans and programmes over the heritage and thereby anticipating the revisions of plans and projects at their very early stage of development.

Finally, on the ground of the experience of some countries, including Italy, recent approaches at the international level suggest the creation of specialized law enforcement bodies for ensuring a more effective protection of the cultural heritage, which could be mentioned in this draft (see, the International Guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property and other related offences, as approved on 16 May 2014, and the Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Properties -Paris, 1970-, adopted by consensus on 18 May 2015 by the Meeting of States Parties to the 1970 Convention).

Art. 38 deals with the attributions of LPAs, however, provisions are very general and do not envisage any real coordination mechanism. There should be local commissions that include peripheral structures of state bodies (General directorate of MECR or decentralized agency branch) that assess projects for monuments of local importance, in order to support local authorities and to increase their capacity in dealing with cultural heritage. It is suggested that the decentralized branches of NANSI cooperate with local authorities in the identification and documentation of monuments of local importance. If MECR through NICH developed guidelines for the documentation and listing of cultural heritage, the decentralized branches of the NANSI could well provide support and guidance for their use.

It should be possible that the proposals for listing monuments of local importance can be decided by a commission formed by technical staff of districts/ regions or large municipalities (e.g Chisinau, Balti, etc.), technical staff of the peripheral branch of the agency and one representative of the national Institute for cultural heritage and one from the council of monuments in order to increase the capacity of the technical staff of local authorities.

To ensure that local authorities will take the necessary measures for the protection of heritage of local importance, there should be provisions in the law clearly established, otherwise it will be unlikely that this will happen, given the current situation of local authorities in Moldova in terms of human, institutional and financial resources. Clear legal provisions should be added that says, for example, grade B monuments are automatically protected by a buffer of xxx meter radius within which all projects must be assessed by the local commission, and that within 4 years since the monument is registered, the local commission (municipality, local Agency with central representatives) prepares the delineation and specific regulation for protection zone (advice from national council should be sought as well – at least for the time being).

At the moment local authorities do not seem to have the capacity to cope with the protection of cultural heritage, particularly mayoralities, given their small size, fragmentation and structural lack of staff

Many provisions of this article are highly technical and it seems unlikely that the technical staff of municipalities or small mayoralities hold the technical competences implement those provisions. If the State intends to guarantee that monuments of local importance continue to be cared for, it has to define a different strategy: MECR (through the national Institute of cultural heritage) should develop criteria and guidelines to be learnt and applied by all – particularly by local administrations - to raise the capacity and limit the risks of delegated functions in the field of cultural heritage.



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Given the size of the country and the type of heritage, it should be possible to have national guidelines (it should be articulated on the basis of 'categories' – e.g. archeological sites, built heritage, urban settings, landscape - and morphologies, material of construction) – a three years project funded by some donors (EU or any other) bringing together local and international experts would serve the purpose).

Also articles 39 and 40 contain provisions that do not take in due consideration the specific situation of local authorities in Moldova; the Law itself does not envisage any mid- term coordination / cooperation / support mechanism among mayoralities with different capacities and State bodies and technical offices of local authorities nor does it envisage training or capacity building programmes to sustain the envisaged reform.

Article 41 contains a long list of obligations, which are not accompanied by corresponding sanction in case of non- observance: this undermines significantly the effectiveness of these provisions in that it remains in the good will and discretion of individuals and entities to respect them or not.

Articles from 42 to 46 deal with financial incentives, fiscal facilitation and funds: they include important provisions but need to be integrated into the relevant fiscal legislation. Some of them would need some procedure and administrative system to become reality, however the provisions do not seem to be built with their implementation in mind: their wording is too generic and no reference to potential secondary legislation is made in the draft text.

Following the reception of the observations made by Member State experts, among whom an experienced jurist, and several meetings, as well as the report from the Moldovan National Commission for Anticorruption, the Beneficiary Country took the courageous decision to proceed to a revision of the text.

To support the process, the Member State experts elaborated three variants of a draft guiding text which were offered in late March 2018 to Moldovan ministerial experts as a basis for the revision of their draft, anticipating the implementation of Activity "1.4. Support to the preparation of a set of normative acts, regulations and b-laws related to immovable cultural heritage management in line with best EU and international practices in participative approach".

These drafts have been already made available to the Beneficiary Country in March 2018, much in advance with respect to the expected schedule.

Regrettably, no significant modification to the roles and functions of the institutions responsible to cultural heritage can be detected in the August 2018 version, since the recommendations provided by the Member State experts do not appear to have been taken in due consideration.

For these reasons it is strongly recommended to rethink the articulation of the competences among the different bodies and re-balance the tasks assigned to each of them: if MECR is devoted to policy making and overall monitoring of its subordinated bodies, the NICH could be assigned the role of the development of scientific and methodological criteria, principles and norms, applied research and register keeping, whilst the NANSI should be tasked with the implementation of the whole spectrum of protection activities, including heritage identification and inventorying, classification proposals, intervention designing, etc. in close cooperation with NICH rather than in competition with it. Mechanisms of rotation of position in different institutions should



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be encouraged, in order to achieve multifaceted civil servants, able to understand the different facets of the job and of the challenges posed to heritage protection, conservation and promotion.



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DRAFT LAW ON PROTECTION OF HISTORIC MONUMENTS (VERSION AUGUST 2018)

The revised Draft law on historic monuments elaborated by the Moldovan ministerial experts has been released at the beginning of August 2018. It is currently published on the portal www.particip.gov.md to gather comments and observations from the public as well as from other ministries, agencies and relevant public actors.

The draft law is structured in a similar manner to the previous draft, comprising ten chapters and fifty articles. On the other hand, a number of provisions have been modified on the ground of the dialogue cored between the BCexperts and the MS STEs within the framework of this Twinning Project.

Below a comparative table between the structures of the October – 2017 and August-2018 versions is provided as a reference. The texts of the two drafts are provides in Annex, along with the three versions produced by the MS STEs, for completeness of information on the revisions process.



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PROJECT - LEGISLATIVE PROTECTION OF HISTORICAL MONUMENTS (Version October 2017)	PROJECT - LEGISLATIVE PROTECTION OF HISTORICAL MONUMENTS (Version August 2018)
<p>CHAPTER I General provisions</p> <p>Article 1. Subject of the present law</p> <p>Article 2. Historical monuments</p> <p>Article 3. Terms of reference (definitions)</p> <p>Article 4. Protection of historical monuments</p> <p>Article 5. Ownership and right to preemption of historical monuments</p> <p>Article 6. The mention in the acts of the historical monument regime</p> <p>Article 7. The distinctive plaque of historical monuments</p> <p>Article 8. Collaboration with NGOs</p>	<p>CHAPTER I. GENERAL PROVISIONS</p> <p>Article 1. Subject matter of the law</p> <p>Article 2. Purpose of the law</p> <p>Article 3. Principles</p> <p>Article 4. Terms of Reference</p>
<p>CHAPTER II Evidence and classification of historical monuments</p> <p>Article 9. National Register and Local Registries of Historical Monuments</p> <p>Article 10. Historical Monument Classification Groups</p> <p>Article 11. Classification of historical monuments</p> <p>Article 12. Triggering the Classification Procedure</p> <p>Article 13. The demolition of the historical monument</p> <p>Article 14. Emergency classification of historical real estate</p> <p>Article 15. Inventory of historical monuments</p> <p>Article 16. The specificity of the inventory file of the cult edifices as a historical monument</p>	<p>CHAPTER II. HISTORICAL MONUMENTS AND THEIR PROTECTION</p> <p>Article 5. Historical monuments</p> <p>Article 6. The land of the historical monument</p> <p>Article 7. Historical and Cultural Reserves</p> <p>Article 8. The cultural objects of the cult edifices as historical monuments</p> <p>Article 9. Ownership and pre-emption right over historical monuments</p> <p>Article 10. Concession of Historical Monuments</p> <p>Article 11. The mention in the acts of the historical monument regime</p> <p>Article 12. Protection of historical monuments</p> <p>Article 13. Historic monument protection area</p>
<p>CHAPTER III - Historical monuments. Interventions on historical monuments and their protection areas</p> <p>Article 17. The land of the historical monument</p> <p>Article 18. The Historic Monuments Protection Zone</p> <p>Article 19. Obligation to protect the historical monument</p> <p>Article 20. Interventions on historical monuments of the individual object category and the whole</p> <p>Article 21. Operation of historical monuments interventions</p> <p>Article 22. Interventions within historical monuments of the built-up category</p> <p>Article 23. Historical and Cultural Reserves</p>	<p>CHAPTER III. CLASSIFICATION AND EVIDENCE OF HISTORICAL MONUMENTS</p> <p>Article 14. Procedure for Classification of Historical Monuments</p> <p>Article 15. Emergency classification of historical monuments</p> <p>Article 16. National Register of Historical Monuments</p> <p>Article 17. Status of immovable property subject to the classification procedure</p> <p>Article 18. Status of immovable property liable to be classified</p> <p>Article 19. Informing the owners about the classification of historical monuments</p> <p>Article 20. Declassification of the Historical Monument</p> <p>Article 21. Inclusion of Historical Monuments in the Cadastre of Real Estate</p> <p>Article 22. Inventory of historical monuments</p> <p>Article 23. The distinctive mark of historical monuments</p>
<p>CHAPTER IV - Institutions and specialized bodies with attributions in the protection of historical monuments</p> <p>Article 24. Ministry of Education, Culture and Research</p> <p>Article 25. Duties of the Ministry of Education, Culture and Research</p>	<p>CHAPTER IV. INTERVENTIONS IN HISTORICAL MONUMENTS</p> <p>Article 24. Archaeological research of historical monuments</p> <p>Article 25. Architectural Surveys at Historical Monuments</p>



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<p>Article 26. National Cultural Heritage Institute</p> <p>Article 27. The attributions of the National Cultural Heritage Institute</p> <p>Article 28. National Agency for Inspection of Monuments and Sites</p> <p>Article 29. Tasks of the National Agency for the Inspection of Monuments and Sites</p> <p>Article 30. National Council of Historical Monuments.</p> <p>Article 31. Duties of the National Council of Historical Monuments.</p> <p>Article 32. Remuneration of members of the National Council of Historical Monuments.</p> <p>CHAPTER V - The attributions of the central and local public authorities in the field of the protection of historical monuments</p> <p>Article 33. Duties of the Ministry of Economy and Infrastructure</p> <p>Article 34. The attributions of Agriculture, Regional Development and the Environment</p> <p><i>a) Two missing articles -</i></p> <p>Article 38. General attributions of the local public authorities and ATU Gagauzia</p> <p>Article 38. Competences of local public authorities of level I</p> <p>Article 39. Powers of the mayor</p> <p>Article 40. Attributions of Local Authorities of Level II and ATU Gagauzia</p> <p>CHAPTER VI - Obligations of historical monuments owners</p> <p>Article 41. Obligations of owners and holders of property rights over historical monuments.</p> <p>CHAPTER VII - Financing of historical monuments protection activities</p> <p>Article 42. Funding of the Protection of Historical Monuments</p> <p>Article 43. Budget for the Protection of Historical Monuments of Public Authorities</p> <p>Article 44. The financial contribution of the state, the local public authorities and the ATU Gagauzia to the works for the protection of the historical monuments</p> <p>Article 45. Covering the cost of works on historical monuments included in programs established by Government Decisions</p> <p>Article 46. Tax exemptions for buildings with historical monument status</p> <p>Article 47. Exercise of the Preemption Right of the State</p>	<p>Article 26. Requirements for the Design and Operation of Historical Monument Interventions</p> <p>Article 27. Intervention notice for historical monuments and protection areas</p> <p>Article 28. Interventions on historical monuments of the individual object category and the whole</p> <p>Article 29. Interventions within historical monuments - built sites</p> <p>CHAPTER V. THE INSTITUTIONAL ORGANIZATION OF THE PROTECTION OF HISTORICAL MONUMENTS</p> <p>Article 30. Bodies and specialized institutions</p> <p>Article 31. The Ministry of Education, Culture and Research</p> <p>Article 32. National Cultural Heritage Institute</p> <p>Article 33. National Agency for Monuments and Sites</p> <p>Article 34. National Council of Historical Monuments</p> <p>CHAPTER VI. LOCAL PUBLIC AUTHORITIES AND TERRITORIAL AUTHORITIES IN HISTORICAL MONUMENTS PROTECTION</p> <p>Article 35. General duties</p> <p>Article 36. Attributions of local government level I</p> <p>Article 37. Powers of the Mayor</p> <p>Article 38. Duties of Local Authorities of Level II and of Autonomous Territorial Units</p> <p>Article 39. Cooperation in the Protection of Historical Monuments</p> <p>CHAPTER VII. THE OBLIGATIONS OF THE HISTORICAL MONUMENT OWNERS</p> <p>Article 40. Obligations of the owners and holders of the right to administer the historical monuments</p> <p>Article 41. Obligation to protect the historical monument</p> <p>CHAPTER VIII. FINANCING THE HISTORICAL MONUMENTS PROTECTION ACTIVITIES</p> <p>Article 42. Sources and Methods of Financing Activities for the Protection of Historical Monuments 30</p> <p>Article 43. Budget of Public Authorities for the Protection of Historical Monuments</p> <p>Article 44. The financial contribution of the public authorities and the real estate guarantee</p> <p>Article 45. Covering the cost of works on historical monuments included in programs established by Government Decisions</p> <p>Article 46. Tax exemptions for buildings with historical monument status</p>
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Article 48. Funds for the Protection of Historical Monuments	Article 47. Ensuring the exercise of the pre-emption right of the state
CHAPTER VIII - Liability for violating this law Article 49. Liability for Breach of this Law CHAPTER IX - Application of international conventions Article 50. Application of international conventions in the field of cultural heritage protection	CHAPTER IX. LIABILITY FOR BREACH OF THIS LAW AND APPLICATION OF INTERNATIONAL CONVENTIONS Article 48. Liability for Breach of this Law Article 49. Application of international conventions in the field of the protection and valorisation of cultural heritage
CHAPTER X Transitional and final provisions Article 51.	CHAPTER X. FINAL AND TRANSITORY PROVISIONS Article 50.

Below a comparative table of the structure of the proposed revised draft of the Law as submitted to the Beneficiary Country representatives in march 2018 and of the structure of the Draft law (version August 2018)

REVISED DRAFT LAW STRUCTURE AND CONTENT (MS EXPERTS) – MARCH 2018 – amended JULY 2018	PROJECT - LEGISLATIVE PROTECTION OF HISTORICAL MONUMENTS (Version August 2018)
CHAPTER I. General Provisions Article 1. Principles Article 2. Object and Purpose Article 3. National and International Cooperation Article 4. Historical Monuments / Historical Cultural Reserves Article 5. Definitions CHAPTER II. Protection Article 6. Object of the protection Article 7. Protection zones Article 8. Protection and Enhancement of Historical Monuments and Historical Cultural Reserves Article 9. Forbidden interventions Article 10. Obligations of conservation New article. Obligated interventions - procedures [there is a need to further develop the provisions related to obligations of conservation - see articles on the same topic of Italian and French legislation to adapt to your legal system provided in annexes] Article 11. Urgent Interventions Article 12. The ensemble of Cultural Goods pertaining religious buildings and historical cultural properties. Article 13. Authorization/approval of works [New article needed] Art. 14 Authorisation/approval procedure	CHAPTER I. GENERAL PROVISIONS Article 1. Subject matter of the law Article 2. Purpose of the law Article 3. Principles Article 4. Terms of Reference CHAPTER II. HISTORICAL MONUMENTS AND THEIR PROTECTION Article 5. Historical monuments Article 6. The land of the historical monument Article 7. Historical and Cultural Reserves Article 8. The cultural objects of the cult edifices as historical monuments Article 9. Ownership and pre-emption right over historical monuments Article 10. Concession of Historical Monuments Article 11. The mention in the acts of the historical monument regime Article 12. Protection of historical monuments Article 13. Historic monument protection area



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[This article is to be developed - see examples from Italian and French legislation for details - provided in annexes].

Art. 15. Requirements for projects and works on historic monuments and historic cultural reserves

Art. 16. Preventive archaeology in protected historic monuments and historical cultural reserves

Article 17. Management of Historical Cultural Reserves

Art. 18. Protection of historical cultural properties owned by other States

Art. 19. Inspection and suspension of works

Art. 20 - Transfer of privately owned cultural property assets or private legal entities

Article 20bis. Exercise of the right of pre-emption

Article 20ter. Disposal of cultural property assets of public ownership

Article 20quater. Authorization for the alienation of cultural property of public ownership

Article 21. Concessions in use of cultural property assets of public ownership

Article 22. Authorization for the concession in use of cultural property of public ownership

New Article. Concessions procedures

[see the observations and clear suggestions of the CAN on the procedure to be delineated]

CHAPTER III Inventory, Classification and Declassification of Historical Monuments and Historical Cultural Reserves

Article 23. Inventory of Historical Monuments

Article 24. Classification and Declassification

Article 25. Classification procedure of Historical Monuments

Article 25bis. Declassification Procedure

Article 26. Notification of the classification / declassification

Art. 26bis Registration into the Cadastre of Real Estate

Art. 27. Claim against the classification / declassification decisions

Article 28. National Register of Historical Monuments [...]

Article 29. Plaque Indicating the Status of Historic Monument [...]

CHAPTER III. CLASSIFICATION AND EVIDENCE OF HISTORICAL MONUMENTS

Article 14. Procedure for Classification of Historical Monuments

Article 15. Emergency classification of historical monuments

Article 16. National Register of Historical Monuments

Article 17. Status of immovable property subject to the classification procedure

Article 18. Status of immovable property liable to be classified

Article 19. Informing the owners about the classification of historical monuments

Article 20. Declassification of the Historical Monument

Article 21. Inclusion of Historical Monuments in the Cadastre of Real Estate

Article 22. Inventory of historical monuments

Article 23. The distinctive mark of historical monuments

CHAPTER IV. INTERVENTIONS IN HISTORICAL MONUMENTS

Article 24. Archaeological research of historical monuments

Article 25. Architectural Surveys at Historical Monuments



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	<p>Article 26. Requirements for the Design and Operation of Historical Monument Interventions</p> <p>Article 27. Intervention notice for historical monuments and protection areas</p> <p>Article 28. Interventions on historical monuments of the individual object category and the whole</p> <p>Article 29. Interventions within historical monuments - built sites</p>
<p>CHAPTER IV. Institutions and Specialized Bodies with Attributions in the Protection and Enhancement of Historical Monuments and Historical Cultural Reserves</p> <p>Article 30. Ministry of Education, Culture and Research Competences and Duties</p> <p>[articles on institutions not developed - the whole architecture under discussion as of march 2018]</p>	<p>CHAPTER V. THE INSTITUTIONAL ORGANIZATION OF THE PROTECTION OF HISTORICAL MONUMENTS</p> <p>Article 30. Bodies and specialized institutions</p> <p>Article 31. The Ministry of Education, Culture and Research</p> <p>Article 32. National Cultural Heritage Institute</p> <p>Article 33. National Agency for Monuments and Sites</p> <p>Article 34. National Council of Historical Monuments</p>
<p>CHAPTER V. Obligations of historical monuments owners</p> <p>Article 31. Obligations of the Owners and Holders of the Historical Monuments and Historical Cultural Reserves</p>	<p>CHAPTER VI. LOCAL PUBLIC AUTHORITIES AND TERRITORIAL AUTHORITIES IN HISTORICAL MONUMENTS PROTECTION</p> <p>Article 35. General duties</p> <p>Article 36. Attributions of local government level I</p> <p>Article 37. Powers of the Mayor</p> <p>Article 38. Duties of Local Authorities of Level II and of Autonomous Territorial Units</p> <p>Article 39. Cooperation in the Protection of Historical Monuments</p>
<p>CHAPTER VI. Financing Activities and other Economic Initiatives for the Protection and Enhancement of Historical Monuments and Historical Cultural Reserves</p> <p>Article 32. Funding of the Protection and Enhancement of Historical Monuments and Historical Cultural Reserves</p> <p>Article 33. Budget for the Protection and Enhancement of Historical Monuments and Historical Cultural Reserves of Public Authorities</p> <p>Article 34. Financial Support and its Guarantees for the Protection and Enhancement Works on Historical Monuments and Historical Cultural Reserves</p> <p>Article 35. Other Initiatives promoting the protection, enhancement and public enjoyment of Historical Monuments and Historical Cultural Reserves</p> <p>Article 36. Covering the Cost of Works on Historical Monuments and Historical Cultural Reserves Included in Programs Established by Government Decisions</p> <p>Article 37. Tax Exemptions and other Benefits for Buildings and Areas with Historical Monument or Reserve Status</p> <p>Article 38. Funds for the exercise of the Preemption Right of the State</p>	<p>CHAPTER VII. THE OBLIGATIONS OF THE HISTORICAL MONUMENT OWNERS</p> <p>Article 40. Obligations of the owners and holders of the right to administer the historical monuments</p> <p>Article 41. Obligation to protect the historical monument</p>
<p>CHAPTER VII. Powers of the Public Authorities in case of Violation of this Law</p> <p>Article 39. Powers of the Public Authority for Historic Monuments and Historical Cultural Reserves Protection and Enhancement</p>	<p>CHAPTER VIII. FINANCING THE HISTORICAL MONUMENTS PROTECTION ACTIVITIES</p> <p>Article 42. Sources and Methods of Financing Activities for the Protection of Historical Monuments 30</p> <p>Article 43. Budget of Public Authorities for the Protection of Historical Monuments</p> <p>Article 44. The financial contribution of the public authorities and the real estate guarantee</p> <p>Article 45 Covering the cost of works on historical monuments included in programs established by Government Decisions</p> <p>Article 46. Tax exemptions for buildings with historical monument status</p>



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<p>Article 40. Violations Relating to Juridical Acts</p> <p>CHAPTER VIII. Liability of Private Persons and Legal Entities for Violating this Law</p> <p>Article XX. Liabilities of Public Officials Committed with Intent</p> <p>Article XX. Negligent Performance of Duties by Public Officials</p> <p>Article 41. Damage, Vandalism and Unlawful Works and Use of Historical Monuments and Historical Cultural Reserves</p> <p>Article 42. Other Violations</p> <p>Article 43. Violations Pertaining to Alienation or to Change of the Holder Property Rights, Administration or Other Real Rights</p> <p>Article 44. Non-Compliance with Administrative Measures</p> <p>Article 45. Liability of Legal Entities</p> <p>Article 46. Collaboration in the Restoration of Cultural Value of a Historical monument and Historical Cultural Reserve</p> <p>CHAPTER IX. Application of International Conventions</p> <p>Article 47. Application of International Conventions in the Field of Cultural Heritage Protection and Enhancement</p> <p>CHAPTER X. Transitional and Final Provisions</p> <p>Article 48. Regulations and Subsidiary Normative Tools</p>	<p>Article 47. Ensuring the exercise of the pre-emption right of the state</p> <p>CHAPTER IX. LIABILITY FOR BREACH OF THIS LAW AND APPLICATION OF INTERNATIONAL CONVENTIONS</p> <p>Article 48. Liability for Breach of this Law</p> <p>Article 49. Application of international conventions in the field of the protection and valorisation of cultural heritage</p> <p>CHAPTER X. FINAL AND TRANSITORY PROVISIONS</p> <p>Article 50.</p>
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Preliminary comments and recommendations (date: August 2018)

The draft law on the protection of historic monuments (version August 2018) has been only recently received therefore only preliminary comments may be proposed at this stage.

It is evident even only by comparing the structures that the new draft law prepared by the BC experts differs from the proposed guiding document submitted for consideration by the MS STEs.

In particular, the Chapter on Protection is much more limited in the Draft Law Version August 2018 prepared by the BC experts, missing a number of key provisions to regulate the matter adequately. On the other hand, the BC draft includes a chapter on Intervention which is not envisaged by the MS proposal, according to a rationale that considers primary legislation not apt to provide for technical specifications and that aggregate under the register of protection the provisions that regulate/ restrict any activity on the protected object.

An effort has been made to strengthen the legal role of the opinion of the National Council of Historic Monuments – NCHM and to improve the procedure for approval/ authorisation of projects on protected monuments and areas, however it still suffers from some confusion and indecision. This is mainly due to the difficulty to acknowledge that the National Council, as an advisory body to the ministry, cannot be given the task to issue administrative acts with external relevance, that is to say, acts that have an impact on the rights of citizens. This should be a task assigned to a technical – administrative branch of the administration, be it a specialised department of the MECR or NAMS, because in this way the administrative responsibility is clear.



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A balance should be sought between collegiality and clear administrative responsibility and accountability/liability. At present, the aims of a stronger protection through collegial decisions do not seem fulfilled, at least when considering the results of the activity of the NCHM.

The Chapter on the Liability for breaching the Law contains several articles in the draft proposed by the MS experts, whilst the proposal by the BC experts include only one article that refers to the relevant legislation. Whilst it is understood that a substantial difference exists between the way in which trans-sectorial matters are dealt with in the legal texts, in RM being preferred the inclusion of liability provisions within the general laws regulating the matter, rather than in the sectorial laws aiming to be equipped with liability provisions, it would have been advisable that a list of updated provisions to be included in the relevant laws about civil, contraventional, penal and administrative responsibility would have clarified better how the Ministry intends to strengthen the legislation via a reinforced set of liability provisions. Given the list of laws to be amended following the potential approval of the present text, it does not seem that criminal, civil and administrative penalties will be modified.

The MS STEs notice that some key objections that were anticipated since November 2017 have not been taken in due consideration by the Beneficiary Country representatives.

These provisions concern:

A. the improper role assigned the Parliament in the approval of the Register of historic Monuments as a way to establish protection regimes on specific objects

This has been one of the first objection moved on the whole architecture of protection of immovable cultural objects to the Beneficiary Country ministerial staff. The explanation offered – that only high level decision are respected by Moldovan to avoid abuses against monuments – does not seem confirmed in the facts: several monuments have been demolished since the Register was adopted by the Parliament, only when the first verbal processes have started to document the responsibility of individuals in the damages to cultural heritage, the practice of widespread demolition has slowed down. The objection that changing the procedure of classification to put it under the responsibility of the Ministry would imply also the modification of the declassification procedure, thereby making it easier and prone to external pressures is reasonable but one has to note that currently, the difficulties in declassifying monuments mostly have as a consequence their demolition, either illegally or legally. It seems therefore that keeping the declassification procedure under the responsibility of the Parliament only limitedly safeguard protected monuments, whilst certainly makes it more difficult and lengthy protecting assets that would deserve being included in the Register. It seems therefore that a thorough reflection on the overall classification/ protection system and on the role and responsibilities of civil servants and staff of the specialised body in the implementation of their mission and of the legislation would serve the purpose to identify remedial mechanisms that avoid to make excessively burdensome the classification system. In this regard it has to be noted that the Law n. 280/2011 outlines a clear and juridically sound process of classification that can be transposed also to the historic monuments.



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- B. the burdensome procedure of Listing in the Register through the establishment of Lists only periodically updated, instead of adopting a formula of Listing based on individual inclusion of the objects deeming legal protection in the Register via ad-hoc decision (preferably ministerial decisions)*

the argument has been discussed above in relation to the role assigned to the Parliament. It would be advisable to set up mechanisms that make it possible the enlistment of individual objects/ assets rather than of periodical lists.

- C. the impossibility to trigger ex- officio the listing procedure for immovable in private ownership*
D. the absence of the possibility to appeal against decisions hierarchically or through the competent court
E. the need to rebalance the tasks and responsibilities of the specialised institutions dedicated to the protection of historic monuments.

In this regard, the concentration of several key functions in the National Institute of Cultural Heritage, which is still to be created, in that the existing one has not performed these tasks and therefore has not matured any experience in this matter appears problematic, because these key functions are separated from another key task - inspection - which is part of the heritage cycle and need to be integrated into the whole system in order to make the inspection function meaningful and useful to improve protection. The current designed system appears defective, penalising the professionalism and expectations of the new Agency, thus triggering frequent turn-over and the impossibility to build capacity and institutional memory, on the one side, and on the other reducing the inspection task to a bureaucratic formality with no technical content and no possibility to use it as a capacity building and a raising awareness tool.

As a matter of fact, this draft law, which was expected to improve and strengthen the Law n. 1530/1993, considered outdated and superseded by other laws for other categories of heritage, in fact achieves only limitedly its goal: many provisions which were clearly set out in law n. 1530/1993 and which could have been usefully reintegrated into the new draft have been dismissed, whilst other ones, that would have deserved a thorough revision, in order to modernise and make more efficient the whole protection system, have been kept and reinserted in the new draft.

The absence of a system of financial and fiscal facilitations, incentives, direct and indirect mechanisms to diversify the resources necessary to develop a viable cultural heritage protection and promotion system, along with the lack of a coherent and convinced system of civil, administrative, contraventional and penal sanctions proportionate to the gravity of the violations of the provisions of the law. No efforts seem to be addressed to amend the penal code, for instance, through parallel legal initiatives remain two of the major limitation of the proposed draft law, along with the above mentioned criticalities.



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PRELIMINARY OBSERVATIONS AND RECOMMENDATIONS TO STRENGTHEN AND MAKE MORE EFFECTIVE THE LEGAL FRAMEWORK FOR THE PROTECTION OF CULTURAL HERITAGE

The first season of normative activity concerning the protection of cultural heritage covers the first 10 –years following independence and produced the following laws:

- *Law on Archives* no. 880 - XII of January 22, 1992;
- ***Law on Historical Monument Protection*** n. 1530 - XII of June 22, 1993
- ***Parliament Decision for the implementation of the law on the protection of monuments*** n. 1531 of June, 22, 1993
- *Law on the Audiovisual Sector*, n. 603 - XIII of October 3, 1995;
- ***Law on Culture*, n. 413 – XIV of May 27, 1999**
- *Law on Architecture* no. 1350 – XIV of February 27, 2000;
- *Law on Publishing* no. 939 - IV of April 20, 2000; modified on August 17, 2001;
- *Law on Theatres, Circus and Performing Art Organisations* no 1421 - XV of October 31, 2002
- ***Law on Museums* no. 1596 - XV of December 12, 2002; amended on July 30, 2010 – now replaced by the Law on Museums**

The subsequent second phase of Independence has seen little activity with regard to the issuance of new legislative instruments concerning the protection of cultural heritage.

Only since 2008 – 2009 the legislative activity in the cultural heritage sector has been revived. Over the last 9 -10 years, several laws have been elaborated and adopted. They include:

- *Law on Formation of Cultural and Natural Reservations "Orheiul Vechi"* no. 251 of December 4, 2008;
- *Law on Copyright and Related Rights* no. 139 of July 2, 2010;
- ***Law on Protection of Archaeological Heritage* no. 218 of September 17, 2010;**
- ***Law on Monuments in Public Space* No. 192 of September 30, 2011;**
- ***Law on Protection of National Movable Cultural Heritage* no. 280 of December 27, 2011;**
- *Law on the Protection of Intangible Cultural Heritage* no. 58 of March 29, 2012;
- *Law on Artists and Artists' Unions* No. 21 of March 1, 2013 (no. 1263-VII, July 28, 2014); and
- *Law on Cinematography* no. 116 of July 3, 2014
- ***Law on Museums*, no. 262 of December 7, 2017**



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The main effort of the legislator over this third post – independence period has been to improve and to detail the legal framework concerning the protection of different categories of cultural heritage which were not adequately addressed by the Law on the protection of Monuments issued in 1993.

As explained earlier in this report, the choice has been to adopt a sectorial approach and to develop distinct legal instruments addressing the protection issues of each main categories of heritage, as it was found more feasible, from an administrative point of view and given the human resources available.

While this approach has allowed to produce progressively modernised and more detailed primary legislation and accompanying regulations for the implementation of the law, on the other hand has also produced a fragmentary system, with definitions often overlapping and inconsistent, with problems of coordination among the provisions of the laws that address overlapping topics and with approaches to the same sphere of activity, e.g. classification and declassification procedures, pre-emption, appealing system, to name a few, which differ from one law to another. This fragmentation has an impact also on institutions dealing with cultural heritage, which, despite the scant number of their staff, work independently and with little or no dialogue among one another, a factor which limits the exchange/ circulation of information and the cooperation, all key elements for effectiveness and efficiency in any administration system, but particularly relevant where human, material and financial resources are scarce and coordination may help avoid redundancy and contribute to an economy of scale, without mentioning a more integrated and less sectorial approach to the protection of cultural heritage, intended not as a sum of different categories of properties but as a multifaceted continuum exhibiting a variety of qualities, specificities and values.

Notwithstanding the above-mentioned structural problems, individually some of these laws are remarkably well conceived and detailed – in particular the law on the protection of mobile cultural heritage n. 280/2011 has to be seen as one of the clearest and adequately detailed, with the only – significant – gap in what it concerns the provisions on the circulation of cultural goods. Indicative of the quality of the law is also the fact that almost all its regulations have been adopted within 12 months and only the regulation on the circulation of cultural goods was left behind. Also the law on the protection of archaeological heritage n. 218/2011 is very detailed and rich in provisions, well equipped with almost all necessary regulations and templates necessary for its application. Only one key issue can be identified for the Law on archaeology, which concerns the provisions on archaeological discharge and preventive archaeology, which, as designed today, tends to privilege the discharge over the possibility to preserve, even in situ, the archaeological remains.

In this process of legal renewal and modernisation, the sector which mostly suffers profoundly is the one covering historic monuments and sites: the law is still to be approved and the draft law that was released with difficulty, after years of gestation, last October 2017, showed significant shortcomings that required substantial interventions and modifications, receiving substantial observations also from the Anti-Corruption National Agency. The experts of the MECR involved in the elaboration of the law took note of the several objections presented by the MS STEs in written notes, meetings and revised and commented drafts produced over the period November 2017 – March 2018; regrettably, due to the dire lack of staff and the pressures



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derived from ordinary activity and extraordinary workload related to the reform process and the upcoming national political elections, the revised version of the draft despite evident improvements, still suffer from many weaknesses that would suggest further interventions in order to pass an effective law, which did not need immediate amendments for it to become a useful instrument able to effectively replace the former Law n. 1530/1993. In this regard, several principles and provisions contained in that Law should be recovered and reintegrated in the new law, to keep high the strength of the norms conceived in the 1990s and which suffered from poor implementation but were not wrong.

The completion of the set of laws elaborated over the period 2009 – 2018 with the approval of a hopefully improved draft law on historic monuments is necessary to create a basis for protection implementation and to complete the process undertaken by the Ministerial officials begun in 2009.

However, the next legislature will have to tackle with the unavoidable challenge to harmonise the principles and provisions of these laws and to proceed to their consolidation into one single Code for cultural heritage and more importantly to begin a constant an inter-ministerial dialogue to lay down the basis for a larger framework for cultural heritage protection and promotion, beginning with a process of raising awareness and sensitisation of a variety of audiences: political decision makers, central and local administration officials in key institutions, Ministry of Interior, Police, Ministry of Justice and the prosecutorial/judicial bodies, Ministry of Finances and related Agencies, Ministry of Economy and Infrastructure, Ministry of Rural Development (MARDE) and other public/private stakeholders, continuing with constant inter-ministerial dialogue to ensure that key trans- sectorial measures to support the cultural heritage sector are agreed upon and introduced: a functioning cultural heritage system cannot rely only on constraints and sectorial ‘passive’ provisions but need a series of active mechanisms that trigger virtuous processes.

Below the comments made to the analysed laws and already presented at the end of the chapters are consolidated for ease of reference.

The Constitution

Extensive comments have been provided in the previous relevant section of this report on the relevant articles of the Constitution; in this section, only the key recommendations are summarised.

The Constitution of the Republic of Moldova contains two key articles related to culture and cultural heritage: the first is art. 33 and the second is art. 59. Jointly they provide for constitutional principles for the safeguard of culture and cultural heritage, however both would deserve being amended.

As a preference, article 33, could be amended in order to include among the obligation of the State (and its administrative central and local articulations) protecting and sustaining both creativity and natural / cultural heritage. In this way, the Constitution would be explicitly equipped with provisions engaging not only the



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private individual citizens with duties related to the protection and conservation of cultural heritage but also public entities, constitutional obligations which appear much needed in a country where the individual administrative responsibility, that is to say, the accountability of the individual in performing her/his function as civil servant is not sufficiently regulated and explicitly stated by the Law.

Additionally, It would seem appropriate to envisage in the medium term to modify the text of article 59 to introduce the concept of cultural heritage/inheritance in place of the concept of historical and cultural monuments, which today seems being limited to certain categories rather than being comprehensive, as well as to strengthen the concept of the obligation of the State and its central and territorial articulations to protect/enhance and sustain the environment, the natural and cultural heritage and culture in general.

The Law n. 413/1999 on Culture

The Law on Culture n. 413/1999 is a very important law setting out principles that have, in fact, constitutional character. It provides for the main principles and regulatory framework for the development of a modernised culture sector in the country. It attempts to position itself as a framework law for the whole sector, with a particular focus on culture and cultural activities, aiming at providing for viable conditions to the development of a richer cultural setting for the Republic of Moldova. While trying to expand the notion of cultural heritage, it also takes into consideration the Law on the protection of monuments, avoiding to provide specifications with regard to the protection of cultural heritage but including it within the realm of cultural activities. The law aimed at supporting the flourishing of cultural initiatives as well as of cultural organisations that could contribute to the action of public institutions.

Some provisions are rather generic, for instance those dealing with the relationship between the State and the creative persons, and would need to be detailed via additional provisions or secondary legislation. At least one provision in art. 27, paragraph 5) stating that “the alienation and the transmission of the edifices, constructions and related land belonging to the cultural institutions for purposes other than the cultural activity shall be prohibited” appears too rigid and may benefit from being nuanced and further regulated through criteria and conditions under which, assets belonging to cultural institutions that have no function or utility for the purpose of the cultural activity and have no potential for being rented or leased, may be alienated or transferred.

As other laws, to fully harness its potential, its approval would have requested the introduction of modifications to other laws, particularly in the fiscal and public budget sector, in the civil service sector, in the contraventional and penal sectors, as a result of a collective political and strategic reflection on the needs for a real, modern, inclusive and effective culture system that is socially inclusive and economically sustainable.

Regrettably, the lack of public funds has not triggered the elaboration of a strategy to activate other sources of funding: the provisions of the law referring to a variety of options for setting up more viable culture system that could be supported by different funding sources has not been accompanied by fiscal measures,



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incentives, tax reliefs that could have promoted private donations, investments, tax preferences as a support to the public budget dedicated to culture.

This problem is identified here but concerns all laws of the sector: options and proposals to strengthen and to diversify the sources of funding for supporting culture or cultural heritage remain confined within the sectorial provisions and do not have any real impact on the fiscal / financial system of Moldova. This means that the discussion on the reinforcement and, as a matter of fact, on the creation of a viable and lively culture system, able to contribute to the reinforcement of the socio- economy of the Republic of Moldova, remains within the 'culture family' and does not reach the highest level of the political decision making, Prime Minister's Office, MF, MEI, which are the main actors to be sensitized towards the need of structural reforms to trigger a 'culture economy'.

The Law n. 1530/1993 on the protection of monuments

The law on the protection of monuments n. 1530/1993 is an ambitious legal instrument, particularly when one considers the time when it was designed and approved, in that it aimed at protecting both natural and cultural monuments, both tangible and intangible heritage, through a comprehensive approach to heritage, which is very rare to find. In this regard, the notion of 'monument' used by the law is very wide, as it refers to objects holding historic, artistic or scientific value, "which are testimonies of the evolution of civilisations on the territory of the republic and of the spiritual, political, economic and social development" (art. 1, para 1). However, unfortunately, this broad definition is immediately limited by the addition "which are registered in the Register of monuments of Moldova", thereby limiting the condition and status of monument only to those objects already included in the Register and renouncing to the idea that monuments may exist beyond what is already included in the Register and await being identified, understood and formally acknowledged as such through the protection process. This narrow and somehow bureaucratic understanding of heritage prevents the full harnessing of the law as a tool for establishing a wider protection framework based on a more updated and open understanding of heritage.

Also the definition of protection of monuments is very comprehensive and advanced: art. 10 reads "State protection of monuments include the provision and assurance of recording, study, enhancement, rescue, conservation and restoration works, the expansion of its material base [increasing the protected monuments], of their use and accessibility for investigations for educational and promotion purposes".

Another clear and useful provision is set out in art. 23 which states that " conservation of monuments is a priority in restoration or construction works" and that "restoration and appropriate preservation works shall first provide for measures to prevent damage and ruin, to preserve the original structures of the monuments without damaging their historical, artistic or scientific value", thereby setting out in a short clear sentence that prevention and conservation have to be prioritised over any type of other works, a principle that was meant to guide also the rules and prescriptions – never developed – for the conservation and restoration of works mentioned in the subsequent art. 24. Additionally, it can be noted that the use of the word



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‘restoration’ in this law refers to a broad understanding of the notion, which may accommodate a variety of intervention nuances.

The articulation of the law in chapters is well thought and the provisions are generally consistent with the topic of the chapter, clearly set out and based on sound and advanced principles.

On the other hand, many provisions remain very general and for them to become fully operational would need being further detailed via secondary legislation or through appropriate amendments and cross-referencing with other laws, e.g. with the contraventional and penal codes, the fiscal legislation and the provisions regulating the State budget formation and articulation.

For instance, the chapter on financing of heritage protection outlines a variety of possible solutions to support the sector, however, the provisions are too general and ‘intentional’ rather than ‘enacting’ and lack the necessary level of detail, which, regrettably, the legislator has never developed to turn these articles into operational provisions. If at the time the law was approved the financing mechanisms could have been considered advanced, nowadays they would benefit from being revisited and updated. In this regard, the Twinning has provided an overview over financing mechanisms that could serve the purpose of modernising and making more viable the current Moldovan system of cultural heritage protection (see the report annexed to the proposal for a Strategic Plan prepared for Activity 2.2).

No criminal sanctions are envisaged for conducts putting at risk the protection of monuments. In particular, it is difficult to prosecute public officials who carelessly or intentionally violate or ignore the provisions of this law, the mission of the institution they work for, when this is in charge of heritage protection, or their specific duties. This aspect would need to be better regulated also in laws pertaining more general sectors, such as those concerning the status, rights and obligations of civil service, functioning of public administrations, administrative procedures (see the analysis of the legal framework concerning this sector in the relevant report).

No detailed steps and criteria are established when taking decisions on the demolition of monuments, which is a highly sensitive area where pressures and corruption – broadly intended - could play an important role in distorting the application of this provision (art. 40, introduced through amendment in 2007).

The competences of public foundations could be very important to stop the increasing destruction of monuments in Moldova. Therefore, they should be supported and facilitated in their power of intervention. Regrettably, this provision has not been accompanied by adequate awareness raising programmes and even the founders or associated of many of these associations and foundations have, in most cases, a limited understanding of their role in acting as the ‘controllers’ of the public administrations’ interpretation and implementation of the Law.

Additionally, the subdivision of the implementation of the law between two ministries – the MECR for cultural heritage and the MARDE for natural heritage – without any coordination mechanism between the two ministries and no clear provisions established for the role of the MARDE has undermined the original goal of



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the law to integrate the protection and management of natural and cultural heritage, because it has not provided the law with legal, regulatory and administrative instruments.

One structural weakness of this law is represented by the excessive role given to the Government and the Parliament - they are charged respectively with the drawing up and the approval of the Register of Monuments - for technical administrative tasks, which ideally should be performed by the MECR and, perhaps, to a certain extent, by the Government. While it is understandable that, following independence and the establishment of a new political order, the Register of protected monuments had to be established by law for the first time, in order to confirm that the newly established political institutions recognised as those objects as monuments of the independent Republic of Moldova, it does not seem appropriate from a juridical perspective that considers the separation of powers set out in the Constitution of Moldova, that the Parliament, which is in charge of the legislative power, deals with administrative tasks and the regulation of specific conditions, as it is the case for the listing of a monument and the establishment of a specific protection regime.

The role given to the Parliament in the listing of monuments has considerable repercussions on the procedure, which is complicated, lengthy and clearly cannot be undertaken for one single object, thus preventing from the possibility to augment the protected assets in a feasible and regular manner. As a matter of fact, since 1993, when the Register of Monuments was firstly approved by the Parliament with law n. 1531/1993, it has never been updated: only between 2016 and 2018 an effort has been made to create a new, independent, Register of the monuments in public space, which basically is an updated excerpt of the 1993 Register.

Following the approval of the Law on the protection of archaeological heritage in 2010, the law on the protection of movable goods in 2011, the law on the protection of intangible heritage in 2012 through the law n. 58 of 29 March, the law on the protection of monuments n. 1530 currently suffers from problems of coordination with the provisions of these laws. As a matter of fact, this law is destined to be superseded by a set of updated sectorial laws, which at the moment only misses a revised law on historic monuments, the draft of which has demanded years of preparation and which has been the object of detailed analysis and extensive work to strengthen it by the MS STEs within the activities of the project over the period November 2017 – February 2018 (see relevant chapter in this Report and the annexed documentation). However, since several years have passed since other sectorial laws were approved, the overlapping and conflicts of provisions have affected the implementation of this law in particular.

The Law n. 1530/1993 can be considered as a solid skeleton for a law regulating the entirety of heritage in Moldova, in that overall general principles and main provisions are sound but is deficient in terms of adequate detailing and specific provisions, particularly regarding archaeological heritage, **monuments**, museums, movable objects, as well as natural heritage.

Unfortunately, the lack of sectorial provisions for specific categories of heritage has triggered partial reforms through the elaboration of sectorial laws instead of preferring the option of detailing the original legal skeleton of the Law through the elaboration of ad-hoc provisions grouped in sections dedicated to specific



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heritage categories. This approach would have saved most of the ambitions, if not all, of the 1990s legislator and would have progressively enriched the initial Law to the point that the achievement of a comprehensive Code for the heritage of the Republic of Moldova, an objective which should be prioritised in the agenda for the next legislature, would have been more easily reached.

A valid reform of the Law n. 1530/1993 would benefit from:

- a thorough reconsideration of the registering system of cultural heritage in general and of any of the acknowledged categories (historic monuments and sites, archaeological heritage, commemorative monuments (monuments 'de for public'), movable goods, creating a solid and clear correlation between the law on the protection of monuments in the strict sense and that which concerns assets of archaeological relevance, so as to avoid overlaps and normative uncertainties;
- a clarification and update of the distribution of the responsibilities among the state bodies in charge of the implementation of the protection, consistently reflecting the modifications to the ministerial institutional structure, including its subordinated bodies (this step has never been undertaken, leaving a number of ambiguities open with regard to how the locution 'state bodies for the protection of monuments' has to be interpreted);
- clarification and distinction in regulating the transfer of ownership and the of hold regimes, e.g. concessions, leasing and rental of protected monuments;
- detailing and cross- referencing of the provisions concerning the financial measures with the fiscal legislation and the state budget regulations;
- detailing and cross-referencing of the provisions concerning the administrative and criminal sanctioning, as enacted in the contraventional and criminal codes, with the protection measures as envisaged in the law;
- elaboration of provisions for specific categories of cultural heritage and, where necessary adaptation of the ones already existing to cover more categories;
- elaboration of the set of secondary legislation mentioned in the text of the Law to make it fully operational and therefore understanding the real needs for reform.

The MECR has chosen to abandon the Law n. 1530/1993 and to progressively replace it through new sectorial laws. These will be analysed below. A comparative assessment of the achieved improvement is outlined at the end of the analysis.

The Law n. 218/2010 on the protection of archaeological heritage

The adoption of a very articulate law defines in detail the tasks and all the figures involved in archaeological researches: agencies, universities, professional archaeologists, foreign research institutes (artt. 13 & 14) and



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three different system to register the archaeological data (i.e. artt. 15-16&17)¹⁴. The complexity of this law is also due to the fact that the archaeological heritage of Moldova is perhaps one of the most relevant aspect of the cultural heritage in Moldova and one of its strengths among the countries of the Eastern European continent (for instance, the Palaeolithic site of Cosăuțior the Neolithic Culture of Cucuteni- Tripolie or the graves culture system of tumulus in the Iron Age).

Clearly it emerges a profile of a country with a strong tradition of archaeological research and a system of archaeological registration data well consolidated and detailed as evidenced by the updated database in possession of the agency, which contains several thousands of sites, out of which around 1500 are documented to an extent sufficient to proceed to their formal inclusion into the Register of Archaeological Heritage (source: NAA staff).

Of particular interest is the Preamble to the Law which states:

The archaeological heritage is the essential element that defines the age and originality of culture, history and traditions of every nation, state or cultural space in relation to other peoples, states or ethnocultural spaces. Every people have an obligation to preserve their cultural assets and to harness them for the benefit of all humanity. The archaeological heritage of the Republic of Moldova - a basic component of the national cultural patrimony, subject to serious threats of degradation, both as a result of the intensification of the process of accomplishing the major projects of complex planning, new construction and land exploitation, and the risks natural, clandestine digging or insufficient information to the public - needs to be protected, by integrating organically the policy of protecting the archaeological heritage in cultural, educational, environmental, urban development and land development policies, land management, land management and forests.

In the preamble clearly resonates the principles of the CoE *Convention on the protection of archaeological heritage* (1992), known also as the Valletta Convention, which also informs the definitions and the provisions contained in the Law. In particular, it is worth mentioning here the notion of archaeological heritage - it encompasses both immovable and movable ensemble of material goods resulting from past human activity and preserved in natural conditions aboveground, belowground or underwater, which are susceptible of being studied with archaeological methods – and of juridical regime of discovery and research – a set of legal, administrative, financial, technical and scientific measures designed to ensure prospecting, identification, discovery, inventory, preservation, restoration, guarding, maintenance and valorisation of archaeological heritage and of its land – that attest to the thorough reflection carried out on archaeology, its aims, obligations and methods.

¹⁴Just to compare with another country which is rich in archaeological heritage, one can see that in Italy the provisions concerning the archaeological heritage are concentrated only in a few specific articles in the Code of Cultural and Landscape Goods (D. Lgs. 42/2004) and in others two articles in the new Code of public contracts (D. Lgs. 50/2016 n. 25 & 26).



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Interestingly, the Law defines the preventive archaeological investigations as *part of the strategies for sustainable social-economic development, for environmental development, for town development and territorial planning, for tourism development at the national and local levels.*

Importantly, the law envisages that the responsible ministry (currently MECR) shall approve the documentation for town development and territorial planning which include archaeological sites or zones with archaeological potential (Article 12), in order to promote a sustainable policy in the field of the protection and recovery of the archaeological heritage.

Overall, the provisions of this Law provide for a solid legal framework for the protection of the archaeological sites and of in situ archaeological remains and represent an important achievement for the Republic of Moldova.

The Law was equipped two years after its issuance and entry into force with most of the secondary legislation that is envisaged in its text to ensure its implementation, namely:

- Regulation concerning the evidence and the classification of archaeological heritage (immovable and movable)
- Regulation concerning the archaeological research and the archaeological expertise
- Regulation concerning the archaeological repertory and the archaeological Register
- Regulation concerning the Register of Archaeologists in Moldova
- The Deontological Code of archaeologists

The regulations indicated above specify with abundant detail the principles, criteria, requirements, necessary documentation and phases of the corresponding procedures. They represent the essential complement to the provisions of the law for the key procedures necessary to implement the protection of archaeological heritage.

The NAA has also developed templates for the daily implementation of the Law even though they have not been endorsed yet by the Ministry. They include:

- Request of authorisation for archaeological research
- Archaeological expertise
- Contract for archaeological research for discharge
- Certificate of archaeological discharge

The MECR has prepared a template for the authorisation to carry out archaeological research.

However, notwithstanding the substantial achievements reached with the approval of this Law and the adoption of its regulations, some weaknesses have emerged through the analysis. They concern:

- C) the mechanisms to ensure the tracking and to establish protection of the archaeological findings emerging from rescue, preventive or discharge archaeological investigations.



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By law, the finds that come from archaeological excavations are not protected until they become part of the collection/ patrimony of one museum. Therefore, an intermediate risk arises between the moment of the discovery of a find to its enhancement through the inclusion in the patrimony of a museum. A grey zone of uncertainty with regard to status of the find can be detected and this is not resolved by the provision that removing any emerging archaeological finding from the area of excavation without authorization is forbidden (art. 47, paragraph 1, let. f)).

The law contains several articles that define how to protect the known archaeological sites but it is not very clear on what is expected to be the path that archaeological finds must follow once discovered before being transferred to the museums and acquired into the collection and exhibited. The NAA's responsibility seems predominantly to be concentrated on archaeological sites and not on movable heritage, therefore it does not seem clear whether there is a responsible person and who is for the deposits of materials before their inclusion in the museum collection.

The Regulations for the archaeological research and archaeological expertise (Annex n. 2 to Ministerial Order n. 126/2013) attempts to fill this gap by:

- imposing to the institution requesting the authorisation to carry out the archaeological research to ensure the provisional preservation of the archaeological materials resulting from excavations and their transmission, within the established timeframe, to specialized state institutions according to the decision of the MECR
- giving the applicant the responsibility of transmitting all the archaeological materials discovered, after the laboratory work, to the specialized institutions for preservation and storage, in conformity with MECR's dispositions on the matter; the document attesting the reception of the material by the identified specialized institutions needs to be annexed to the Scientific Report.

The legislation however does not require the applying Institution to carry out immediately after discovery a preliminary inventory of the findings to be transmitted to the specialised public institution that will be receiving the archaeological material at the end of the archaeological excavation, in order to keep track since its emergence of the find, nor to demonstrate that the researching institution has access to adequate storage facilities where the archaeological material will be temporarily protected.

Additionally, the Law should envisage a form of precautionary protection status for all findings until they are definitively transferred to the specialised institution and inventoried/photographed and protected. This issue is, however, consequent to the fact that a better definition of archaeological item/site is required, independently by the inventory procedures. In particular, this law should consider enacting timeframes as established by the international legislation. In practice, it can be obtained by integrating an article to extend the protection to movable property from the moment of its discovery. The transfer to museums or to other specialised institution can be detailed via a specific regulation that must be mentioned both the law of archaeology and of museums and should envisage coordination and cooperation mechanisms among the



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parties involved (NAA, the receiving specialised institution/ museum, the responsible person for the excavations).

This article could find a place in Chapter VII (for instance between articles. 33 and 36) and provides that when the movable remains are excavated and out of the archaeological excavations there are in State ownership, are automatically protected, must be conferred to the local museum within a defined timeframe and, at that moment the responsibility of their protection and conservation is transferred to the latter.

Another weakness is represented by the:

- D) the implicit mechanisms triggered by the rationale of the provisions for the archaeological discharge procedure and the preventive archaeology procedure.

The procedure for the archaeological discharge of a site is separate from the procedure for preventive archaeology, of which it would seem a logical possible option. Secondly, the procedure for the archaeological discharge is triggered upon request by interested parties who have developed projects the implementation of which may have negative impacts on possible archaeological vestiges and who also must cover financially the research activity. The institution solely responsible for carrying out the archaeological research and issuing the certificate of discharge is the NAA, which stipulates a contract with the applicant and then prepare a research project proposal which must be screened and authorised by the NAC. The NAC may or may not issue the authorisation for discharge research; in case of positive response, the NAA undertake the excavation and, at the end of the research, usually issues the certificate of discharge and return the land to the applicant. This double role – executing the archaeological excavation as a preliminary action to the archaeological discharge and releasing the archaeological discharge certificate – delineates potential conflict of interest and therefore the procedure needs to be modified. The Agency, as an implementing body subordinated to the MECR, issues the archaeological discharge certificate and therefore cannot carry out the preliminary research excavation related to the requests for archaeological discharge. This would give more time to the Agency staff to monitor building sites and carry out inspections and supervision of archaeological discharge research excavations, which should be carried out by other actors, including accredited private archaeologists.

In order to ensure that the revenue obtained from contracts stipulated with public entities for archaeological discharge and, in perspective also by preventive archaeology, continues to contribute to the activity of the NAA (and future NAMS), it is necessary to establish a mechanism for the transfer of a percentage of the amount of these contracts to the Agency, until salaries of the Agencies' staff will be adequately increased by Government/Parliament decision.

Alternatively, the Agency may continue to carry out archaeological research excavations for discharge, but they do not issue any longer the archaeological discharge certificate, the function being transferred to the General Directorate of Cultural Heritage.

On the other hand, preventive archaeology research, even though it may be triggered by the proposal for a project that may affect negatively archaeological remains, although through a different path - as in this case



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it is the issuer of the certificate of urbanism who must inform NAA about the submission of a project proposal that might need the initiation of preventive archaeological research – is financially covered by NAA own funds.

This distinction creates an ambiguous situation and implicit message that developers/ proponents only cover financially the research aimed at the clearance of an area from potential archaeological remains, whilst preventive archaeology, which does not pre- condition in advance the conclusion of the research and the decision on the possible vestiges that might be exposed, must be paid by the citizenry through state funds. It is the view of the MS experts that all preventive archaeology triggered by development activity has to be covered by the ‘developer’ or the proponent within the budget of the proposed work and not by the budgets of the institutions devoted to heritage protection. In this regard it is interesting the mechanism set up in France with the creation of an ad-hoc National Fund for preventive archaeology (Fonds national pour l’archéologie préventive – Fnapp, details can be found at <http://www.culture.gouv.fr/Thematiques/Archeologie/Sur-le-terrain/Archeologie-preventive>).

Additionally, although the issuance of the authorisation for archaeological research aiming at the discharge by NAC does not automatically imply that a certificate of archaeological discharge will be issued at the conclusion of the research campaign, it is reasonable to think that the applicant will expect that, at the end of the process, a certificate of discharge will be obtained, because it is for it that he/she has activated the procedure and stipulated the contract.

While certainly this procedure allows for many archaeological campaigns to be carried out and is ‘self – funded’, thus favouring the accumulation of considerable knowledge about the archaeological sites and potential of the territory of the Republic of Moldova, this risks to be achieved through a high price, taking into consideration the structural financial constraints of state institutions responsible for cultural heritage in Moldova, combined with a low sensitivity of Moldovan society to cultural heritage. As a matter of fact, there might be the risk to accelerate the erase of archaeological heritage in the country, leaving not much to future generations of archaeologists to explore and research, contrary to the principles of international conventions and documents.

More detailed recommendations on the provisions of the law can be found in the relevant section of this report.

Law n. 280/2011 on the protection of movable cultural goods

This law is one of the best prepared among the second generation of legal instruments concerning the protection of cultural heritage, along with the one on archaeological heritage. It is clearly articulated and written, the provisions are elaborated with an adequate level of detail and exhibit a clear understanding of the hierarchy and functions of the different political and administrative organisms.

In Chapter II, the classification procedure adopted for the movable goods appears appropriate as it envisages the right legal instrument – Ministerial order – to establish the protected status under the provisions of the



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law. Classification is at all effects, an administrative procedure. The law also rightly separates the moment of the issuance of the order – which sign the moment of the classification and the establishment of the protection regime – and the inclusion in the register, which requires the preparation of specific documenting evidence. Such an approach should be extended to immovable objects, thus facilitating the increase of immovable assets under the provisions of the law.

Article 9 on the appeal procedure is clearly delineated and could easily be transposed into other laws, and most usefully in the draft law on historic monuments, which has been resealed in its second revised version in early August 2018.

In particular, chapter VII on the attributions of the public authorities appears clearly set out and the most juridically sound, among all laws approved or drafted in the last ten years, in assigning the respective responsibilities to the political organisms. In particular, the Parliament, Government and MECR's responsibilities are correctly delimited to their proper powers and functions. Article 22 should be transposed in all other laws concerning the protection of cultural heritage.

Notwithstanding the robustness of this Law, some weaknesses have been identified and should be carefully considered by the beneficiary Country.

First, there is a need to reinforce the current normative system by establishing a clear definition of movable cultural property, which is a fundamental prerequisite for the administrative and criminal enforcement of sanctions that should accompany many of the obligations stipulated in this legal tool for private and public owners. In the Moldovan legislative system there are several and different definitions of cultural goods. For instance, article 133 of the Criminal Code (Cultural Values) seems to have reference only to the cultural items as protected by the 1970 UNESCO Convention. It is, instead, necessary to have a uniform concept of cultural good in order to reach certainty about rights, obligations/duties for all the stakeholder, including public administrators. With regard to this, the European framework can help in establishing what could be protected. In other words, there should be the introduction of temporary and economic/value limits.

In particular, in article 2 the inclusion of the word exceptional in paragraph 1, let a) may lead to confusion and it would be better to remove it. In article 4, on the other hand, some specifications in terms of age, rarity, or exceptionality may be useful, as the provisions of this article set out the initial conditions for the distinction and future classification of the goods.

In article 5, the distinction between the goods to be included in "Treasure" due to their age, uniqueness, importance and rarity, to be considered unavailable assets for the humanity, and the goods to be included in "Fund", whose value is important for the Republic of Moldova, is useful, however it would need some further clarification. On the other hand, it seems seem contradictory mentioning the notion of "(iii) cultural goods of normal value", if these are not considered for classification and therefore not subject to the provisions of the law: Furthermore, it leads to confusion the notion of "(iv) contemporary cultural goods" which in turn can be of national exceptional/special/normal value (being their protection always the same).



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Articles from 8 to 14 (Classification), from 15 to 17 and 19 (Security, Preservation, Restoration, Commercialization) seem to be very well structured and imply the establishment of new offices able to carry out the multiple tasks required by the classification procedures, the creation of registers, the authorizations for restoration works, the procedures of pre-emptive purchases, the contacts with agents authorized to sell cultural assets. The 30-days deadline set for exercising the pre-emption right referred to in paragraph 4 of article 19 seems too short. It is suggested to extend it to 60 days. A longer period of time would also involve other local institutions or public bodies interested in buying goods.

On the other hand, article 18, deserves a specific comment, which also relates to the draft regulations of the movement of cultural good elaborated in order to implement the provisions of the Government Decision no. 1472 of 30.12.2016, which transposes Regulation no. 116/2009/EC; and in order to implement the Culture Development Strategy "Culture 2020", approved by the Government Decision no. 271 of 09.04.2014 but also in accordance with Law no. 280 of 27.12.2011 on protecting the national cultural heritage.

In particular, the analysis of the draft regulations on the circulation of cultural goods has revealed the need to amend also the primary legislation because some of the provisions introduced in draft regulation, which is secondary legislation, have a higher, legal, rather than regulatory, status, and should therefore be introduced in the primary law. this reasoning also applies to the proposed creation of a ministerial export office in the Republic of Moldova

The provisions concerning the tasks of the MECR are not fully detailed. This appears problematic, especially for what it concerns key duties related to importation-exportation operations and for the inherent responsibilities. With regard to this, it would be appropriate the creation of an Exportation Office, whose competences and organization will be dealt with in a separate report.

With regard to protection, there is a need to reinforce the current normative system, by introducing criminal protection of cultural heritage and reaction to its trafficking. Therefore, the Moldovan legal system should focus its attention on the possibility to provide for:

4. Specialized law enforcement bodies or units, having opportune procedural arrangements;
5. Targeted and detailed sanctions;
6. A clear definition of movable and immovable cultural property, which is a fundamental prerequisite for the administrative and criminal enforcement of sanctions that should accompany many of the obligations stipulated in the present draft for private and public owners.

In the present Moldovan legal system, there is not any provision on concerted international efforts, including emergency import agreements and bans to be adopted when the cultural heritage of a State Party is in jeopardy from pillage of archaeological or ethnological materials.

To carry out the tasks envisaged by the Law, there is a need to establish a specialized public institution / department subordinated to MECR which is responsible for administering movable cultural property classified in accordance with art. 8 paragraph 10. This institution/ department should also be responsible for the Register of national movable cultural heritage in accordance with article 9 paragraph 1).



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Also the following tasks might be assigned to the above-mentioned new specialized institution/ department subordinated to MECR, thereby supporting also the work of the NCMC:

- Establishing/ maintaining/ updating the Register of accredited experts in the field of movable cultural goods;
- establishing/ maintaining/ updating the Register of accredited conservators and restorers in the field of movable cultural goods.
- starting classification procedures;
- setting the model for private owners' application to having their movable cultural goods classified and registered (article 10 paragraph 2), enacting (fiscal and other incentives) measures to favor requests by private citizens and legal or ecclesiastic institutions to come forward, requiring classification of the cultural goods they own/hold;
- triggering the procedure for exercising the pre-emption right referred to in paragraph 4 of article 19;
- approving the restoration projects and contracts presented by private individuals and legal entities of private law in accordance with the normative acts in force.
- approving the applications for laboratories and workshops for the preservation and restoration of national movable cultural goods presented by private individuals and legal entities of private law in accordance with the normative acts in force.

It would be also important to establish a Regulation on teaching standards in the field and on restoration schools' structure and skills.

Regulation on the circulation of cultural goods (July 2018)

The specialised directorate of the MECR has revised the draft regulation on the circulation of cultural goods and has published it on the platform www.particip.gov.md to gather commentaries from all parties concerned. The deadline for the public to provide comments was 18 July 2018

The MS STEs who have provided comments and suggestions to the first draft have provided further comments on the second draft. They have been shared with the representatives of MECR on 20 August 2018 and are summarized below.

Despite the improvements made to the draft regulation, following the cooperative dialogues with the STEs, the current legal and proposed regulatory framework for the circulation of cultural goods are still not completely satisfactory, and some of its provisions appear problematic, especially for citizens, interpreters and public administrators. In particular, this concerns the lack of a time- and of a value- threshold and the lack of adequate detail of the competences of the MECR. The recommendation concerning the creation of an Export Office within the structures of the MECR remains valid. In order to reduce the burden of its work, the Office can rely, whenever necessary, on the expertise of the staff of other public institutions, such as museums, the ICH, the NAA, only to name a few. If such an Export Office were to be established, all competences should be attributed to it, which -in brief- will be tasked with examining works asked for export/



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import and releasing certificates authorizing exportation and importation of cultural goods, elaborating and keeping statistic on the trafficking of cultural objects and providing also training for customs officers.

The system in force and further detailed through the draft regulation appears problematic, especially for what it concerns key duties related to importation-exportation operations and for the inherent responsibilities.

Additionally, in the present Moldovan legal system, there is no provision on concerted international efforts, including emergency import agreements and bans to be adopted when the cultural heritage of a State Party is in jeopardy from pillage of archaeological or ethnological materials. At the same time, there is not any provision on precise obligations to be imposed to antique dealers, required to inform clients on the cultural property export prohibitions.

It is also important to underline that in the Moldovan legislative system there are several and different definitions of cultural goods; and the cultural items listed in the draft Regulation are not always the same as indicated in other existing legislation. In particular, it is important to insert a time and an economic value threshold, which is specifically requested by the recently approved Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State and of the Regulation 116/2009 on the export of cultural goods.

At the same time, the present normative system seems rather complicated. The legislation in force, in fact, divides cultural goods into 4 categories, that is: 1) Cultural goods of national exceptional value (treasures); 2) Cultural goods of national special value (funds); 3) cultural goods of normal value (not classified); 4) contemporary cultural goods which in turn can be of national exceptional/special/normal value. However, their protection does not appear sufficiently graduated and distinct.

Further, certificates of exportation should be released following closely the requirements as established by the model export certificate that has been jointly developed by UNESCO and the WCO. In particular, it is of utmost importance that in the template the applicant is required to specify: (i) If the object is part of a collection; (ii) where the object will be imported (country of destination); (iii) The value of the object, in order to establish, via primary legislation, the preemptive rights by the State.

In order to improve international cooperation and help foreign customs offices to detect illicit import-export operations, the final export certificate should be translated in the language of the destination country. Moreover, the procedures for the release of the exportation licenses should contain provisions allowing the time limits to be suspended and/or prolonged in specific situations (for instance, examination of the item and verification of documentation everywhere there are difficulties, observations to be discussed with the applicant, etc.).

There could be also provisions regarding modern way of promoting schemes that reduce the costs of mobility of collections/single goods (for instance, indemnity schemes; avoiding the cost of commercial insurance; shared liability for loans; avoiding loan fees). There could be also provisions on the release of declarations by the foreign competent authorities that the object shall be considered immune by restraining orders during



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the loan-period (a special approval by the Minister of Education, Culture and Research shall be necessary when such declaration is missing).

The validity of the temporary export certificate could exceed the time established by the present legislation only when the exportation office is allowed checking the cultural good conditions and state of conservation. To properly make this possible, the object shall be put at disposal of officer of the exportation administration and the cost of the service shall be paid by the applicant.

In line with a sound policy for loans, as recommended by the international normative system, the extension of the period for which the temporary export certificate shall be issued, could be prolonged.

The sanctioning of illegal import-export operations should be well structured, harmonizing administrative/penal customs violations with other criminal specific sanctions. Not only. The confiscation of the object involved in illicit exportation and importation attempts should be mandatory and imprescriptible. There should be also the shifting of the *onus probandi* from the controller to the exporter/ importer / applicant, and confiscation orders could be enacted -as appropriate- without final conviction and ordered when the value of the property is disproportionate to the lawful income of the convicted person and the property in question is derived from criminal conduct. Confiscation from a third party could be also possible if third party knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value. In case the object shall not be subject to confiscation, the exporter and the owner shall be liable to pay the amount value of the object. Obviously, such structural reforms need a primary legal tool, and cannot be stipulated in the frame of a regulation.

The draft should be amended, and photos of the object should always accompany the object itself. Further, an electronic database should be created and include export certificates issued, denied and of the objects that are spotted abroad, being illegally exported.

Furthermore, there is not a clear definition of contemporary cultural goods which is a fourth category of cultural goods. At the same time, the legislation in force is too demanding and require much formalism. All this could hinder the free circulations of artists, at the same time limiting incomes resulting in tourists spending in art products. For other particular criticisms, see the text of this draft.

Details of the suggested amendments are provided at the end of this report in the chapter “List of the relevant laws, regulations and bylaws with insufficient provisions or in need of amendments”.

THE LAW N. 262/2017 ON MUSEUMS

In providing an analysis of the present law, it is assumed that its aim would be to provide a legal framework to enable museums’ maintenance and development according both ICOM ethical principles and international



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agreement, as well as national related legislation. Furthermore, it would be desirable that it encourages museums to a more effective role as a driver for a sustainable place based, local development.

Compared to the former law, the new text seems to overlook conceptual issues and to focus more on procedure and relations involving different competent bodies and authorities: definitions and principles are given less weight than in the previous law, regrettably no mention of international principles, conventions and criteria is provided in the new law, whilst the previous one was careful in mentioning them and in clarifying that, in case of national provisions not compliant with international conventions or other legal/methodological texts which the Republic of Moldova adhered to, their provisions would prevail. Republic of Moldova adhered to, their provisions would prevail. Even if what now stressed should be by implication applied to the provisions of this law.

Despite the reduced number of articles (27 against 32), the new Law contains more provisions than the previous ones, due to the high number of paragraphs included in each article. A new chapter on the accreditation of museums is introduced as well as detailed provisions on the selection of the staff, which were previously missing.

As a general remark, the designed system seems to be too complex, considering the dimension of the phenomenon and the available human and financial resources of the museum sector at present and probably also in the medium - term, and, at the same time too detailed and rigid, when it comes to definition and authorities, too schematic and undefined referring to following steps in the process or to related relevant topics.

The logical framework of the Law appears complicated and a little confused as far as some specific topics are concerned, because they are scattered in different chapter and articles, i.e. the juridical status of museum patrimony and the reading of the whole text is difficult.

The absence of a consolidated act on cultural heritage and several laws on different categories of cultural heritage demands a special attention with regard to inconsistencies and cross effects of distinct legal measures. This approach to law-making based on separate acts risks to miss the focus with a plenty of additional related regulations and negatively affecting the understandability of the whole frame and rationale.

The main cause of concern, with regard to the Law on Museums, however, is that the new administrative system is likely to lead to an unnecessary and unwanted increase of bureaucracy in the management of museums, and, as often happens, in the scattering of the individual responsibilities.

The potential consequences of some provision are not assessed with due attention, i.e., the revocation of accreditation and liquidation. Some provisions also seem to lead to some inconsistency, i.e. about museums' goods movement and deaccessioning and about museum property registration.



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Unclear rules allow differing interpretations, thus also contributing to the problem. Diverging legal interpretations may result from the lack of clarity of some of the proposed provision.

The ongoing definition of the regulations system that stems from the law will be crucial to ensure a better understanding and implementation of the new legal framework.

Continuous changes in the regulatory framework of a sector are not desirable, as they have a negative impact on the functioning of the whole system, therefore, specific amendments are more advisable than a general revision of the Law. A very careful drafting of regulations may help clearing some pointed deficiencies.

Some considerations concerning the structure and specific articles are provided below.

A major remark relates to the definition of Museum, which does not reflect ICOM definition because of two missing adjectives: non-profit and permanent. See below:

ICOM: A museum is a non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment

On the other hand, the definition included in the new law reads:

MD muzeu – instituție de cultură aflată în serviciul societății, care achiziționează, conservă, cercetează și valorifică, cu prioritate prin expunere, patrimoniul material și imaterial, în scopul cunoașterii, educării și recreării publicului larg;

EN: Museum - a cultural institution in the service of society, which acquires, preserves, researches and capitalizes, in particular through exposure, the material and immaterial heritage for the purpose of knowledge, education and recreation of the general public;)

Compared to the previous act the new museum definition more clearly refers to duty in service of society and highlights relations with immaterial heritage even though a better definition intangible cultural heritage could have been used.

Another critical point appears the definition of “restoration” as “*the set of measures aimed at regaining the appearance or the initial structure of the cultural goods that have undergone a process of alteration or degradation*”. This approach focused on *regaining the original appearance* and appear somehow simplistic in relation to the complexities of the restoration activity, although it is true that a number of international texts understand restoration in this perspective. In this regard it might be advisable to use the more general definition of conservation, which encompasses

A further weakness, in comparison with the former law n. 1526, is the absence of any mention to international agreement and treaty and to State commitment to guarantee the condition for museums’ existence and development.



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The status of each museum is attributed by founder's decision, whilst National museum status is attributed by Government decision at the proposal of the MECR. This classification ratio focused on territorial relevance always suits both relevance and ownership. This is a little confusing considering the issuing process and the present register, recording ownership with regard to institutional level, not relevance.

The majority of Moldovan museums are local museum and were founded, as a territorial grid, during the soviet regime according to a specific policy, both cultural and socio political. This origin features a significant amount of little local museums, which tends to look like all the same or very similar to one another, always originated as mere collection of local cultural goods without a deliberate mission and acquisition policy. Nevertheless, even unconsciously, those museums preserve a plenty of material evidences of the geographical, ethnographical, historical diversity in Republic of Moldova, which is a richness that must be understood as such and enhanced through appropriate and captivating narratives.

This classification is properly useful to describe juridical status and useful as a museum register data base, but seems too schematic and rigid to describe museum relevance and in order to address museums to exploit their potential to testify and illustrate national and supranational. This classification assumes univocal relations between ownership and relevance and consequently denies or deters development policies.

This is a critical issue that need to be addressed through the regulatory system.

Further classification's criteria are based on the different location- indoor and outdoor -and specificity of museum heritage.

Article 5, paragraph 7 establishes that can be considered museum also sites and cultural reserve. However, their inclusion in the museum system conflicts with the categorization of museums based on their collection specificity: archeology, art, literature, ethnography etc. Even if this distinction may be appropriate to a large average of museum, it may be inadequate to several museum, i.e. National Museum of Ethnography and Natural History, certainly for cultural reserves or sites. It could be a useful amendment add "mixed" to the list.

Furthermore, considering ICOM ethical principle focused on museum mission and in a territorial perspective such a schematic approach to museums may be undesirable in order to develop thematic museum and an updated narrative for each museum.

In order to comply with ICOM Ethic Principles is highly recommended to include mission statement as compulsory documentation.

The absence of a definition for accreditation and registration makes it unclear the distinction between these terms. The expected Regulation will have to clarify and to set out the differences, relations and linkage between registration and accreditation.

In accordance with art. 8, the MECR is the competent administration which assesses and eventually issues the accreditation for all registered museum, whilst the NCMC has an advisory role. Accreditation is done every 4 years. The accreditation assessment of all registered museums shall be completed into 4 years.



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A relevant question concerns the scope of established registration if, despite its name, the article rules registration for all museum, public and private, collections.

Furthermore, museum collections' registration should be provided for all museum heritage not only for movable goods. This is an issue to be amend as far as one of the purposes of the present law is to avoid the closure of many local museum to exploit real estate value.

Despite the fact that, under art 10, heritage of public museums is inalienable, art 12 further reiterates that "the return to cultural or physical persons of cultural goods registered in the "treasure" collection register, in the "Fond" collection register and in the Register of the collections of museums is forbidden."

Transmission of goods is allowed among the collections of the same founder's upon approval of the National Commission of Museum and Collection. It would be desirable a more general prevision concerning "transmission" as far as reorganization of museum collection may involve different founders both private and public.

Assuming as relevant to preserve many historical buildings as museum and assuming as very commendable the rules established by art. 17 .4., a stronger attention to the potentially existing linkage between museum collections and building or site facilities could be very appropriate and highly recommended. As mentioned above, the lack of awareness on the key function of Museums' mission statement seems to underlie many of the critical findings in the present act.

Public responsible authorities may allocate, on a project-based basis, financial means for research activities, enhancement/ valorization of museum heritage, sociological research of the public, field research, archaeological investigations. Central and local authorities define prices and tariffs of subordinated museums.

However, the law does not specify how the revenues of museums are redistributed among the museum system. This lack of clarity does not serve the purpose of increasing effectiveness and efficiency of museum in performing their mission.

For example, if the main revenue comes from ticketing, and the assignment of resources from the state or local budget were calculated on direct proportion of the revenues obtained by that particular museum, this would be a very important factor to stimulate the staff to improve the service and, thereby to obtain more funds. As a matter of fact, in order to support the Museums sector and to motivate the staff, the principle "more tickets, more funds for the museum!" may assist in creating a virtuous circle in the service staff and it generates a permanent research of potential new public.

Consideration should be however given to the increase of the ticket fees, which today are very low and could not form a reasonable basis for the museum sector financing, and, on the other, to mechanisms that guarantee the access to museums to all Moldovan citizens, many of whom suffer from poor incomes. For instance, in many countries tickets have a different price, and foreign people pay much more than citizens.



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Another gap in the legislation concerns the lack of tax relief through the transfer of assets to the state, e.g. as it happens in France through the *dation* formula¹⁵.

Both proposals however, have to be discussed and agreed with the the Ministry of Finance: in other countries, the *dation* and the total redistribution of museum revenues to museum system have been accepted as their revenues present a minor financial entry for this ministry.

The Law sets out different compulsory management obligations for National museum and other public museums, and it designs management as follow:

In this regard, more attention to key specializations for museum management and functioning would be necessary. Some improvements may be achieved through amendments to the Law and, then, through solid and detailed regulation, which should carefully rule on the updating and checking of the specialization of the museum staff.

Senior staff, specialised staff and maintenance staff ensure museum activities, whilst a director or a general manager guarantees the management. A considerable issue is represented by the fact that the selection of the manager/ director is under the responsibility of the public administration under the jurisdiction of which the museum falls and it is made on the basis of a managerial project contest. The procedure, and the assessment for the selection, may be overly complicated for many local administrations and it appears a little surprising since no article in the text recalls museum mission statement, without which it might be difficult to identify the right professionals to run the museum.

The main recommendation for the forthcoming regulation is to pay due attention to the real situation of human and financial resources. A clear, balanced governance is fundamental as well.

¹⁵ The "Dation" is an exceptional form of payment consisting in giving the creditor something other than the very object of the debt (for example payment in kind of a debt in money). Desired by André Malraux, then Minister for Cultural Affairs, Law No. 68-1251 of 31 December 1968 "to promote the conservation of the national artistic heritage" devoted the dation in tax law by introducing a special provision in application of which the inheritance taxes may be paid by the return to the State of works of art, books, collectibles or documents of high artistic or historical value (article 1716 bis of the General Tax Code). This option was extended in 1982 to the payment of the transfer duties due in respect of inter vivos gifts and the right of partition (Article 1131 CGI) and in 1988 to the payment of the solidarity tax on wealth (1723 ter OOA, CGI). The decision to accept the offer of dation is made by the Minister of the Economy and Finance, on the proposal of the Minister concerned by the assignment, after consulting the Interministerial Accreditation Commission. This body, made up of representatives of the different ministries concerned, decides on the artistic and historical interest of the goods as well as their value. The taxpayer may intervene at any time during the procedure to withdraw his offer. As a method of payment of the tax, the dation must be granted unconditionally and remain, in principle, anonymous. Original way of enriching the national heritage, this procedure has contributed in particular to the entry in the public collections of many works of modern art (the most famous dations being those of the heirs of Pablo Picasso who allowed the creation of the museum Picasso at the Salé hotel in Paris, and numerous depots in classified and controlled museums, or the dations by Chagall's heirs) but also, to mention just a few examples, of "L'Astronome" by Vermeer, royal furniture eighteenth century, tapestries Flanders, a Limoges enamel shrine dating from the late twelfth century, the Louvre, two paintings by Paul Cézanne, L'Oncle Dominique lawyer and Portrait of Ms. Cézanne, d Claude Monet's painting, Les Déchargeurs de charbon, from The Origin of the World by Gustave Courbet at the Musée d'Orsay (source: <https://www.universalis.fr/encyclopedie/dation-oeuvres-d-art>).



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One can notice that a great responsibility derives from the accreditation system, which, in the absence of any monitoring body to guarantee an evidence-based knowledge on phenomena, may lead to excessive discretionary power in the issuance and withdrawal of the accreditation.

MECR's broad attributions appear very difficult for MECR to manage effectively, in the current situation of great changes and still dire need of numerically and technically adequate staff and salaries to meet the challenge.

The amount of regulation to be elaborated is emblematic of the over complex and vague system set by the law.

Therefore, the approval of this law has triggered further extensive work for the MECR administration, in that ideally, by November 2018, MECR is expected to approve five regulations and to support the Government in its task, by preparing three draft regulations, the approval of which falls under governmental responsibility and by law, they are to be approved by early April 2019. Additionally, amendments to three Laws are expected by the same deadline.

A prioritisation of the most urgent regulations to be adopted for the effective implementation of the new Law would be beneficial, considering the constraints of the MECR administration in term of staff units.

Revised Draft Law on the protection of historic monuments (August 2018)

The draft law on the protection of historic monuments (version August 2018) has been only recently received therefore only preliminary comments may be proposed at this stage.

It is evident even only by comparing the structures that the new draft law prepared by the BC experts differs from the proposed guiding document submitted for consideration by the MS STEs.

In particular, the Chapter on Protection is much more limited in the Draft Law Version August 2018 prepared by the BC experts, missing a number of key provisions to regulate the matter adequately. On the other hand, the BC draft includes a chapter on Intervention which is not envisaged by the MS proposal, according to a rationale that considers primary legislation not apt to provide for technical specifications and that aggregate under the register of protection the provisions that regulate/ restrict any activity on the protected object.

An effort has been made to strengthen the legal role of the opinion of the National Council of Historic Monuments – NCHM and to improve the procedure for approval/ authorisation of projects on protected monuments and areas, however it still suffers from some confusion and indecision. This is mainly due to the difficulty to acknowledge that the National Council, as an advisory body to the ministry, cannot be given the task to issue administrative acts with external relevance, that is to say, acts that have an impact on the rights of citizens. This should be a task assigned to a technical – administrative branch of the administration, be it a specialised department of the MECR or NAMS, because in this way the administrative responsibility is clear. A balance should be sought between collegiality and clear administrative responsibility and



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accountability/liability. At present, the aims of a stronger protection through collegial decisions do not seem fulfilled, at least when considering the results of the activity of the NCHM.

The Chapter on the Liability for breaching the Law contains several articles in the draft proposed by the MS experts, whilst the proposal by the BC experts include only one article that refers to the relevant legislation. Whilst it is understood that a substantial difference exists between the way in which trans-sectorial matters are dealt with in the legal texts, in RM being preferred the inclusion of liability provisions within the general laws regulating the matter, rather than in the sectorial laws aiming to be equipped with liability provisions, it would have been advisable that a list of updated provisions to be included in the relevant laws about civil, contraventional, penal and administrative responsibility would have clarified better how the Ministry intends to strengthen the legislation via a reinforced set of liability provisions. Given the list of laws to be amended following the potential approval of the present text, it does not seem that criminal, civil and administrative penalties will be modified.

The MS STEs notice that some key objections that were anticipated since November 2017 have not been taken in due consideration by the Beneficiary Country representatives.

These provisions concern:

F. the improper role assigned the Parliament in the approval of the Register of historic Monuments as a way to establish protection regimes on specific objects

This has been one of the first objection moved on the whole architecture of protection of immovable cultural objects to the Beneficiary Country ministerial staff. The explanation offered – that only high-level decision are respected by Moldovan to avoid abuses against monuments – does not seem confirmed in the facts: several monuments have been demolished since the Register was adopted by the Parliament, only when the first verbal processes have started to document the responsibility of individuals in the damages to cultural heritage, the practice of widespread demolition has slowed down. The objection that changing the procedure of classification to put it under the responsibility of the Ministry would imply also the modification of the declassification procedure, thereby making it easier and prone to external pressures is reasonable but one has to note that currently, the difficulties in declassifying monuments mostly have as a consequence their demolition, either illegally or legally. It seems therefore that keeping the declassification procedure under the responsibility of the Parliament only limitedly safeguard protected monuments, whilst certainly makes it more difficult and lengthy protecting assets that would deserve being included in the Register. It seems therefore that a thorough reflection on the overall classification/ protection system and on the role and responsibilities of civil servants and staff of the specialised body in the implementation of their mission and of the legislation would serve the purpose to identify remedial mechanisms that avoid to make excessively burdensome the classification system. In this regard it has to be noted that the Law n. 280/2011 outlines a clear and juridically sound process of classification that can be transposed also to the historic monuments.



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- G. the burdensome procedure of Listing in the Register through the establishment of Lists only periodically updated, instead of adopting a formula of Listing based on individual inclusion of the objects deeming legal protection in the Register via ad-hoc decision (preferably ministerial decisions)*

the argument has been discussed above in relation to the role assigned to the Parliament. It would be advisable to set up mechanisms that make it possible the enlistment of individual objects/ assets rather than of periodical lists.

- H. the impossibility to trigger ex- officio the listing procedure for immovable in private ownership*
I. the absence of the possibility to appeal against decisions hierarchically or through the competent court
J. the need to rebalance the tasks and responsibilities of the specialised institutions dedicated to the protection of historic monuments.

In this regard, the concentration of several key functions in the National Institute of Cultural Heritage, which is still to be created, in that the existing one has not performed these tasks and therefore has not matured any experience in this matter appears problematic, because these key functions are separated from another key task - inspection - which is part of the heritage cycle and need to be integrated into the whole system in order to make the inspection function meaningful and useful to improve protection. The current designed system appears defective, penalising the professionalism and expectations of the new Agency, thus triggering frequent turn-over and the impossibility to build capacity and institutional memory, on the one side, and on the other reducing the inspection task to a bureaucratic formality with no technical content and no possibility to use it as a capacity building and a raising awareness tool.

As a matter of fact, this draft law, which was expected to improve and strengthen the Law n. 1530/1993, considered outdated and superseded by other laws for other categories of heritage, in fact achieves only limitedly its goal: many provisions which were clearly set out in law n. 1530/1993 and which could have been usefully reintegrated into the new draft have been dismissed, whilst other ones, that would have deserved a thorough revision, in order to modernise and make more efficient the whole protection system, have been kept and reinserted in the new draft.

The absence of a system of financial and fiscal facilitations, incentives, direct and indirect mechanisms to diversify the resources necessary to develop a viable cultural heritage protection and promotion system, along with the lack of a coherent and convinced system of civil, administrative, contraventional and penal sanctions proportionate to the gravity of the violations of the provisions of the law (no efforts seems to be addressed to amend the penal code, for instance, through parallel legal initiatives) remain two of the major limitation of the proposed draft law, along with the above mentioned criticalities.



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ASSESSMENT OF THE LEVEL OF IMPLEMENTATION OF THE CURRENT LEGAL FRAMEWORK

IMPLEMENTATION OF THE LEGISLATION IN THE CULTURAL HERITAGE SECTOR

The assessment of the implementation of the legislation in the sector has been partly elaborated and presented in the analysis of the legal framework, within this report, and in Activity 2.1 analysis of the institutional framework and presented in the Report for activity 2.1.

From a legal and regulatory perspective, the elaboration, approval and use of regulations, criteria, and definition of procedures and related forms can be considered as indicators for the implementation of the laws. In most cases, in the absence of a regulatory framework and of clearly established procedures, the implementation of law is difficult if not impossible. Additionally, regulations and procedures demonstrate that the administration has addressed the functional and procedural aspects of law implementation, that is to say, the administration has addressed the operational details that are necessary to operationalise the provisions of the laws. Another element that may be helpful in the expectation of implementation at least, is represented by the organisation of training events for public officers in different administrations to guarantee the knowledge and understanding of the rationale of the regulations and their provisions.

From an institutional / organisational perspective, the existence of ad – hoc dedicated bodies, regulated, organised, staffed and equipped with adequate instrumental, human and financial resources is the first indicator of the possibility to implement the legal framework. In this regard, it has to be noted the institutional system for cultural heritage protection, conservation and enhancement/ promotion is patently insufficient to be able to ensure the implementation of the legal framework: this applies to MECR staff and to AIRM staff in particular, whilst the staff of NAA can be increased but is not in a situation as critical as AIRM or the Directorate of Cultural Heritage.

The existence and use of systems to record and to monitor the activity carried out by the institutions (e.g. datasheets where to record incoming and outgoing correspondence, procedures carried out, ordered dossiers of the activity classified by attributed functions and tasks) is another key indicator for external assessment of the level of implementation of the legal framework, along with periodic reporting on the activity carried out.

From the legal perspective, the Laws that seems to be implemented at least for a good part of their provisions include law on the protection of Archaeological heritage, n. 218/2010, for which regulations and templates for procedures have been elaborated and adopted, and the Law on the protection of movable cultural goods.

Both laws show shortcomings in implementation when it comes to the circulation of cultural movable goods and the status of protection of archaeological findings before they are integrated into museum collections: this in particular open up an issue concerning the gap in the legislation, and therefore in the implementation



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of effective protection measures. The regulation on the circulation of movable cultural goods has been submitted to public debate through the portal www.particip.gov.md and therefore should be able to fill an important gap that will need to be accompanied by sensitisation campaigns and training organised for different target audiences.

The law on museums has been adopted only at the end of 2017 and regulations are still under elaboration, so it is too early to attempt an appraisal of its implementation.

The sector of protected monuments, on the other hand has been left behind: law. 1530/1993 has not been equipped with regulations, a new law was expected since at least some five years ago, so in its absence no regulation has been elaborated to make the law fully operational. Although an ad-hoc Agency for inspection and restoration of monuments was established, this has been tasked with too many functions in respect to the number of assigned staff units. Additionally, the profile of the staff is not clearly defined nor is it the internal structures and functions.

These conditions clearly are not favourable for the implementation of the residual valid provisions of Law n. 1530/1993 on the built historic monuments. Currently the only stably implemented provision, although imperfectly in its procedural path (the Law provides for ministerial approval of project proposals upon issuance of opinion by the NCHM: the approval stamp by the Minister cannot replace an approval in the form of an administrative act), concern the approval of interventions on protected historic monuments and within the historic centre of Chisinau and protected areas.

Inspections cannot be performed in the absence of technical staff – the only post envisaged at the Agency for an architect, being vacant since June 2018 - and it is not clear how the tasks envisaged by the legislation are implemented, since it has not been possible to have access to the yearly reports of the Agency.

IMPLEMENTATION OF THE OBJECTIVES OF THE STRATEGY CULTURE 2020



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LIST OF LAWS, REGULATIONS AND BY-LAWS INSUFFICIENT, PROBLEMATIC OR IN NEED OF FURTHER SPECIFICATIONS

Below the list of the primary and secondary legislation that needs to be revised in order to clarify, strengthen or specify the legal provisions is provided is provided.

- Constitution of the Republic of Moldova
- Law on Culture n. 413/1999
- Law on the protection of monuments n. 1530/1993
- Law on archaeology n. 218/2010
- Law on the protection of the national movable cultural heritage n. 280 /2011
- Law on Museums n. 262/2017
- Draft Regulation of circulation of cultural goods (versions February 2018 and July 2018)
- Draft Law on the protection of historic monuments (version August 2018)

THE CONSTITUTION OF THE REPUBLIC OF MOLDOVA

The amendments suggested to strengthen the Constitutional concern art. 33 and art. 59. Article 33 may benefit from the insertion of a reference to obligation of safeguarding cultural heritage and not only to sustaining access to culture; in article 59 it is advisable to replace the locution “historic monuments” with the broader “cultural heritage”.

CULTURAL HERITAGE SECTOR

THE LAW ON CULTURE N. 413/1999

The Law on Culture is an important law, the provisions of which have in many cases constitutional character. However, its provisions are very general and would need specification via secondary legislation to ensure its implementation, these regulations however are not envisaged by the law.

With regard to the tangible cultural heritage, MS experts found that the provisions related to prohibition of privatisation of publicly owned cultural assets appear too rigid. While it is important to keep the principle



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that publicly owned cultural properties, broadly intended, are to be secured for public enjoyment, it should also be recognised that when the public budgets are insufficient, as it is the case for the Republic of Moldova (and of many other countries), the obligation to ensure that citizens can enjoy the publicly owned cultural heritage becomes very difficult to be performed. The BC representatives might wish to carefully consider to explore the opportunity and feasibility of a privatisation plan of some assets in State or public ownership, for which it has been difficult to find appropriate use and functions and financial resources to ensure conservation and enhancement. In this sense, revising the norms that prevent tout court privatisation of publicly owned cultural properties may be a step to be prudently undertaken, on the basis of clear criteria and guidance.

In this regard, the revision of the articles referring to this aspect may be envisaged within a larger and integrated programme which also include the parallel elaboration of regulations, criteria and fiscal measures supporting the process and preventing uncontrolled privatisation.

THE LAW ON THE PROTECTION OF MONUMENTS N. 1530/1993

This Law is destined to be soon superseded by a renewed Law, therefore in this case, instead of providing detailed comments on suggested amendments to specific articles, a highlight of provisions that are either still valid or in need of being modified will be provided.

The definition of monuments in article 1, paragraph 1 is very broad and should be retained. What is not valid is the restriction only to the registered monuments. Other paragraphs of this article contain important definitions, which, however, need to be revised because the legislation now has become more sectorial, therefore the notion of monuments has to be restricted to immovable assets. Also article 2 contains useful definitions that deserve being considered as well as revised and expunged of the parts related to movable or natural items.

Article 3 contains a key provision that need to be recovered: “The aesthetic, functional or material value of the monument is subsidiary to the historical testimony”. This sentence clarifies that first of all the monument is tangible testimony of its history, thereby requiring that all periods of its life need to be carefully considered and understood.

On the other hand, the provision contained in art. 4 about the role of the Parliament in relation to the approval of the register was meaningful at the time of the promulgation of this law, when a dramatic political change had recently occurred and there was the need for establishing a new protection regime recognised within the new political / institutional system. However, today, a substantial modification of the system should be envisaged, to facilitate the manageability of the protection system, the update of the Register and avoid politicisation of administrative provisions, such as the issuance of protection measures. The same remark affects art. 11 where the Parliament is given competence on recording, studying, valorising, protecting, preserving monuments, approving the register and approving the state programme for cultural heritage and its financing and where the Government is given other tasks that should be of the Ministry of



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Culture. Of course, they approve the repartition of the state budget each year, but should not be the Parliament to approve how the yearly budgetary allocation to the Ministry of Culture (today MECR) has to be articulated and subdivided. This articulation has of course to follow clear criteria, should be set in ad- hoc legislation or regulations.

Art. 13 and 14 contain clearly state provisions, the content of which is still valid but need to be further specified. On the other hand, art. 15 contains provisions that are inappropriate and need to be superseded.

Art. 16 clarifies that the National Council of Historic Monuments has an advisory role and its advice has to be taken into account in the approvals of project proposals which has to be released by the Ministry of Culture. The current solution adopted by the Ministry just to have a stamp of approval by the Minister is not juridically correct, in that the principle of the separation between political guidance and administrative implementation of the legal framework is not respected. This represent a major issue in term of gap with the key principles of a European public administration which focuses on service, *independence*, responsibility, accountability, efficiency and transparency that need to be expeditiously amended.

It is also recommended that the remuneration of the members of the National Council (art. 16 para 5) is only envisaged for the members who are not part of the MECR or related / subordinated institutions (e.g. Agencies, Museums, Institute of Cultural Heritage, Universities, etc.): for them only a reimbursement of documented incurred expenses has to be envisaged (e.g. if they live outside the Capital, if they need to take public transportations and taxis to reach the meeting point).

Article 18, paragraph 2 is too loose: no criteria are envisaged to determine whether a property has lost the qualities that make it a monument deserving protection. This provision needs to be revised and equipped with clear principles and criteria guiding the technical assessment preliminary to the decision in this regard. The system of updating the Register has to be completely reformed and made less burdensome in order to favour the growth and evolution of the Register of Monuments, which is crystallised in its initial elaboration in 1993.

Article 19 paragraph 2 envisages that private assets can be protected only with the consent of the owner: it would be advisable that this provision is modified, in order to make possible that State authorities protect privately owned assets without the consent of the owner, whilst the owner is allowed to appeal against the decision. Of course, such a provision needs to be accompanied by incentives and facilitations for the conservation and maintenance of the owner's part.

Art. 23, paragraph 2 contains a key provisions, as it states that "conservation of monuments has to be prioritised in respect to restoration or construction", crucial is also paragraph 3, which states that "restoration for repair and adequate conservation works shall first provide for measure to prevent damage and ruin, to preserve the original structure of the monuments without damaging their artistic, historic and scientific value". These provisions are crucial and must be retained in the new law that will supersede Law n. 1530/1993.



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Art. 24 and art. 25 are clear provisions that need to be taken into consideration in the revision of the law or in the elaboration of a new one. They need further detailing through primary and secondary legislation but set out important principles. Article 26 is also very important and need to be retained and further specified through an administrative system.

Article 27 is crucial as it sets out a key provision for the implementation of the legislation and for its effectiveness: "State monument protection authorities designate special empowered persons, the only ones with the right to supervise and control the conservation and restoration works as well as to interrupt them in case of non-observance of the provisions of the law." Regrettably this provision has not found real application, as it has not been perfected through secondary legislation, the wording of the regulation of the AIRM being only partly clear in this regard, nor through ad-hoc administrative acts – e.g. via a ministerial appointment. It is crucial that this provision is retained in any future legal text and amended to make it clear and immediately applicable. It should also be extended to cover any works on protected monuments or areas, in order to give to the empowered person the instrument to be effective.

Also art. 34 contains a key provision in that it identifies the responsible person for any damage that may derive from works being carried out on a protected monument.

Chapter V on financing of the protection activity of the monuments sets out useful provisions but need to be further detailed and above supported by a correspondence with provisions in the fiscal code.

Article 40 is very problematic and should be fully revised. As it stands it opens a Pandora's box of potentially unnecessary demolitions, based on economic interests rather than on necessity. Clear principles, criteria and a controlled procedure should be set up before allowing demolition. Severe sanctions for unauthorized demolitions should be set out and applied in order to avoid that monuments continued to be illegally demolished.

Chapter VII on public foundations set out important principles that need to be retained, in particular art. 51 contains key provisions on the control role of public foundations with a mission related to protection to heritage

In this regard it is suggested that the content of this article is retained and extended to associations. It would be important also to introduce the concept of common goods (commons) and that of collective interest in the Moldovan legislation, to ensure the necessary distinction between public goods and common goods and between public interest and collective interest.

The whole chapter on Liability has to be strengthened, the new Law would be the best opportunity. Article 53 requires to be detailed and equipped with a clear procedure, in order to ensure that the provision is applied. At this stage its text does outline only a principle but not a clear implementation path. Also article 54 would need to be detailed in what it concerns the procedure for the assessment of the damage and its



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quantification. Article 57 tries to set out a procedure which needs to be further detailed through secondary legislation but which is valid and should be retained in any revision/ reform of this Law. Article 56 contains an important principle, which has to be retained and reintegrated in the new law. However, it also needs a procedure and regulations affecting the budget management, in order to ensure that the revenues from the fines and penalties are earmarked for the purpose of conservation and protection of heritage. Article 58 envisages the possibility of confiscation: it is important that this provision is retained.

Article 60 on the other hand may be dangerous in its current wording, as it may pass the message that cultural heritage can be damaged against financial compensation. Whilst the principle “polluters pay” is important, it has to be understood in its real meaning, which implies that alternative solutions with reduced impact on heritage are to be found. If they are costlier, the ‘polluter’ - that is to say the subject who intends to carry out an activity with negative impact on environment and heritage – covers the difference; only in case no alternative solution can be found and the intervention/ work is necessary to respond to public needs, then financial compensation is to be provided, earmarked for the recovery of the impact of the work.

THE LAW ON THE PROTECTION OF ARCHAEOLOGICAL HERITAGE N. 218/2011

As discussed in the previous section, the Law on the protection of the archaeological heritage is one of the most developed among the Laws on cultural heritage in Moldova. However, it exhibits various weaknesses regarding the procedure of preventive archaeology and of the procedure of archaeological discharge.

The key articles dealing with this matter are articles 5 and 6, which, with a view to strengthen the protection of archaeological heritage, to improve the provisions and to eliminate potential conflicts of interests, are the ones that would need to be amended.

In particular, in the provisions of the law it is not clear how the procedure for the archaeological discharge and the preventive archaeology is triggered. The Moldovan system seems to have at its core, the archaeological map of Moldova, which however does not seem complete and is not made accessible to public administrations, thus preventing them to play their role in the protection of the archaeological heritage, which is nevertheless clearly stated in the law and, more importantly, preventing a strategic selection of the location of infrastructure or of considerable projects. It however constitutes the reference for establishing whether either preventive archaeology or the discharge procedure has to be activated. Making accessible the archaeological map at least to public administrations seems therefore a crucial step for a strategic planning of spatial plans and projects. Apparently, the law does not envisage forms of control over the works (e.g. the presence of an archaeologist during excavation works, specific methods for the excavations, etc.), thus weakening the whole system.

In the view of the MS experts, it should be much clearer what criteria would guide the selection of the most appropriate procedure: the archaeological discharge or the preventive archaeology; this decision should not be left only in the responsibility of the National Archaeological Commission, in the absence of a clear explicit guidance.



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It would also be necessary distinguishing the subject who does the archaeological research and the subject releasing the archaeological discharge certificate: as a matter of fact, it would represent a conflict of interest if the very same body carrying out the archaeological investigations, being paid by a private/public legal or natural person to obtain the discharge, released also the final archaeological discharge, as it is now the case in the current state of the legislation.

The suggested changes would imply amending art. 5 by introducing other subjects being eligible for carrying out the archaeological investigations in the case of discharge, whilst the NAA would be responsible for the release of the archaeological certificate or, in case it is the intention of the MECR to let the NAA or future NAMS to continue with this activity, another body, in the ministry should be given the task to issue the archaeological certificate, which might also be a possible solution.

Art. 6 also would need to be modified in order to introduce the principle that, in case preventive archaeology is triggered by a development project, it is to be paid by the proponent of the intervention and not by the NAA, NAMS or other MECR related institutions. The only preventive archaeology that should be paid by any of these organization is the archaeological research which is inserted in the yearly research programme of the specialized institutions subordinated to the MECR.

In general, with regard to the preventive archaeology, the French system appears to be the one more similar to the Moldovan one, however with some key differences that the Beneficiary Country is suggested to take into full consideration.

Below relevant articles excerpted from the French law on preventive archaeology are presented for ease of reference. According to the Member State experts, the key articles to be adapted to the Moldovan context are art. 5 and 6 of the Decree n. 2004 – 490, attributing to the NAA (or the future NAMS) the competences of the Prefect in the French system.

Excerpt from the Decree n. 2004-490 of June 3rd, 2004

Dispositions générales

Art. 1er. – Les opérations d'aménagement, de construction d'ouvrages ou de travaux qui, en raison de leur localisation, de leur nature ou de leur importance, affectent ou sont susceptibles d'affecter des éléments du patrimoine archéologique ne peuvent être entreprises que dans le respect des mesures de détection et, le cas échéant, de conservation et de sauvegarde par l'étude scientifique ainsi que des demandes de modification de la consistance des opérations.

Art. 2. – Les mesures mentionnées à l'article 1er sont prescrites par le préfet de région.

Toutefois, lorsque les aménagements, ouvrages ou travaux affectent ou sont susceptibles d'affecter des biens culturels maritimes, le ministre chargé de la culture exerce les compétences dévolues au préfet de région par le présent décret. Il est saisi du dossier par le maître d'ouvrage. La commission consultative compétente est le Conseil national de la recherche archéologique prévu au titre Ier du décret du 27 mai 1994 susvisé.

[omissis]



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Art. 5. – Sont présumés faire l'objet de prescriptions archéologiques préalablement à leur réalisation les projets d'aménagements affectant le sous-sol qui sont réalisés dans les zones définies dans le cadre de l'établissement de la carte archéologique nationale, conformément aux dispositions du deuxième alinéa de l'article L. 522-5 du code du patrimoine, par arrêté du préfet de région pris après avis de la commission interrégionale de la recherche archéologique, en fonction des informations scientifiques conduisant à envisager la présence d'éléments du patrimoine archéologique.

L'arrêté du préfet de région est adressé au préfet du département ou des départements intéressés par le zonage aux fins de publication au recueil des actes administratifs de la préfecture, ainsi qu'aux maires des communes intéressées. Il fait l'objet d'un affichage en mairie pendant un mois à compter du jour où il a été reçu. Il est tenu à la disposition du public dans les préfectures et dans les mairies.

Art. 6. – Lorsqu'il dispose d'informations lui indiquant qu'un projet qui ne lui est pas transmis en application de l'arrêté mentionné à l'article 5 est néanmoins susceptible d'affecter des éléments du patrimoine archéologique, le préfet de région peut demander au maire de lui communiquer au cours de l'instruction, selon le cas, le dossier de demande de permis de construire, de demande de permis de démolir, de demande d'autorisation de lotir, de demande d'autorisation relative à des installations ou travaux divers ou le dossier de réalisation de zone d'aménagement concerté qui correspond à ce projet.

Il peut, pour le même motif, demander au maire de lui communiquer le dossier d'une déclaration de travaux déposée en application de l'article L. 422-2 du code de l'urbanisme.

[omissis]

Art. 10. – Les aménageurs peuvent, avant de déposer une demande pour obtenir les autorisations requises par les lois et règlements ou avant d'engager toute autre procédure, saisir le préfet de région afin qu'il examine si leur projet est susceptible de donner lieu à des prescriptions archéologiques. A cette fin, ils produisent un dossier qui comporte un plan parcellaire et les références cadastrales, le descriptif du projet et son emplacement sur le terrain d'assiette ainsi que, le cas échéant, une notice précisant les modalités techniques envisagées pour l'exécution des travaux.

Si le préfet de région constate que le projet est susceptible d'affecter des éléments du patrimoine archéologique, il informe le demandeur, dans le délai de deux mois à compter de la réception de la demande, que le projet qu'il lui a présenté donnera lieu à des prescriptions de diagnostic archéologique.

Art. 11. – Hors des zones mentionnées à l'article 5, en cas de réponse négative ou d'absence de réponse dans le délai prévu à l'article 10, le préfet de région est réputé avoir renoncé à prescrire un diagnostic sur le même terrain et pour le projet de travaux dont il a été saisi, pendant une durée de cinq ans, sauf modification substantielle du projet ou des connaissances archéologiques sur le territoire de la commune. Sont considérées comme substantielles les modifications portant notamment sur l'implantation, la profondeur ou les modes de fondation des ouvrages projetés.

[omissis]

CHAPITRE II

Régime des prescriptions archéologiques

Art. 13. – Le préfet de région édicte les prescriptions archéologiques, délivre l'autorisation de fouille et désigne le responsable scientifique de toute opération d'archéologie préventive.

Le responsable scientifique est l'interlocuteur du préfet de région et le garant de la qualité scientifique de l'opération archéologique. A ce titre, il prend, dans le cadre de la mise en oeuvre du projet d'intervention de l'opérateur, les décisions relatives à la conduite scientifique de l'opération et à l'élaboration du rapport dont il dirige la rédaction. Il peut être différent pour la réalisation du diagnostic et pour la réalisation de la fouille.



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Art. 14. – Les prescriptions archéologiques peuvent comporter:

1. La réalisation d'un diagnostic qui vise, par des études, prospections ou travaux de terrain, à mettre en évidence et à caractériser les éléments du patrimoine archéologique éventuellement présents sur le site et à présenter les résultats dans un rapport ;
2. La réalisation d'une fouille qui vise, par des études, des travaux de terrain et de laboratoire, à recueillir les données archéologiques présentes sur le site, à en faire l'analyse, à en assurer la compréhension et à présenter l'ensemble des résultats dans un rapport final ;
3. Le cas échéant, l'indication de la modification de la consistance du projet permettant d'éviter en tout ou partie la réalisation des fouilles ; ces modifications peuvent porter sur la nature des fondations, les modes de construction ou de démolition, le changement d'assiette ou tout autre aménagement technique permettant de réduire l'effet du projet sur les vestiges.

Les prescriptions sont motivées.

[omissis]

Art. 16. – Lorsque les opérations d'aménagement, de construction d'ouvrage ou de travaux mentionnées à l'article 1er portent sur des terrains recelant des vestiges archéologiques dont l'intérêt impose une conservation sur place faisant obstacle à la réalisation de l'aménagement, le préfet de région demande le classement parmi les monuments historiques de tout ou partie du terrain. Le ministre chargé de la culture notifie, dans ce cas, au propriétaire du terrain une proposition de classement dans les conditions prévues par le chapitre Ier du titre II du livre VI du code du patrimoine.

[omissis]

CHAPITRE III

Mise en oeuvre des diagnostics

Section 1

La désignation de l'opérateur chargé du diagnostic

Art. 22. – Les prescriptions archéologiques de diagnostic sont notifiées à l'autorité compétente pour délivrer l'autorisation de travaux, à l'aménageur, à l'Institut national de recherches archéologiques préventives ainsi que, s'ils disposent d'un service archéologique agréé, aux collectivités territoriales ou aux groupements de collectivités territoriales sur le territoire desquels l'opération d'aménagement doit avoir lieu.

[omissis]

Articles 25, 26, 27 are dedicated to the formation of the territorial archaeological service

Section 2

Les conditions de réalisation du diagnostic

Articles from 28 to 34 regulate the relationships between the beneficiary and the contractor who has to deliver the 'diagnostic'

CHAPITRE IV

Mise en oeuvre des fouilles

Section 1

Les prescriptions archéologiques de fouilles

Art. 35. – Lorsque le préfet de région prescrit, dans les conditions prévues par l'article 19, la réalisation d'une fouille, il assortit son arrêté de prescription d'un cahier des charges scientifique qui:



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- a) Définit les objectifs, les données scientifiques ainsi que les principes méthodologiques et techniques de l'intervention et des études à réaliser;
- b) Précise les qualifications du responsable scientifique de l'opération et, le cas échéant, celles des spécialistes nécessaires à l'équipe d'intervention;
- c) Définit la nature prévisible des travaux nécessités par l'opération archéologique, en indique, le cas échéant, la durée minimale et fournit une composition indicative de l'équipe;
- d) Détermine les mesures à prendre pour la conservation préventive des vestiges mis au jour;
- e) Fixe le délai limite pour la remise du rapport final.

[omissis]

Section 2

Les conditions de réalisation des fouilles

Art. 37. – Les opérations de fouilles archéologiques prescrites par le préfet de région ou, pour les opérations sous-marines, par le ministre chargé de la culture, sont réalisées sous la maîtrise d'ouvrage de l'aménageur.

[...]

Art. 38. – Les opérations de fouilles peuvent être confiées à l'Institut national de recherches archéologiques préventives, à un service archéologique territorial agréé ou à toute autre personne de droit public ou privé titulaire de l'agrément prévu au chapitre IX du présent décret.

Art. 39. – Si l'aménageur est une personne publique soumise au code des marchés publics, la passation du contrat de fouilles est soumise aux règles de passation des marchés de travaux fixées par ce code.

Si l'aménageur est une personne publique ou privée soumise à la loi du 3 janvier 1991 susvisée, la passation du contrat de fouilles est régie par les règles de passation des marchés de travaux fixées par le décret du 31 mars 1992 susvisé.

[omissis]

Art. 44. – Lorsque l'aménageur est une personne privée, il ne peut confier l'opération archéologique prescrite à un opérateur que lui-même ou un de ses actionnaires contrôle, directement ou indirectement.

[omissis]

Art. 46. – Dans le cas où aucun opérateur ne s'est porté candidat à la fouille ou ne remplit les conditions pour la réaliser, l'aménageur demande à l'Institut national de recherches archéologiques préventives d'y procéder en lui communiquant la prescription correspondante.

Dans les deux mois suivant la réception de la demande, l'Institut national de recherches archéologiques préventives adresse au demandeur un projet de contrat contenant les clauses prévues à l'article 40.

[Omissis]

Section 4

CHAPITRE V

Le contrôle des opérations d'archéologie préventive

Art. 54. – Les opérations d'archéologie préventive sont exécutées sous la surveillance des services de l'Etat. [...]

[omissis]



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Art. 60. – Le ministre chargé de la culture définit par arrêté, après avis du ministre chargé de la recherche et consultation du Conseil national de la recherche archéologique, les normes d'identification, d'inventaire, de classement et de conditionnement de la documentation scientifique et du mobilier issu des diagnostics et fouilles.

Art. 62. – La commune sur le territoire de laquelle les objets mobiliers ont été découverts peut demander que la propriété des vestiges attribués à l'Etat lui soit transférée à titre gratuit.

Au cas où la commune intéressée renonce à en faire la demande ou qu'elle n'offre pas des conditions de conservation satisfaisantes, le transfert de propriété des vestiges mobiliers à titre gratuit peut être sollicité par toute autre collectivité territoriale ou groupement de collectivités dans le ressort desquels les objets ont été trouvés.

Un arrêté du ministre chargé de la culture précise les conditions exigées pour une bonne conservation des vestiges mobiliers.

[omissis]

CHAPITRE VIII

Carte archéologique nationale

Art. 69. – La carte archéologique nationale comporte:

1. Des éléments généraux de connaissance et de localisation du patrimoine archéologique pouvant être utilisés par les autorités compétentes pour délivrer les autorisations de travaux et permettant l'information du public;
2. L'état complet de l'inventaire informatisé des connaissances et de la localisation du patrimoine archéologique.

It is recommendable to modify these provisions and to give prevalence to preventive archaeology research which may possibly lead to the issuance of the archaeological discharge at the end of the excavation campaign but without this being pre-empted. MS STEs suggest that the provisions establishing that preventive archaeological research is funded by the NAA budget should be modified in order to make sure that this activity is resourced within the budget of the works likely to affect the archaeological remains, individually or through the creation of an ad-hoc fund fed by an earmarked percentage of all budgeted infrastructure and construction works. Additionally, the procedure for the archaeological discharge should be more clearly regulated as the possible final part of the preventive archaeology procedure, one of the options that can be adopted when no or no significant remains are found by archaeological investigations. This would imply to move the provisions regulating this procedure after the one on preventive archaeology (art. 6), whilst the latter should explicitly outline the different options that may be pursued on the grounds of the results of the investigations (preservation in situ of the remains for their presentation and relocation of the project, partial or total preservation in situ of the remains (without presentation) and prescriptions and modifications to the project to allow this preservation below ground or below the works, archaeological discharge).

Finally, the clarity and usability of the Law would benefit from a reordering of its provisions in that many of them are not placed in the most appropriate position, article or chapter. For instance, article 4, which is dedicated to "classification and protection of archaeological heritage", includes provisions related to fortuitous discovery, which could be grouped with other provisions related to the same topic, e.g. paragraphs (8) and (9) of art. 5, dedicated to "mechanisms for the protection of archaeological heritage". This article also contains the provisions for the archaeological discharge, which should be grouped and moved in another



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article, specifically dedicated to the archaeological discharge, positioned after the article regulating preventive archaeology. As an aside, one may note that the procedure of the archaeological discharge cannot be seen as the primary mechanism to protect archaeological heritage, in that it leads to the complete removal of the archaeological remains, or the certification that existing remains have been destroyed to a non-recoverable extent, in order to give back the land for development or any other use.

Article 5 also contains several paragraphs - from 12 through 17 - that provide for definitions and criteria for archaeological research: it would be more appropriate to give these paragraphs the dignity they deserve through a dedicated article on the notion of archaeological research and their guiding principles. As such these provisions are not given the necessary relevance in the Law. On the other hand, paragraph 18, regulating the use of metal detectors and other remote sensing devices can be part of an article regulating the use of these devices.

Art. 6 is not fully clear in that it mixes up the different situations and procedures, that is to say, preventive archaeology, the issuance of an archaeological expertise and advice at the notification of works that affect the soil and therefore potentially also archaeological remains as well as accidental discovery in case of works. The clarity of the provisions contained in this article would benefit if they could be grouped at least in two distinct articles, one for the issuance of the archaeological expertise and one for preventive archaeology.

With specific regard to the procedure of issuing the archaeological expertise, it has to underlined that ten days is a far too limited timeframe. This short timeframe combined with the administrative mechanism of the 'tacit- consent' introduced in the Law n. 160/2011 via an amendment introduced in 2017 (Law n. 185/2017) undermines the possibility to protect effectively potential archaeological remains located below ground. In this regard an extension of the timeframe to at least 30 days should be envisaged and explicitly proposed.

As a matter of fact, the recently approved Administrative Code (July 2018) offers the possibility to the MECR to regulate its procedures and to set out by regulations (e.g. through Government Decision) the steps and timeframe for each procedure related to the protection of cultural heritage.

Furthermore, it is noted that art. 5 paragraph 7 establishes that construction projects or other projects involving soil interventions in areas with archaeological heritage are approved by the Ministry of Culture on the basis of the expertise of the NAA but in subsequent paragraphs there is no explanation on how this approval is provided (times, modes and model of certificate).

Considering the archaeological richness of Moldova, particularly for the prehistoric and proto-historic periods, as a result of which the entire territory exhibits high archaeological potential, it is suggested that every work must always be submitted to NAA to issue its preliminary archaeological expertise. A specific provision should also be added establishing that the responsible offices of local authorities issuing building permits/ authorisation must inform NAA of the beginning of the works, to allow the necessary monitoring of their prescriptions and of the control over the territory).



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It is also of fundamental importance to consider that, by law, the finds that come from archaeological excavations are not protected until they become part of the collection/ patrimony of one museum. This issue is consequent to the fact that a better definition of archaeological item/site is required, independently by the inventory procedures. In particular, this law should consider enacting timeframes as established by the international legislation. Therefore, an intermediate risk arises between the moment of the discovery of a find to its enhancement through the inclusion in the patrimony of a museum. A grey zone of uncertainty with regard to status of the find can be detected and this is not resolved by the provision that removing any emerging archaeological finding from the area of excavation without authorization is forbidden (art. 47, paragraph 1, let. f)).

Further specific weaknesses are to be signalled. They concern: 1) statistic to be collected on illegal digging; 2) the issue of valorization not always properly faced; 3) The radius of the protection area, too limited; 4) Use and other forms of exploitation of archaeological heritage that should be ruled in details.

Finally, the archaeological excavations carried out by other institutions (for example foreign research institutions) report to the NAC and not to the NAA directly. This means that for the updating of the database the archaeologists of the Agency have to go themselves and recover the excavation reports. This makes it difficult -if not impossible- to update the Repertory, for instance. Therefore, the provisions of law should be amended (i.e. in the Chapter III) and should envisage that the reports of different institutions involved in Moldavian Archaeological Researches were delivered directly to the NAA that one could become the archaeological Archive of Moldova.

LAW ON THE PROTECTION OF THE NATIONAL MOVABLE CULTURAL HERITAGE, N. 280/2011

In this law, articles that may deserve being amended include art. 2, art. 4, art. 5, art. 8, and particularly **art. 18.**

A key issue concerns the manifold definitions of cultural heritage.

From the point of view of the security of assets and their protection, including in terms of the applicability of any sanctions in this regard, the major changes must take place in the context of the Criminal Code art. 133, which adopts the definition of the 1970 UNESCO Convention and, therefore, can operate only on the goods that fall within that definition.

The other definitions contained in both the 280 Law and the draft Regulation on the circulation of cultural heritage are more detailed than the UNESCO 1970 definition, but each time always different from each other, they are improved than the UNESCO 1970 Convention, but this improvement does not imply as a consequence an improvement of the implementation of the law or of the protection of cultural goods, because they are not recognised and incorporated yet in the Penal Code and therefore illicit acts violating



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their protection are not always properly sanctioned. It is therefore necessary to standardize the concepts and definitions between the law n. 280/0211 and the Criminal Code.

Art. 2 Main notions

- a) The word "exceptional" creates confusion and makes one think of unique or rare objects. It seems more appropriate to delete it in this article.

Art.4 Structures of national movable cultural heritage

The concept of a movable cultural good should be better specified. And all related legal provisions need to be aligned in terms of definitions, in order to avoid legal gaps (e.g. in the Penal Code the definitions are slightly different from the Law and this makes ambiguous the cases for application of the sanctions).

Although the list referred to in art. 4 is very extensive and detailed, this doesn't seem sufficient to define the cultural good protected by law. It is also necessary better describing the assets listed in these last paragraphs (4.2, 4.3, 4.4, 4.5, 4.6) by introducing chronological terms or qualifying adjectives such as "exceptional", "rare", *etc.*, as exemplified below.

Possible amendments include the following:

Art. 4.1 a)archaeological objects ... more than one hundred years old;

Art. 4.2 a) b) c) ... works and objects more than fifty [or better seventy] years old;

Art. 4.3 a) b) c) d) e) ... "rare" or "exceptional" ...;

Art. 4.3 f) ... furniture more than fifty [or better seventy] years old;

Art. 4.4 b) ... "rare" or "exceptional" ... ;

Art. 4.5 d) ... "rare" or "exceptional" ... ;

Art. 4.5 g) ... more than seventy-five years old;

Art. 4.5 h) ... more than twenty-five years old.

Art.8Classification of movable cultural good

It is suggested that the specialised staff of the MECR or of its subordinated institutions is responsible for the expertise that leads to the classification and that the recourse to private, although accredited, experts is reduced to only exceptional cases. It is noted that the law does not provide for any form of incentive for the private owners to seek for the classification of their own movable objects.

The limit of 10 days indicated at paragraph 12 is too short: it should be extended to at least 30 days.

Art. 11 Declassification of movable cultural goods



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No detailed procedure and criteria are set out in this very sensitive area. Amendments to better regulate the application of this article should be envisaged.

Art. 14. Inventory of mobile national cultural heritage

No secondary legislation is envisaged to rule in detail the data -banks mentioned in the article. Neither statistic collection is envisaged.

Art. 15. Ensuring the security of national mobile cultural goods

The provisions of this article are not always clear, additionally no sanctions are envisaged to ensure that provisions are implemented.

Art. 18 Circulation and trading of the classified movable cultural goods

This article is the one more in need of being revised and amended, in order to strengthen the protection regime of movable cultural goods.

It is necessary to set some additional rules on circulation of cultural goods, in order to combat illicit trafficking in the domain: the importation must take place on the basis of documentation suitable for proving the legitimate origin and the property; otherwise, seizure procedures should be available and the country of origin should be informed about. Further, a certain duration must be established / fixed for the validity of the import certificate (five years are suggested); duration could be possibly renewed upon request by the interested party (inspection of the objects should be mandatory and its costs as well as other ones should be charged on the interested party).

With the possible establishment of the Export Office, the double approval of the Ministry and the President of the Museums and Collections Commission would be redundant and would fall. Furthermore, it should be considered that with the possible establishment of the Export Office, some tasks of the Museums and Collections Commission would be given to the Export Office. The Export Office should be a technical administrative Office rather than a high -level advisory body such as the Commission, in order to allow its smooth activity. Considering the scarcity of staff, especially at MECR, the Office could function with limited new staff: only a secretary of Office managing the database of the objects and the requests and release of certificate of circulation would suffice: the experts may be employed in other public institutions, e.g. the Museums, the ICH and future NICH, at least one representative of the General Directorate of Cultural Heritage in the MECR should be part of the Export Office/ commission, which, in turn, can gather once a week to examine the requests and to decide upon the release of the circulation certificate.

At para 4, concerning the mechanisms of lending cultural goods owned by the Church or religious entity, it would be advisable to add an authorization by the Ministry. This may have an impact on agreement between the Church and the State, if and where they exist.

Within the paragraph 15, the concept of compulsory purchase could also be included. In this case it should also be reinstated in the regulation, from which for the moment it was expunged due to the fact that the primary law did not provide for it. Instead, the law provides for pre-emption (Article 19).



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All the paragraph 15 may remain but should be reviewed with reference to the Export Office as well as to the customs authorities. In addition, let. d) in para 15 refers to a category - decoration items, costumes, props, made on the basis of sketches or projects of living authors - is not sufficiently specific. It is also noted that this paragraph provides for too many restrictions that could hinder the free circulation of contemporary art and damage the revenue coming from tourism.

The establishment of an Export Office may assist as there will be experts assessing what can be definitively exported. The experts engaged in the Export Office can also provide training to the Custom staff, to support them in the first stage screening. The access of Customs to a database of goods having cultural importance and that have been denounced as missing or stolen is crucial in this regard.

Paragraph 16 should be corroborated as regards the importation and prevention of illicit trafficking. There should be a contact between the competent customs authorities and the Export Office. In other words, the competent customs authorities should demand suitable documentation for goods with a status of cultural goods both at the entrance and, more importantly, at the exit.

Art. 19 Commercialization of movable cultural goods

The 30-days deadline set for exercising the pre-emption right referred to in paragraph 4 of article 19 seems too short. It is suggested to extend it to 60 days. A longer period of time would also involve other local institutions or public bodies interested in buying goods.

Additionally, there is no specific provision contemplating the compulsory purchase of cultural goods when presented at the Export Office and not allowed for export. This provision could be state the following:

Compulsory Purchase

- 1. The export office may recommend to the Ministry the compulsory purchase of the thing or the property for which the certificate of free circulation has been requested, contemporaneously notifying the party concerned, to whom it shall moreover declare that the object subject to the purchase recommendation shall remain in the custody of the aforesaid office until the conclusion of the relative procedure.*
- 2. The Ministry shall have the option to purchase the thing or property for the value indicated in the declaration. The purchase provision shall be notified to the party concerned within the peremptory term of ninety days from the declaration. Until notification of the purchase provision occurs, the party concerned may decide against the exit of the object and take action to withdraw the same.*
- 3. Should the Ministry not wish to proceed to purchase, it shall, within sixty days of the declaration, notify the local authority from whose territory the recommended object has its provenance. The local authority shall have the option to purchase the thing or the property in accordance with the provisions pertaining to the financial coverage of the costs and the assumption of the relative promise to purchase. The relative decision by the local authority shall be notified to the party concerned within the peremptory term of ninety days from the declaration.*

As far as the other parts of the law 280 are concerned, it is necessary to include the Export Office within the Ministry, as an institute exclusively competent to oversee, in direct collaboration with the General Management, the circulation of works of art.



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If the Export Office is introduced, then in the final articles describing the attributions of the Ministry and the competences / tasks of the organs / offices that are part of it, the Export Office should be included.

The word “classified” in the title of chapter V of the Law is to be deleted.

Chapter VI on financing is very limited: Other fiscal intervention, tax deductions and incentives for culture should be envisaged. This is a structural weakness in all laws and hinder the effective protection and conservation of cultural heritage in the Republic of Moldova.

In chapter IX, **art. 29 paragraph c)** the term "classified" must be eliminated, because the unauthorized exportation of cultural assets must be punished tout court, not just that of classified goods.

In addition, it has to be noted that throughout the text of the law, in various articles (e.g. art. 8, paragraph 7; art. 15) there is reference to obligations for which there are no correspondingsanctions in art. 29, it is urgent to amend this part, in order to ensure that all envisaged obligations are sanctioned in case of non - compliance.

In addition, there is a difference between the definition of cultural good in this law and the one included in the administrative and penal code. Therefore, not all the violations indicate under article 29 can be adequately punished via the application of the administrative and penal code.

A revised chapter on Sanctions should be envisaged, which should have an impact on the Penal Code, in order to see strengthened the provisions of art. 133 and should detail all cases envisaged by the Law.

Chapter X - Final and Transitional Provisions

The final clauses of the law establish that eight regulations are to be adopted within a specific timeframe and two registers. Only two regulations remain to be developed and approved:

- Rules on the authorization of economic agents selling movable cultural goods.
- Rules on the marketing of movable cultural goods.

However, according to the MS experts, it would be advisable to develop regulations also for the standards and the management of the databanks mentioned in art. 14

For further details, see the annexed report *Considerations by Paola Traversone and Paolo Giorgio Ferri on the importance to establish an **Exportation Office** competent in the field on the movement of mobile cultural goods abroad* and the report *Considerations by Paola Traversone and Paolo Giorgio Ferri on the **draft of Regulation on the movement of mobile cultural goods** elaborated in order to implement the provisions of the Government Decision no. 1472 of 30.12.2016, which transposes Regulation no. 116/2009/EC; and in order to implement the Culture Development Strategy "Culture 2020", approved by the Government Decision no.*



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271 of 09.04.2014 but also in accordance with Law no. 280 of 27.12.2011 on protecting the national cultural heritage.

THE LAW ON MUSEUMS N. 262/2017

On the grounds of the analysis and of the preliminary comments provided in the previous section, in the MS experts' opinion, the most urgent regulation is the one on accreditation, which, on the contrary, does not seem to have been put in hand or at least one of those further back in the elaboration, on the other hand is the most conceptual because it implies a broader vision.

With regard to the articulation of the Law, its structure appears to be a little confused: it deals with the same subject in distinct parts and sometimes in a manner inconsistent with the title of the section or of the article. The drafting of the text would perhaps need a little more time to better focus and metabolize innovations or the impact of some changes.

Notwithstanding the fact that changing the law radically a few months after its entry into force does not seem advisable, the integrations should above all aim to bring to the fore the concept of Mission and identity of the Museum, in order to induce a reflection on the testimonial value of the patrimony guarded, on its specificity and on its narrative potential.

Amendments are considered desirable and possible without distorting the law in its structural system include the following.

IN ART.1 aligning the definition of the Museum with that of the ICOM with the addition of 2 permanent and non-profit requirements

Similarly, the definition of restoration must be reviewed with a more conservative approach. As regards the documents necessary for the institution, the Mission Statement should be inserted as a requirement.

The relationship between classification must be clarified: Art. 5 must clearly state if the classification based on relevance has a link with membership and, in case, and if and how it is possible to move between the various levels.

At point 5.7 it is advisable to include the possibility of mixed museums, as most of the national museums are mixed in nature, including the National Museum of Ethnography and Natural History.

In ART. 6 the mission statement among the "enabling Documents" should be inserted.

In art. 9 it should be clarified what happens in case of revocation of accreditation both in the case of public museums and in the case of private museums in case of loss of accreditation. The text is ambiguous enough it is not clear if it necessarily implies the closure of the museum and the transfer of collections to other museums. A forecast of this type is risky. The value and significance of the museum collections as a whole should be protected, while providing for the possibility of transferring assets if they are functional and consistent with the identity and mission of the museum (see amendment Article 12)



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In art.11 Museum heritage, a paragraph should be added that establishes what the cultural heritage of each museum should be, regardless of type, subject to inventory / register of the museum with the procedures that the legislation provides for each type of property. Given the structure, it would also seem useful to insert a standard that recognizes the value of the collections / cultural heritage of the museum as a whole.

At the same time it would be useful to make the reorganization of the collections possible even between museums of different properties by regulating or through the law or through one of the regulations the possibility of transferring assets between museums also of different ownership prior opinion and approval of the Ministry where functional greater consistency with the identity and mission of the institutions involved and, on the basis of a scientific project and through agreements, with a view to reorganizing the collections, where these have not historical or cultural values as a whole.

Art. 14 The register of the mobile collections seems to be intended only for public museums (art. 12) and not for those private (art 14): the register of collections must be a requirement for all museums.

Art. 19 is somehow vague about the professional figures of which a museum must be able to dispose autonomously or in a shared form if not in the primary standard. These specifications should be dictated at least in the regulation framework for the organization and operation of museums.

In Art. 26 should be specified which is the legislation on the basis of which sanctions or penalties for failure to comply with the law are established.

Those indicated above seem indispensable and feasible amendments that would greatly improve the law.

DRAFT REGULATION ON CIRCULATION OF CULTURAL GOODS (VERSIONS FEBRUARY 2018 AND JULY 2018)

Draft of Regulation on the circulation of cultural goods (version February 2018)

Below are presented the articles of the draft regulation on the circulation of cultural goods in its February - 2018 version that needed to be amended with suggested modifications.

Article 2: In the Moldovan legislative system there are several and different definitions of cultural goods; and the cultural items listed in annex 1 to the draft Regulation are not always the same as indicated in other existing legislation. For instance, article 133 of the Criminal Code (Cultural Values) seems to have reference only to the cultural items as protected by the 1970 UNESCO Convention¹⁶.

It is, instead, necessary to have a uniform concept of cultural good in order to reach certainty about rights, obligations/duties for all the stakeholder, including public administrators. With regard to this, the European framework can help in establishing what could be protected.

¹⁶ See what remarked in the following points referred to the sanctioning system of the violations.



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Annex – Categories of Cultural Objects Covered by Article 1 of the Council Regulation EEC N° 3911/92 of 9 December 1992 on the export of cultural goods¹⁷ defines as cultural goods the following:

A.

1. Archaeological objects more than 100 years old which are the products of: - Excavations and finds on land or under water; - Archaeological sites; - Archaeological collections;
2. Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years.
3. Pictures and paintings executed entirely by hand, on any medium and in any material;
4. Mosaics other than those in categories 1 or 2 and drawings executed entirely by hand, on any medium and in any material;
5. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters;
6. Original sculptures or statuary and copies produced by the same process as the original, other than those in category 1;
7. Photographs, films and negatives thereof;
8. Incunabula and manuscripts, including maps and musical scores, singly or in collections;
9. Books more than 100 years old, singly or in collections;
10. Printed maps more than 200 years old;
11. Archives, and any elements thereof, of any kind or any medium which are more than 50 years old;
12. (a) Collections and specimens from zoological, botanical, mineralogical or anatomical collections; (b) Collections of historical, palaeontological, ethnographic or numismatic interest;
13. Means of transport more than 75 years old;
14. Any other antique items not included in categories A.1 to A.13 (a) between 50 and 100 years old: - toys, games – glassware - articles of goldsmiths' or silversmiths' wares – furniture - optical, photographic or cinematographic apparatus - musical instruments - clocks and watches and parts thereof - articles of wood – pottery – tapestries – carpets – wallpaper – arms (b) more than 100 years old.

The cultural objects in categories A.1 to A.14 are covered by this Regulation only if their value corresponds to, or exceeds, the financial thresholds under B.

B. Financial thresholds applicable to certain categories under A (in ecus). Value: 0 (Zero) - 1 (Archaeological objects) - 2 (Dismembered monuments) - 8 (Incunabula and manuscripts) - 11 (Archives) 15 000 - 4 (Mosaics and drawings) - 5 (Engravings) - 7 (Photographs) - 10 (Printed maps) 50 000 - 6 (Statuary) - 9 (Books) - 12 (Collections) - 13 (Means of transport) - 14 (Any other object) 150 000 - 3 (Pictures).

The assessment of whether or not the conditions relating to financial value are fulfilled must be made when an application for an export license is submitted. The financial value is that of the cultural object in the Member State referred to in Article 2 (2) of the Regulation.

¹⁷Obviously, the amendments to this list as made by the European legislator in other successive Regulations should be also considered: here it is important to underline that the European Community takes into consideration two aspects for declaring an object as cultural, that is the age and the value.



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However, some of the suggested reforms can be achieved only via primary legislation, and not through secondary normative acts. It could be, however, possible via secondary legislation to introduce temporary and economic/value limits in relation to cultural goods relevance, whenever such limits do not imply the limitation of property rights.

Article 3, in its paragraph 3¹⁸ has been enacted to implement Article 18, paragraph 18, of the Law 280/11. These legal provisions are, however, old fashioned and should be abandoned in order to implement a sound circulation abroad of cultural items. Nowadays, it is a well-known and established principle that States should attach importance to any sort of damage caused by de-contestualisation, that is to say, by the removal of any cultural object from its geo- historic- cultural setting. Cultural heritage belongs to the country of origin, and is essential to its culture, development and identity. Ownership of cultural heritage by the country of origin does not expire. Cultural property is irrevocably identified with the cultural context in which it was created. It is the original context that gives it its authenticity and unique value. The result envisaged by Article 18 of the Law 280/11 and Article 3, comma 3 of the draft Regulation could be realized via the following options: (i) Long-term loans of the requested object; (ii) Shared ownership; (iii) Temporary exchange of artefacts; (iv) Renewable or temporary deposit; (v) Joint research project to enhance the context of the object; (vi) Partnership; (vii) Restoration of partage¹⁹; (viii) Provision of a replica and/or website; (ix) Special storage arrangements; and (x) Creation of joint exhibitions.

Article 4 should follow closely the requirements as established by the model export certificate that has been jointly developed by the UNESCO and the WCO²⁰ or other compatible models such those created by the European community. In particular, it is of utmost importance that in the form the applicant is required to specify: (i) If the object is part of a collection; (ii) where the object will be imported (country of destination²¹); (iii) The value of the object.

If the value is declared by the applicant, via primary legislation could be established an important principle, that is the compulsory purchase by the State of the cultural item for whom an exportation certificate is required. The provision could be envisaged as it follows: “1) The export office may recommend to the Ministry the compulsory purchase of the thing or the property for which the certificate of free circulation has been

¹⁸“The definitive exportation of movable cultural goods classified as Fund shall only be made in the context of an exchange of cultural goods of similar value”.

¹⁹ Partage would allow for museums and universities from outside a host country to conduct excavations in that country, and then share their finds with local museums. However, this form of partage could signal a return to the colonialist era of archaeology. For this reason, someone proposed a modified version of this partage system, separating ownership from possession. Here is how it would work: The country of origin would own anything that is excavated there and keep most of the finds on display in local partnering museums. The museums (or even private collectors or investors) that sponsored the dig would be allowed to borrow a percentage of the finds and exhibit them. Eventually, all the finds from a site would be exchanged on a rotating basis between the country of origin and the museum, which would pay the expenses and insurance.

²⁰See, note 8.

²¹In this way a copy of the full export certificate could also be sent to the foreign customs office if agreements were to establish such opportune exchange of information (see, Guideline 59 of the above mentioned Operational Guidelines).



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requested, contemporaneously notifying the party concerned, to whom it shall moreover declare that the object subject to the purchase recommendation shall remain in the custody of the aforesaid office until the conclusion of the relative procedure.. 2) The Ministry shall have the option to purchase the thing or property for the value indicated in the declaration. The purchase provision shall be notified to the party concerned within the peremptory term of ninety days from the declaration. Until notification of the purchase provision occurs, the party concerned may decide against the exit of the object and may act to withdraw the same. 3) Should the Ministry not wish to proceed to purchase, it shall, within sixty days of the declaration, notify the local authority from whose territory the recommended object has its provenance. The local authority shall have the option to purchase the thing or the property in accordance with the provisions pertaining to the financial coverage of the costs and the assumption of the relative promise to purchase. The relative decision by the local authority shall be notified to the party concerned within the peremptory term of ninety days from the declaration". Such a compulsory purchase is allowed in other provisions of the Moldovan legal system, and it is compatible with its constitutional principles.

In this Article, it is also established that, if the applicant does not have documents of licit provenance, he/she will file a declaration on his/her own responsibility assuring his/her ownership/administrator-ship of the property. Other declaration stating that the goods for which an export certificate is requested are not in dispute is also required. However, the above-mentioned declarations should be supported by appropriate documentation and shall be accepted only after a close investigation by the competent Authorities, warning the applicant that the exportation certificate could be delayed at the end of the verification process.

Article 5 should always require the authorization of the MECR, even when a temporary exportation is required²². It should be ultimately in the competence and liability of a specific office of the Minister the release of every exportation licence. In order to improve international cooperation and help foreign customs offices to detect illicit import-export operations, the final export certificate (in 5 copies²³) shall be translated in the language of the destination country and accompanied by detailed photos of the item (at least 5, one for each copy of the certificate). Moreover, the procedures for the release of the exportation licences should contain provisions allowing the time limits to be suspended and/or prolonged in specific situations (for instance, examination of the item and verification of documentation everywhere there are difficulties, observations to be discussed with the applicant etc). In order to avoid, inter alia, unnecessary expenses, delays, corruption, private expert intervention should be required only when the contribution of public institutions technicians cooperating with the Ministry have not the scientific competences. On a practical level, a limit should be imposed to the number of objects where an export operation comprises different cultural goods, for instance a maximum of 100 items.

²²See, Article 5, 1 co, lett.A.

²³As said a further copy could be sent to the importation country customs authorities, whenever opportune agreements should be reached.



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Article 6 could be amended. If a unified exportation office with scientific and administrative competences shall be created -as suggested in separate report-, then the intervention of other administrative authorities could be useless.

In Article 7, there could be also provisions regarding modern way of fostering schemes that reduce the costs of mobility of collections/single goods (for instance, indemnity schemes; avoiding the cost of commercial insurance; shared liability for loans; avoiding loan fees). There could be also provisions on the release of declarations by the foreign competent authorities that the object shall be considered immune by restraining orders during the loan-period (a special approval by the Minister of Education, Culture and Research shall be necessary when such declaration is missing).

Article 8 should be amended, and the validity of the temporary export multiple-export certificate could exceed two calendar years only when the exportation office is allowed checking the cultural good conditions and state of conservation. To properly make this possible, the object shall be put at disposal of officer of the exportation administration whose expenses shall be paid by the applicant.

In line with a sane policy for loans, as recommended by the international normative system, also Article 9 should be amended. The extension of the period for which the temporary export certificate shall be issued, could be for a maximum period of 2 years to be prolonged for other 2 years, following, however, the provisions as indicated under Article 8 as above suggested.

Article 10 should be amended, and a term for using the export certificate should be established (for instance 7 years). After this period, a new examination of the object and of its cultural value could, in fact, involve a different evaluation by the competent administrative authorities.

Article 11 states that: "Failure to observe the terms of the temporary export stipulated in the export certificate or the ones stipulated by art. 10, constitutes an illegal export operation and is subject to the national and international legal provisions in force". However, the sanctioning of illegal import-export (temporary and definitive) operations should be well structured, harmonizing administrative/penal customs violations with other criminal specific sanctions²⁴. It is also remarkable that the definition of the cultural status of an item is different in the criminal code (Article 133) with regard to the definition given by the Law

²⁴The Moldovan Criminal Code under Article 248, 4th paragraph, punishes the smuggling of cultural goods, that is: "The transportation of goods of cultural value across the customs border of the Republic of Moldova circumventing customs control or concealing the goods from customs control by hiding them in compartments specially prepared or adjusted for this purpose as well as the failure to return to the territory of the Republic of Moldova items of cultural value taken out of the country if their return is mandatory shall be punished by imprisonment for 3 to 8 years, whereas a legal entity shall be punished by a fine in the amount of 5000 to 10,000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity. The actions committed: b) by two or more persons; c) by an official with the use of his/her official position; d) on an especially large scale; shall be punished by imprisonment for 3 to 10 years, whereas a legal entity shall be punished by a fine in the amount of 5000 to 10,000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity". However, the definition of the cultural status of an item is different in the criminal code (Article 133) with regard to the definition given by the Law 280/11, similarly implemented in the draft Regulation under consideration. In this respect, see what above reported. All this could be of detriment to the penal protection of cultural heritage affected by illicit export operations.



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280/11, similarly implemented in the draft Regulation under consideration. All this could be of detriment to the penal protection of cultural heritage affected by illicit export operations, as criminal sanctions can at present be imposed only with regard to the cultural items protected by the 1970 UNESCO Convention (which, as said, does not protect some of the cultural goods listed in the Law 280/11 and in its draft Regulation). Not only. The confiscation of the object involved in illicit exportation and importation manoeuvres should be mandatory and imprescriptible. There should be also the shifting of the *onus probandi*, and confiscation orders could be enacted -as appropriate- without final conviction and ordered when the value of the property is disproportionate to the lawful income of the convicted person and the property in question is derived from criminal conduct. Confiscation from a third party could be also possible if third party knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value²⁵. In case the object shall not be subject to confiscation, the exporter and the owner shall be liable to pay the amount value of the object. Obviously, such structural reforms need a primary legal tool, and cannot be stipulated in the frame of a regulation.

Article 12 should be amended, and the photos of the object should always accompany the object itself.

In Article 14, the competences should be (as it will be indicated in separate report) attributed to Exportation Office, and the electronic database should include export certificates issued, denied and of the objects that are spotted abroad, being illegally exported. Further, the same Exportation Office should elaborate and keep statistic on the trafficking of cultural objects; providing also training for customs officers (on the importance of these aspects, see the separate report).

Article 15 should be deleted. Under Article 8 as amended, precise rules on the extension of the temporary exportation have been envisaged. Moreover, the second comma of this Article could generate confusion between temporary and definitive exportation.

In Article 16, there is not a clear definition of contemporary cultural goods which is a different category of cultural goods. According to the Moldovan legal system, no authorization is needed to transfer abroad contemporary art. Therefore, it is useless to distinguish between temporary and definitive exportation of such items (see, in this respect the first comma). Furthermore, this Article is demanding and require too much formalism. All this could hinder the free circulations of artists, at the same time limiting incomes resulting in tourists spending in art products.

In Article 17, it is stated that: "natural persons (and obviously also legal entities) have the right to import cultural goods on the territory of the Republic of Moldova, provided the documents regarding the provenance of the goods and documents proving the ownership of the property/administrator (or legal representative thereof) are presented to the customs body. If the applicant does not have such documents,

²⁵The Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 considers such cases of confiscation. This Directive can be applied to art crimes whenever criminal associations and laundering operations crimes are indicted (see, Art.3).



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he shall submit a declaration on his/her own responsibility ... regarding the origin of the goods, their capacity as owner/manager of the goods and attestation that the imported goods are not in dispute". There should be, however, a verification system as envisaged under Article 4 as amended. Further, it seems necessary to specify the modalities of the information the custom authorities are obliged to give to the Exportation Office and the obligations and powers of intervention of it: for instance, to inform the country of origin; to authorize the importation, the protection measures and so on. Moreover, the draft Regulation does not contain any rule on the temporary importation, and it is not clear at all what shall happen to cultural goods admitted in importation when the owner wants to export them again. Of particular importance are the cooperation measures with the country of origin authorities, in order to prohibit the entrance of illicitly trafficked cultural goods, especially when the items come from war-torn areas²⁶. Criminal prosecution and seizure of illicitly imported objects should be also allowed via primary legislation.

The above-reported comments have been thoroughly discussed with the representatives of the MECR in May 2018 in a cooperative and constructive climate. Proposed amendments to the draft Regulation have been positively received with a view to revise the draft before releasing it for public participation. The issues raised by this draft (Version March 2018) need to be addressed at the earliest possible stage. The draft Regulation in its sector of intervention, with appropriate adjustments, can make possible to turn into a robust system the laudable intentions behind the reform of the current draft.

Draft Regulation on the circulation of cultural goods (version July 2018)

The draft regulation on the circulation of cultural goods has been modified by the representatives of the Ministry of Education, Culture and Research and made available to the public in July 2018 in the platform www.particip.gov.md. The revised draft shows some improvements in its articulation, however a number of weaknesses still characterize this text that may, if approved in this form, lead to juridical problems and issues in its implementation. In particular, some structural reforms need a primary legal tool and cannot be stipulated in the frame of a secondary legal instrument such as a regulation.

They should be urgently enacted via primary legislation in order to create a sound import/export regime for cultural items and include the following:

- There is firstly a need to reinforce the current normative system by establishing a clear definition of movable and immovable cultural property, which is a fundamental prerequisite for the administrative and criminal enforcement of sanctions that should accompany many of the obligations stipulated in the various legal tools for private and public owners. In the Moldovan legislative system there are several and different definitions of cultural goods. For instance, article 133 of the Criminal Code (Cultural Values) seems to have reference only to the cultural items as protected by the 1970 UNESCO Convention. It is, instead, necessary to have an uniform concept of

²⁶ Full consideration should be given to the provisions of the Hague Convention and its additional instruments.



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cultural good in order to reach certainty about rights, obligations/duties for all the stakeholder, including public administrators. With regard to this, the European framework can help in establishing what could be protected. In other words, there should be the introduction of temporary and economic/value limits (these limits are possible also via secondary legislation, as the private or public property does not suffer of any limitation). However, the entire system should be amended through primary legislation as the present normative system seems rather complicated. The legislation in force, in fact, divides cultural goods into 4 categories, that is: 1) Cultural goods of national exceptional value (treasures); 2) Cultural goods of national special value (funds); 3) cultural goods of normal value (not classified); 4) contemporary cultural goods which in turn can be of national exceptional/special/normal value (being their protection always the same);

- Other critical aspects of the Moldovan legal system concern its criminal protection of cultural heritage and reaction to its trafficking, realized mostly via illicit import/export operations. Therefore, the Moldovan legal system should focus its attention on the possibility to provide for: 1. Specialized law enforcement bodies or units, having opportune procedural arrangements; and 2. Targeted and detailed sanctions. In this respect, the sanctioning of illegal import-export operations should be well structured, harmonizing administrative/penal customs violations with other criminal specific sanctions. Not only. The confiscation of the object involved in illicit exportation and importation manoeuvres should be mandatory and imprescriptible. There should be also the shifting of the *onus probandi*, and confiscation orders could be enacted -as appropriate- without final conviction and ordered when the value of the property is disproportionate to the lawful income of the convicted person and the property in question is derived from criminal conduct. Confiscation from a third party could be also possible if third party knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value. In case the object shall not be seizeable, the exporter and the owner shall be liable to pay the amount value of the object. There is more. Detailed provisions should be also enacted on the responsibilities of central and local officials;
- In the present Moldovan legal system, there is not any provision on concerted international efforts, including emergency import agreements and bans to be adopted when the cultural heritage of a State Party is in jeopardy from pillage of archaeological or ethnological materials, notwithstanding the ratified conventions and particularly the 1970 UNESCO Convention;
- An authorization system by the Minister of Culture, Education and Research should be implemented and it should be ultimately in the competence and liability of a specific office of the Minister the release of every exportation licence. With regard to this, a unified exportation office with scientific and administrative competences should be properly created and staffed. In addition, tasks of the Ministry and the other bodies involved in the protection/enhancement seem to overlap in many instances and responsibilities are often scattered. The Ministry should have political and technical competences as well, and the different Agencies should come to be departments of the Ministry;



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- There could be provisions regarding modern way of promoting schemes that reduce the costs of mobility of collections/single goods (for instance, indemnity schemes; avoiding the cost of commercial insurance; shared liability for loans; avoiding loan fees). There could be also provisions on the release of declarations by the foreign competent authorities that the object shall be considered immune by restraining orders during the loan-period (a special approval by the Minister of Education, Culture and Research shall be necessary when such declaration is missing);
- There are not fiscal or other incentives to induce private owners to start the classification procedure. On the other hand, no clear procedures are envisaged for the declassification of a cultural good, that is in a very delicate field where corruption could be high;
- The protection of the contemporary art is not well structured and there are too much restrictions that could hinder the free circulation of this art and damage the revenue coming from tourism;
- There is no specific provision contemplating the compulsory purchase of cultural goods when presented at the Export Office.

The above should be addressed via modification of the primary legislation. On the other hand, in addition to the general comments provided in the previous section of the document, below some specific remarks to the current phrasing of the articles of the regulations are provided.



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REVIEW OF URBAN AND SPATIAL PLANNING LEGAL FRAMEWORK RELEVANT TO CULTURAL HERITAGE SECTOR



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SUMMARY

The present document - which has been drafted by analysing, deepening and re-elaborating the different information gathered through the interviews carried out, the documents provided by the local staff and through the desk analysis of laws and procedures - intends to provide the comprehensive state of the art of the sector of urban planning, presenting the picture on how it is regulated; the indication of the main criticalities which emerged from the analysis of the above mentioned picture; a proposal for overcoming the identified criticalities , through solutions that appear to be feasible in the short/medium period and that consequently, could be validly supported and carried out within the ongoing Twinning Project.

Firstly, an inventory was made of the entire set of national laws, local regulations and ratified international conventions on urban planning or potentially impacting on the sector. Then, the planning process was analysed at both national and local levels, taking into account the provisions of the legal and regulatory framework and the results of the interviews performed at *General Directorate of Architecture* of the Municipality of Chisinau, *Moldsilva Agency*, *Ministry of Economy and Infrastructure*, *Ministry of Regional Development and UrbanProiect* Institution.

The main national legal and regulatory instruments regulating the spatial and urban planning sector include the following:

- The Law of the Republic of Moldova n. 721 of February 2, 1996, regarding the quality in constructions.
- Government Decision of the Republic of Moldova on State Quality Control in Construction, n. 360 of 25.06.96.
- The Law of the Republic of Moldova n. 835 of 17.05.1996 on the principles of urbanism and spatial planning.
- The Law of the Republic of Moldova n. 1350 of 02.11.2000, regarding the architectural activity.
- Government Decision of the Republic of Moldova n. 306 of March 30, 2000, on the approval of the Regulation on the authorization of the operation and the change of destination of constructions and facilities.
- Government Decision of the Republic of Moldova n. 499 of 30.05.2000, on the approval of the Framework Regulation on the activity of the local bodies of architecture and urbanism.
- Decision of the Government of the Republic of Moldova n. 676 of 11.07.2000 on the unique procedure for keeping records of the green spaces of urban and rural localities
- Decision of the Government of the Republic of Moldova n. 782 of 03.08.2000 for the approval of framework regulations of national parks, natural monuments, resource reserves and biosphere reserves
- Government Decision of the Republic of Moldova n. 1009 of 05.10.2000, on the approval of the Regulation on natural and built protected areas.



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- Decree of the President of the Republic of Moldova n. 1676 of 2000 on some measures for increasing the efficiency of state control over urbanization and landscaping
- Decision of the Government of the Republic of Moldova n. 869 of 20 August 2001 on the development of national architecture
- Government Decision of the Republic of Moldova n. 1300 of 27.11.2001, approving the Regulation on the drawing up and maintenance of the urban functional cadastre.
- Decision of the Government of the Republic of Moldova n. 633 of 8.6.2004 on the approval of the Action Plan to ensure compliance with the provisions of Law n. 835-XIII of May 17, 1996 on the principles of urbanism and spatial planning and other related legislative and normative acts
- The Law of the Republic of Moldova n. 239 of 08.11.2007, on flora.
- Government Decision of the Republic of Moldova on the Conduct of the National Contest "The Most Modern, Healthier and More Settlement Town", n. 678 of 06.06.2008.
- Ministry of Construction and Territorial Development of the Republic of Moldova, Order on Calculation of Building Structures, n. 4 of 10.04.2008.
- Decision of the Government of the Republic of Moldova n. 158 of 4 March 2010 on the approval of the National Regional Development Strategy
- Decision of the Government of the Republic of Moldova n. 493 of 4.7.2013 on the Medium-Term Program for the elaboration of town-planning plans at the level of localities for the years 2013-2016
- Decision of the Government of the Republic of Moldova No.364 of 27.5.2014 regarding the approval of the Methodology of state control planning on the entrepreneurial activity in the field of urbanism and constructions on the basis of analysis of the risk criteria
- Ministry of regional development and construction, Ordinance no.120 regarding the approval of the Amendment no. 2MD to snapshot normative document 2.07.01-89 *
- Ministry of construction and development of territory, Order n. 5 regarding the approval of the Regulation of the National Architectural and Urban Council and the Order of examination and coordination of the architectural-urban documentation.

The documents listed above are not examined in detailed but are mentioned, where necessary, to explain the current situation in the sector and the interlinkages with the legal framework for the protection of immovable cultural heritage.

It has to be underlined that the Republic of Moldova has been working for a complete revision of its legal framework in the spatial planning and construction sectors and has elaborated a draft of an Urban Planning and Construction Code which is currently at its final stages of parliamentary discussion and is expected to be adopted very soon.

The approval of the Code will respond to some of the weaknesses identified in the current system by the MS STEs about the need for a more coherent legal framework in the sector.



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The draft Code for Urban Planning and Construction appears to be a well-developed legal document, in line with EU requirements, which certainly will modernise the approach to spatial planning in the Country. It contains key references to environment and cultural heritage protection among the aims/ objectives of spatial planning, thereby laying down a planning framework which takes into due consideration sustainable development goals – the only preoccupation on the MS STEs side is the institutional and professional capacity that will be needed to implement the Code, when considering that the 1996 -Law on Principles of urban and spatial territorial planning could be implemented only very partially.

As a matter of fact, even if fragmented into several laws insisting on different aspects of Urban/ spatial Planning, the existing legislation for the sector seems to be robust enough to sustain, if implemented, the necessary measures even if it probably overestimates the real capabilities of the involved administrations in terms of available personnel and competences.

The extension of the subject in terms of actors dealing with it and in terms of number of norms regulating the sector, some of which are in course of approval and once into force are supposed to change the framework, make that this analysis document should be considered as a working document and reference that complete the analysis of the legal framework for rectors related to immovable cultural heritage protection.

The legal basis for environmental and strategic impact assessment in the Republic of Moldova was also taken into consideration, in order to ensure that existing and draft provisions for heritage protection and impact assessment shall be coordinated and cross – referenced.

It has been noted that one of the main weakness in Moldova concerns the lack of a technical regulatory framework able to orient, regulate, guide the transformation in areas protected for their cultural values.

It has been therefore considered useful to mention the French and Italian experiences in this regard, in order to offer some reference instruments for the revision of the legislation and regulatory framework for the urban planning and for the protection of protected areas/ zones mentioned in the relevant legislation on the cultural heritage sector.

In this regard, the Study Visit to Italy and France and the documentation and materials made available by the Municipality of Florence and by the Ministry of Culture and Communication of France are to be seen as a deepening of the brief outline in this report.

In particular, in Italy, the attributions to the Regions of spatial/ urban planning legislation and development make the sector very wide and its analysis would require extensive investigations. With this in mind, only an overview of the key principles and provisions valid throughout the national territory is provided.

The legal basis for environmental and strategic impact assessment in the Republic of Moldova was also taken into consideration, in order to ensure that existing and draft provisions for heritage protection and impact assessment shall be coordinated and cross – referenced.



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It is also recommended continuing the observation of the legal framework with a particular attention to the new Code on Urban planning and Construction currently under approval by the parliament that, once entered into force, could change the current scenario.



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OVERVIEW ON THE STATE OF THE ART OF URBAN PLANNING IN THE REPUBLIC OF MOLDOVA

In order to understand the current situation of urban planning in Moldova we'll first analyse its state of the art: starting from the administrative division of Moldova, we'll see how Urban Planning has been conceived by the ruler, the main actors involved, its organizational levels (national, regional, local) and legislative basis.

Administrative divisions of Moldova.

The territory of the Republic of Moldova²⁷ is organized administratively in a series of **administrative-territorial units**:

- **VILLAGES.** Village is an administrative territorial unit which comprises the rural population united by the territory, geographical conditions, economic, social-cultural relations, traditions and customs.
- **COMMUNES.** Two or more villages, depending on the economic, social-cultural, geographical and demographical conditions, can be united forming a single administrative territorial unit called commune. The commune is the administrative territorial unit which comprises the rural population united by the community of interests and customs.
- **CITIES.** City is the territorial administrative unit which is more developed than the village from the economic and social cultural point of view which comprises the urban population with corresponding economic, industrial and commercial structures whose population is employed mostly in industry, in the field of public services and in different fields of intellectual activity, in cultural and political life.
- **MUNICIPALITIES.** Municipality is a locality of urban type with a special role in the economic, social-cultural, scientific, political and administrative life of the country, with important industrial, commercial structures and institutions in the field of education, protection of health and culture.
- **DISTRICTS.** District is a territorial administrative unit made up of villages, communes and cities united by the territory, economic and social cultural relations.
- **ZONES.** Zone is a territorial unit composed by several districts.

Finally, the national territory is divided in five **REGIONS OF DEVELOPMENT** established in year 2006 after adopting the law on regional development. They have the goal to stimulate the fundraising and investments and to assure a durable development.

The statute of the administrative-territorial units is elaborated based on the framework statute, approved by the Parliament of the Republic of Moldova and by the local Councils.

The administrative and territorial organization of the Republic of Moldova is articulated into two **administrative-territorial levels**:

²⁷ <http://www.moldova.md/en/content/administrative-territorial-organization-moldova>
<http://www.madrm.gov.md/en/node/161>
https://en.wikipedia.org/wiki/Administrative_divisions_of_Moldova



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- **FIRST LEVEL.** At this level we find villages, communes, cities and municipalities (around 900 exist throughout the Moldovan territory)
- **SECOND LEVEL.** Composed by the 32 districts plus the 3 municipalities with a special status.

With reference to this, it is important to underline that the status of Chisinau, Balti, and Bender as municipalities and first-level territorial units of the country allows their suburb villages to have, when large enough, their own mayor and local council. By contrast, the villages that are administratively part of the other cities do not retain self-rule.

MAIN ACTORS INVOLVED IN SPATIAL AND URBAN PLANNING

As per the Decision concerning the approval of the Regulation on natural and built protected areas (Decision no. 1009, analysed below):

The **Minister of Economy and Infrastructure** is the public authority responsible for:

- drawing up plans for administrative-territorial units;
- landscaping and urban plans of cities and towns;
- reflecting the immovable cultural heritage assets (including the protected construction areas/historic towns);
- integrating internationally accepted regulations on the protection and their sustainable management.

The **Ministry of Agriculture, Regional Development and Environment** instead:

- provides the methodological support for the valorization of the natural and built heritage objects of national and international importance, based on the documentation of urbanism and landscaping;
- jointly with the Ministry of Culture, sets up the committee for monuments and protected areas, which will function on public principles;
- organizes periodically seminars for the specialists of the design institutions, mayors, secretaries and staff of the architecture and urbanism departments from the local public authorities, in order to inform and make them acquainted with the provisions of the Regulation;
- controls the implementation of the Regulation on natural and built protected areas.

Ministry of Economy and Infrastructure

The tasks related to urban planning sit in the Department of Urban Planning, Construction and Housing, which is the functional subdivision of the organizational structure of the Ministry of Economy and Infrastructure and is the coordinator and promoter of urban, construction and housing policies. The Directorate was created in accordance with the Regulation, Structure of the Ministry of Economy and Infrastructure, approved by the



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Government Decision no.690 of 30.08.2017 (Official Gazette of the Republic of Moldova, 2017, No. 322-328, article 792).

The department has the following functions:

- Ensures the process of designing, analyzing, monitoring and evaluating policy documents in the field of urban planning, construction and housing, as well as contributing to the assessment of the social, economic, financial and other impacts of policy documents;
- Organizes and coordinates the implementation of urban, construction and housing policies, ensuring uniform application of national legislation in the areas concerned;
- Coordinates the development of the system of technical regulation in the field and its harmonization with European standards;
- Drafts proposals on the programs and plans of the Ministry, the reports on their realization in the field of urbanism, construction and housing and the strategic directions established by the Ministry;
- Determine priority activity directions and develop strategies and programs as a result of assessing the situation in the sector and its related sectors, identifying issues, risks and opportunities to exclude identified deviations, prevent identified dangers and threats, or capitalize on emerging opportunities;

Ministry of Education, Culture and Research

According to the Law n. 1530/71993 on the protection of monuments, the Ministry has several tasks among which the closest to spatial planning tasks include:

- Elaboration of the regulations on the intervention in the areas of protection of monuments;
- Preparation of the investigation documentation to set up protection zones of monuments;
- Ensures that opinions on the general urban plan and rural construction plans are respected in their elaboration and implementation.

The reform is likely to add to the ministerial structures or subordinated bodies further responsibilities.

National Council for Architecture and Urban planning

The Council has been established in 2008 by Ministerial order. Its functions include the examination of issues concerning:

- a) sustainable development of the perspective of the spatial planning, urbanism and architecture (the plan for the planning of the national territory, general urban plans, as the case may be, zonal, details of the localities, etc.);
- b) projects of major objectives and those located in the historical, central and other areas of the localities and on the main roads of the Republican motorways;
- c) systematization of localities.



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As well as the methodological management of local urban councils, established by the local authorities of architecture and urbanism.

Finally, **Local Authorities** (county councils, town councils, municipalities, villages, communes and mayors) are recommended to:

- draw up the registers and lists of the natural and built heritage;
- delimit cultural, historical or natural heritage areas;
- design, establish and legalize protected areas of natural sites, historical and cultural monuments of local importance;
- define the protected areas for the natural and built heritage objects of national and international importance;
- establish the judicious use of the monuments located in the administrative territory.

According the law n. 835/2000, the **funding for national plans** is made from national funds: the allocated funds for the urbanization of the territory, with partial attraction of the financial means of the National Ecological Fund and the Tourism Development Department, obtained from the touristic activity, including the visit to the national cultural areas.

Funding for local plans is made from local budgets and funds.

MAIN LAWS AND REGULATIONS

Law no. 835-XIII / 1996 on the Principles of urban and spatial / territorial planning sets out key definitions and principles for the understanding of Planning in the republic of Moldova.

The entire territory of RM is to be considered the object of spatial planning. Both central and local authorities are responsible for planning the territory under their responsibilities at the different scales.

Key principles and aims of this Law in a cultural heritage protection perspective are clearly established.

Spatial Planning has to seek:

- a) a balanced economic and social development in terms of respecting the specifics of each area;
- b) improving the quality of life of people and human collectives;
- c) responsible management of natural resources and protection of the environment;
- d) the rational use of the territory.

Urbanisation activity needs to pursue the following:

- a) the rational and balanced use of the lands necessary for the functioning of the localities;
- b) determining the functional structure of the localities;



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- c) ensuring a dwelling corresponding to the requirements and the level of development of the company;
- d) *ensuring the compositional aesthetics in the realization of the built frame and the arrangement of the natural framework of the localities;*
- e) protecting the population, natural and built environment against pollution, foreseeable natural and technological risks;
- f) *protecting, preserving and conferring the appropriate status of cultural and nature monuments.*

According to the administrative division of the territory, the Moldovan law concerning the principles of urban planning and spatial planning (Law no. 835-XIII, analysed below) foresees three different typologies of **Planning scale/ instruments**:

- GENERAL, where the covered area is the entire urban territory.
- ZONAL, where the covered area corresponds to fractions of the urban territory.
- DETAILED, where the covered area corresponds to a single building or a small group of buildings, normally up to 4-5 units, a building block.

Since urban planning involves a town (or parts of it) both plan proposal and approbation are up to local authority only.

The cited law also encompasses **Territorial Planning**, where different geographical and administrative levels are involved:

- NATIONAL LEVEL. The covered area is entire Moldova. At this level, the proposal is Governmental and the approval is Parliamentary.
REGIONAL + ZONAL LEVEL. It involves the five development regions plus the three municipalities with special status. At this level, the proposal is made by regional authorities and the approval is up to the Government.
- LOCAL LEVEL. It involves Cities, Towns and Villages. At this level, the proposal is made and eventually approved by the local authority itself.

The first level local public authorities are responsible for drafting and approving the design work specifications for urban development plans while second level local public authorities are responsible for drafting and approving the design work specifications for Urban landscaping plans.

National and regional plans orient the development in the territory: they must address specific topics including the enhancement of natural resources, harmonisation of the development of human settlements and distribution of urban functions, protection and rehabilitation of natural and built environment.

One could see just from the language the evolved approach of this early Moldovan law on planning and may also understand that perhaps the country was not fully ready to digest such a paradigm- shift in planning only five years after Independence was gained and the soviet system of planning collapsed.

Local plans have a different nature: they include an orientation and prescriptive / regulatory character at the same time. The orientation part envisages the possibility to establish protected zones, among other things.



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The regulatory part envisages, among many spheres to be regulated, also the delimitation of areas where public utility works are to be executed; since conservation of monuments is considered an activity of public utility by the relevant legislation, this implies that that wording also covers conservation/ restoration of protected monuments.

Urban plans are also articulated in three different scales: the general urban plan, the zonal urban plan and the detailed plan. Whilst general and zonal plan contain both an orientation and regulatory components, the detailed plan is an executive plan that can be approved only on the basis of the general urban plan. The regulatory component of the general and zonal plans can contain provisions on the exterior appearance of constructions, the arrangements of their related immediate setting/ land.

The details of the documents needed are transferred to regulations.

The Law contains a chapter dedicated to protected areas regulating the creation of protected areas and the necessary planning documentation for these areas. The provisions are not detailed but open to possibility of further development through regulations, which however have not been elaborated.

The whole is completed by urban planning regulations which are regulatory documents only.

Secondary legislation that accompanies and complements the main law on planning includes the following:

- Decision concerning the approval of the Regulations for the reception of the constructions and related installations/facilities, no. 285, May 23, 1996.
- Government decision n. 499/ 2000 concerning the approval of the regulatory framework on the activities of local bodies of architecture and urbanism
- Government Decision n. 676/2000 for the unique procedure of keeping evidence of the green spaces in urban and rural localities
- Government Decision n. 1676/2000 concerning the measures to ensure efficient State control on urban and territorial planning
- Government Decision n. 633/2004 on the approval of the Action Plan to ensure the respect of the provisions of Law n. 835/1996
- Decision on technical expertise in construction, no. 936, August 16, 2006
- Ministerial Order n. 5/2008 on the approval of the regulation of the National and Architectural
- Decision on a medium-term program for the elaboration of town-planning plans at the level of localities for the years 2013-2016, no. 493, July 04, 2013.

A good example of the national level was given by the ***Special Planning Department of the Ministry of Regional Development*** that is in charge of Territorial planning at national, regional and local level. Among



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other, they are responsible for the examination of the documentation to be annexed to the plans²⁸ and for the issue of the related legal *opinion* of conformity that, in case of positive opinion, is submitted to the parliament to be formally converted into law.

They deal with the public bodies (Ministries, Agencies and Institutions) involved in the field of planning including inter-ministerial groups. In the private sector, they cooperate with the sectorial professional associations at national level. They reported that control procedures would benefit from procedural simplification: most of them are adapted from those in use in the soviet period and only partially updated with EU regulations.

Among the set of laws regulating the urban planning sector at national level, the main legal instrument is the **Law concerning the principles of urban planning and spatial planning, no. 835-XIII** of 17 May 1996, that at Article 1 defines the:

- Territory planning as the *“complex of activities for coordination economic, social, cultural and environmental policy in accordance with the fundamental values of society taken as a whole in view creating a natural and harmonious built environment that favours the social and cultural life of the population”*.
- Urbanism as the *“most important component of land planning, whose object is the territory of the localities and all the territories needed to ensure their functioning and development”*.
- Guideline provisions as the *“provisions contained in the documentation urbanization and spatial planning, which set out their strategy and the main directions of development of a territory at national level, regional or local”*.
- Provisions with regulatory character as the *“provisions contained in urban and spatial planning documentation, including town planning regulations, which establish regulations in the field urban planning and land use, which is actually applied in practice on each cadastral parcel. They constitute mandatory substantiation elements required for the issue of certificates urbanization, building permits, dismantling, functioning or destination change”*.

It also states that Territory planning activity is aimed at:

- protecting the population, the natural and built environment against pollution, foreseeable natural and technological risks (Art.5);
- protect, preserve and grant appropriate status to the value of the monuments of culture and nature (Art.5).

The protection or, as the case may be, the rehabilitation of the natural and built environment is a task of Zonal Territory Plans (Art.9), prepared for territories grouped in an area with geographic, historical features

²⁸ As foreseen by law 835 concerning the principles of urban planning and spatial planning, Law 0102/2016 on Constructions Works and the ratified international conventions.



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or other common nature, and which includes, in whole or in part, the territory of several administrative districts.

Urban planning and spatial planning documentation may set definitive or temporary building bans for a number of reasons or simply as a rule set by the protected area (article 47). Similarly, the building permit is issued for constructions and works that meet the conditions of compliance established by the legal norms and legislation, with the exception of those located in protected areas, in the central areas of the municipalities and towns or in other areas for which the local urban planning regulations impose specific requirements (Article 51).

The definition of Protected Areas is given at Article 58, where the law states that *“they are territories where they are located objects or ensembles of objects belonging to the national patrimony cultural or natural, to which specific regulations apply to maintain their quality, to maintain balance by interventions and conservation, as well as for ensuring relationships harmonious to the environment”*.

Article 59 specifies that the creation of protected areas is required in case of:

- monuments declared by law part of the national cultural patrimony, together with the related protection areas;
- monuments declared by law as part of the national natural patrimony.

Moreover, through the planning and spatial planning documentation a regime of protected area may be established in any other territory in order to protect and conserve immovable properties appreciated by the local public administration authorities as valuable and not included in the Register of state-protected monuments established by law.

Such Protected areas (Article 60) may be of national or local interest:

- in the first case, obligations and responsibilities related to the identification, inventorying, preserving, capitalizing and controlling are established and governed by the Government.
- in the second case, obligations and responsibilities related to the identification, inventorying, preserving, capitalizing and controlling are made by the local public administration authorities, based on the regulations and instructions approved by the Government.

The **Decision concerning the approval of the Regulation on natural and built protected areas**, no. 1009 of 05 October 2000 is adopted in order to implement a series of laws on natural and built heritage, among which is the Law on the Principles of Urban and Territorial Planning no. 835-XIII of 17 May 1996 analyzed above.

This law recommended to county councils, town councils (municipalities), villages (communes) and mayors, by the end of 2001 to:

- draw up the registers and lists of the natural and built heritage;
- delimit cultural, historical or natural heritage areas;
- design, establish and legalize protected areas of natural sites, historical and cultural monuments of local importance;



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- define the protected areas for the natural and built heritage objects of national and international importance;
- establish the judicious use of the monuments located in the administrative territory.

In its general provisions, the regulation establishes the criteria for the delimitation of the natural and built areas in the urban and territorial planning documentation, the basic requirements for the preservation and valorization of these areas, defines the competencies of the central and local public authorities in this field and proposes special regulations for sites.

It has a mandatory value for central and local public administration authorities responsible for the protection and valorization of natural and built heritage, as well as for the design institutions and all other natural and legal persons involved in the development /drafting of documentation on urban and territorial planning, construction, reconstruction, revitalization, preservation, use or any other interventions in areas, sites, monuments, landscapes, of national or local interest.

In general, the establishment of protected areas aims at preserving, valorization of natural and built heritage, by delimiting territories with a special regime for managing and regulating interventions, for ensuring a harmonious framework and best conditions for the preservation of these assets.

The regulation main body starts defining the Protected Areas as *“areas in which objects or sets of objectives that are part of the built or natural heritage are located, to which specific regulations are applied in order to preserve their quality, preserve the balance through interventions and preservation, and to ensure harmonious relations with the environment”*.

Then it defines three different categories of protected areas depending on the value of natural or built heritage:

- *PA of International Importance*, that includes national natural and built heritage assets of international interest. It is subject to the UNESCO regulations on the inclusion of values in the world cultural heritage list.
- *PA of National Importance*, that includes heritage values that are of interest to the history and culture of the Republic of Moldova.
- *PA of Local Importance*, that includes natural and built heritage values of aesthetic, historic or other significance for a certain area, age, style, author.

The categories of protected areas are defined based on urban and spatial planning documentation. Their establishment and delimitation is also made according to the urban and spatial planning documentation, after a multidisciplinary analysis based on scientific criteria and on legal regulations has been carried out. In this context, the following steps are set:

- *Stage 1 - Identification Of The Heritage Elements*. The protected areas regime for built heritage is established for the monuments included in the Register of State-Protected Monuments and in the registers of the monuments of the administrative-territorial units.



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- *Stage 2 - Substantiation Study.* The multidisciplinary analysis is conducted according to criteria as type of heritage (with a typological and value hierarchy), delimitation of the influence area of the monument (in the locality and the territory), identification of disfunctions, discomfort, pollution and aggression factors.
- *Stage 3 - Development Of The Protected Area Project.* The protected area project receives a general approval (aviz) issued by the Ministry of Culture and endorsed by the Ministry of Environment and Territorial Planning. After approval by the interested bodies and approval by the respective local public authority, the protected area project is included in the urban and spatial planning documentation.

For a heritage value of national and international importance/significance, three degrees of protection and related regulations are established. Depending on the importance, three or less degrees of protection may be established for a heritage value of local importance:

- *Zero Degree Protected Area* (heritage value). Intervention measures in the 0 degree protected area (ODPA) are governed by specific laws protecting heritage value. The beneficiary of use of heritage value will not initiate interventions without the consent of competent bodies and has the legal obligation to ensure the maintenance and proper use of patrimonial value.
- *First Degree Protected Area* (immediate vicinity to the heritage). Delimitation of 1 degree protected area (1DPA) takes into account requirements as the good functioning of the priority function of the heritage (cultural, scientific, artistic, spiritual, etc.), ensuring a strict conservation regime, ensuring accessibility and visibility.
- *Second Degree Protected Area* (close vicinity to the heritage). The 2 degree protected area (2DPA) includes the territory from close vicinity, which represents the environmental- territorial context of the heritage. For any intervention proposed in the perimeter of this area, it is necessary to carry out an assessment of the environmental impact and built framework, required by the urbanism certificate.

Architectural assemblies, urban and rural sites of national heritage value, with their protected areas are declared reserves by governmental decision while the local ones are declared reserves by local public authority decisions. The determination and delimitation of the reservations is made on the basis of the urban and spatial planning documentation.

The objects that are part of the natural and built heritage must be mandatorily included in the regional and local landscaping plan as well as in the official registers and official lists of the monuments and natural areas protected by the state. The regional and local landscaping plan must also determine the preliminary boundaries of the protected areas and heritage territories, for which the development of general urban plans (PUP), zonal urban plans (ZUP) and detailed urban plans (DUP) is mandatory.

For the purpose of ensuring the optimal protection regime on territories including archaeological, urban and rural sites, reservations, within the general urban plan (GUP) for these territories, urban zoning plans may be developed. In this case, the boundaries and the management regime of protected areas are set out through



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these urban zoning plans whose developemet is up to the National Institute of Urban Design and Research "Urbanproiect". In particular, the Zonal Urban Plan (ZUP) addresses two following aspects related to the protected areas:

- delimitation of ZUP zones in direct correlation with protected areas;
- establishment of protected areas and regulation on constructions in the surrounding area.

Finally, the law foresees that a detailed urban plan (DUP) is developed in according to the requirements specified in the urbanism certificate, drawn up in accordance with the regulation related/attached to the general or zonal urban plan for the respective territorial unit.

Cross – reference between the law on urban planning and the laws on cultural heritage protection can be found particularly in the **Law on the protection of the archaeological heritage**, no. 218 of 17 September 2010 (and 2017 Amendment).

Article 1 states that *"The archaeological heritage of the Republic of Moldova—an essential part of the national cultural heritage, subject to a serious risk of degradation caused by the intensification of implementation of major projects for complex planning, new constructions and soil exploitation and by the natural risks, illegal excavations or insufficient public information—needs to be protected, by integrating organically the protection of the archaeological heritage politics into the policies for culture, education, environment, urban development and territorial planning, administration of farming terrains, soils and woods"*.

At Article V the law defines the preventive archaeological investigations as *"part of the strategies for sustainable social-economical development, for environmental development, for town development and territorial planning, for tourism development at the national and local levels"*.

While in Chapter VI gives details of the priority interests of sustainable development of archaeological areas, financial support for archaeological research, conservation, restoration, and so forth. The law obliges the local public authorities of the territories where there are areas of priority archaeological interest to take administrative and technical measures for their protection and valorization, for the elaboration of urban development documentation, and for the organization of their special protection (art. 24–26).

In order to promote a sustainable policy in the field of the protection and recovery of the archaeological heritage, the Ministry of Culture and Tourism shall approve the documentation for town development and territorial planning which include archaeological sites or zones with archaeological potential (Article 12);

Among the main prerogatives of the National Archaeological Agency we find:

- to carry out, on a paid basis, the scientific and technical expertise of all construction projects, projects for territorial planning or land design or modification;
- to endorse the documentation of urbanization and territorial planning, which includes archaeological sites or zones with located archaeological heritage (Article 14);



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- to include into the programs of economic, social and urban development, as well as in programs for spatial and territorial planning, specific objectives concerning the protection of the archaeological heritage.
- to issue expert opinions and the special permits when archaeological potential is envisaged in areas impacted by urban plans and projects.

Finally, at Article 25: *“Local public authorities in charge of the territories including zones of major archaeological interest have the obligation to consider administrative and archaeological measures necessary for the protection of archaeological patrimony and its utilization through the integration in the economic, social and territorial development plans of the localities” and “Town development and territorial planning documentation of the zones of major archaeological interest should be confirmed by the Ministry of Culture and by the central public administration authority in construction and is coordinated with the local public administration authority”.*

This review on Urban Planning legislation at national level concludes bringing into attention the fact that Republic of Moldova is currently working²⁹ on the **Urban Planning and Construction Code**, which unifies and systematizes provisions, and harmonizes Moldovan legislation with the construction principles and regulations of the EU.

The draft Code has been developed in accordance with the provisions of the Government programme *“European Integration: Freedom, Democracy, Welfare”* for the years 2011–2014³⁰.

Once approved, the draft Code will encompass all acts concerning urbanism and constructions under a same law addressing the current fragmentation and redundancy of the sector. This should grant a greater ease of use and the removal of overlaps and conflicts caused by different laws ruling on a same matter. Among other, it will establish:

- a unified legal framework governing planning and urban development;
- approval and execution of construction works;
- quality assurance of construction materials and products;
- the exercise of State control in planning and licensing;
- a uniform application of legal provisions on construction quality.

²⁹ As reported by UrbanProiect, the new code will be presumably face public consultations on the week 4-8 June 2018 and its approval on second lecture is likely to be on summer 2018 and in any case before the next national elections of November 2018.

³⁰ Action: *removing administrative constraints in the business environment*; Sub-action: *development of a code in the construction field which would cover all procedures of construction improvements and, in particular, would ensure optimization of licensing procedures and acceptance of construction by combining documentation of completion of construction works in a single procedure.*



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If passed, this Code will integrate the process of constructing a building, including location, design, approval, implementation, monitoring, and post-use. Moreover, as reported by *UrbanProiect*³¹, the Ministries will be no more responsible for the certification since it will become responsibility of each Association of professional (Union of Architects, Union of Engineers etc.). The certification will be released by the union of architects or engineers, according to the sector of interventions:

- Urbanism and territorial planning;
- Civil Construction;
- Industrial Construction;
- Historical Heritage.

An advanced draft of this Code has been accessed in June 2018. A brief examination of its provisions confirms the crucial importance of this text to improve the situation of planning and construction sectors in Moldova.

Whilst the part on spatial planning seems to contain provisions that, if implemented, will improve the role of spatial and urban planning in protecting the built cultural heritage and its setting, the part on constructions contains key sections, for instance on structural reinforcement and seismic retrofitting, technical installation rehabilitation, accessibility, which do not seem appropriate to traditional buildings and historic monuments. In other words, the Code does not seem to address sufficiently the cultural heritage chapter or ad – hoc articles envisaging at least the development of specific regulations on these matters as well as ad – hoc technical norms, to avoid that the implementation of the provisions of the future Code, conceived for ordinary and reinforced concrete constructions, may impact negatively on the qualities of historic buildings and monuments.

Local level legislation (Chisinau Municipality).

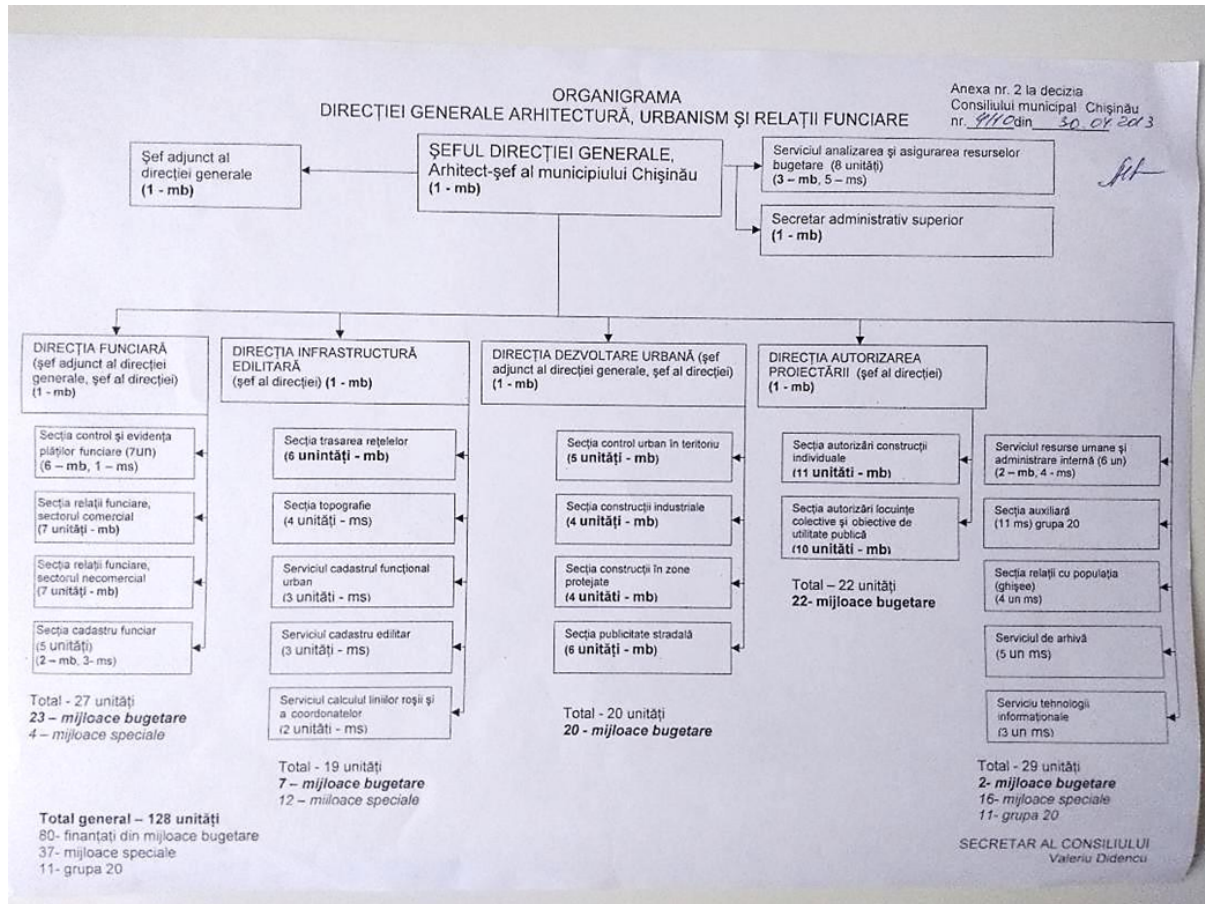
An insight into urban planning was provided by the staff of Chisinau municipality, where urban planning is administrated by two public local bodies: the *General Directorate of Architecture, Urban Planning and Land Authorizations* and the *Architectural-Urbanistic Council*.

The **General Directorate of Architecture, Urban Planning and Land Authorizations** is a public structure operating at local level within the Chisinau municipality and in charge, among other, of the urban planning policies.

³¹ Urbanproiect actively contributed to drafting of the new Code on Urbanism and Constructions currently under second approval by the parliament.



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Its structure is composed by four subdirections, each one further divided into a variable number of smaller sections:

- *Direction for Land Estate* (27 units – 23 million MDL budget) dealing with: control and evidence of land payments; land relations with commercial and non-commercial sectors; land cadastre.
- *Direction for Urban Infrastructure* (19 units – 7 million MDL budget) dealing with: network tracing; topography; urban cadastre; municipal cadastre; red line calculation and coordinate service.
- *Direction for Urban Development* (20 units – 20 million MDL budget) dealing with: urban control in the territory; industrial buildings; construction in protected areas; street advertising.
- *Direction for Project Authorizations* (22 units – 22 million MDL budget) dealing with: individual construction authorizations; collective housing authorization and public utility objectives.



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This means that GDA can rely on a planned staff consisting of 128 units, of which only 100 are currently on duty. The ordinary budget amounts to 80 million MDL (including a few more sections of non-technical or administrative nature) plus 37 million MDL more as special budget, for a total of 117 million MDL.

A specific GDA direction/section for cultural heritage is missing even though they possess a section dedicated to the construction in protected areas.

Some of its tasks are strictly related to the local level of urban planning, as they are in charge of building authorizations and verifications, construction in protected areas, cadastre services and topography. Nevertheless, they do not deal with *planning* in the strict sense since planning activity is reserved for the political authority e.g. the Chisinau Municipal Council.

GDA cooperates and coordinates its work with different sectors of the public administration (such as the *Urban Council* and the *Directions for Heritage, Culture, Transports and Public Works*) but also with private citizens also (e.g. granting permissions for re-zoning and change of use for buildings or land plots) and associations like the *Union of Architects* even though they have neither relations with NGOs nor self-standing international relations that are not mediated by the municipality.

Apart from laws operating at national and central level, urban planning is also impacted by the sets of regulations ruling the actors operating at a local level such, as we saw in the case of Chisinau municipality, the General Directorate of Architecture, Urban Planning and Land Authorizations and the Architectural-Urbanistic Council.

1. Decision of the Chisinau municipal council on regulations and organizational chart for the General Directorate of Architecture, Urban Planning and Land Authorizations, no.54/14, August 03, 2006.
2. Decision regarding the establishment of the moratorium on the modification of the street tram and the location of the constructions in the historical center and in the green spaces of the Chisinau municipality, no. 978, September 02, 2004.
3. Guidelines of the Architectural-Urbanistic Council of Chisinau municipality, internal protocol no. 1545, December 11, 2006.
4. Decision regarding the approval of the historical register of local historical monuments in Chisinau municipality and regulations regarding the criteria for evaluation, use and protection of the local built cultural patrimony no.10/09, December 04, 2014.
5. Specifications for building up the concept of sustainable development of the transport infrastructure for Chisinau Municipality.³²

The legislative framework GDA moves in, is mainly composed by the national laws on *concerning the protection of monuments* no. 1530-XII (22 June 1993) and *concerning the authorization of the execution of the construction works* no. 163 (09 July 2010). Very important are the local decisions of the Chisinau municipal council on *regulations and organizational chart for the General Directorate of Architecture, Urban Planning*

³² decision draft, not yet approved.



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and Land Authorizations no.54/14 (03 August 2006) and establishment of the moratorium on the modification of the street tram and the location of the constructions in the historical center and in the green spaces of the Chisinau municipality no. 978 (02 September 2004). Finally, the Guidelines of the Architectural-Urbanistic Council of Chisinau municipality no. 1545, (11 December 2006) are also in use.



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URBAN PLANNING & PROTECTED NATURAL AREAS

In this chapter an overview is provided of the current legislation on protected natural areas and the rules applied to the ecological examination and evaluation on impact on environment in order to evaluate the possible impacts on urban planning of the means adopted for natural heritage protection.

Since environmental protection relies mechanism that is set up to ensure that plans, program and projects do not impact negatively on environment and natural heritage, it may be useful to evaluate its levels of planning in order to look for potential areas of overlap with the urban planning sector.

National legislation includes a number of laws, codes, decisions and decrees. The most important pieces of law are:

1. Law concerning environmental protection, no. 1515-XII, June 16, 1993.
2. Law concerning natural resources no. 1102-XIII, February 6, 1997.
3. Law concerning the natural areas protected by the state, no. 1538-XII, February 25, 1998.
4. Land Code, no. 828-XII, December 25, 1991.
5. Subsoil Code, no. 1511-XII, June 15, 1993.
6. Law concerning Payment for Environmental Pollution, no. 1540-XIII, February 25, 1998.
7. Law concerning the Ecological Examination and Evaluation of Impact on Environment, no.851, May 29, 1996.
8. Forest Code, no. 887, June 21, 1996.
9. Water Code, no. 1532-XII, June 22, 1993.
10. Decision concerning the approval of the National Action Plan for Implementation in The Republic of Moldova Convention on Access to Information, Justice and public participation in environmental decision-making, no. 471, June 28, 2011.
11. Decision concerning the approval of the Concept of the Environmental Policy of the Republic of Moldova, no. 605, November 02, 2001.
12. Decision concerning the approval of the Regulation on the procedure for establishing the protected natural area regime, no. 803, June 19, 2002.
13. Decision concerning the approval of the Regulation on the organization and functioning of the "Moldsilva" Agency, the structure and staffing of its central body, no. 150, March 02, 2010.
14. Decision concerning the approval of the Framework Regulations on National Parks, Natural Monuments, Reserves of Resources and Biosphere Reserves, no. 782, August 03, 2000.



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15. Decision concerning the approval of the Regulation on natural and built protected areas, no. 1009, October 05, 2000.

ENVIRONMENTAL AND STRATEGIC IMPACT ASSESSMENT

Among the main environmental laws potentially impacting on urban planning we find the **Law concerning the Ecological Examination and Evaluation of Impact on Environment**, no. 851 of 29 May 1996, that among other at Article 1 defines Urbanism and landscaping documents as *“the ensemble documents, drafted and approved in the established manner, relating to a determined territory, which contains the analysis of the existing situation and establish the objectives, actions and measures in the field of urban planning and landscaping”*;

The law states that “new projects, programs, plans and schemes, regarding urbanism and landscaping in urban and rural localities are obligatorily subject to state environmental expertise” (Article 6) while “state environmental expertise of project documentation and planning in capital, urban planning, and land planning is carried out before the final examination of the overall documentation by the department of architecture and construction” (Article 18).

Among the aspects to be checked during the examination of the submitted documentation is mentioned the character of technical, engineering, architectural-urban solutions, as well as of proposals regarding the use of raw materials, energy and natural resources (Article 19).

The annexed regulation establishes the purpose of elaboration of the documentation related to the *Environmental Impact Assessment* (referred as EIMI - *evaluarea impactului mediului inconjurator*) its requirements, elaboration, coordination and approval, and includes the List of Objects and Activities for which the EIMI documentation must be compiled at the stage prior to the design. The EIMI documentation should contain materials on establishment, description and evaluation of the possible direct and indirect impact of objects and activities expected on, among other, the monuments of culture and history and the environmental quality in urban and rural localities (Chapter II).

On the basis of the documentation on EIMI, the beneficiary draws up the *Environmental Impact Statement* (referred as DIMI - *Declaratia impactul mediului inconjurator*), in which are collected all the materials, calculations and investigations carried out in the process of elaboration of the documentation on EIMI. The DIMI shall contain, among other, a complex description and assessment of the environmental components most affected by the impact, including not only natural components but also the characteristic of urban localities, the functional characteristic of the suburban areas, protection areas and monuments of history and culture (Chapter III).

A complex description of the possible impact on the environment (direct, indirect, repeated, short, temporary, long-lasting and permanent impact) and assessment of its degree is also required and the regulation foresees the possibility of an impact on anthropogenic systems, their components and their



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functioning, explicitly mentioning a possible impact on buildings, architectural and archaeological monuments and other material cultural values so as an impact on non-material cultural values *e.g.* local traditions and similar (Chapter III).

Lastly, must be provided a description of expected actions to prevent, liquidate, minimize and offset the impact on the environment also requiring technical solutions for the protection of architectural and archaeological monuments (Chapter III).

PROTECTED AREAS

A second group of fundamental environmental laws to be considered as a potential source of instruments for urban planning is the one constituted by:

- **Law concerning the natural areas protected by the state**, no. 1538-XII of 25 February 1998.
- **Decision concerning the approval of the Regulation on the organization and functioning of the "Moldsilva" Agency, the structure and staffing of its central body**, no. 150 of 02 March 2010.

The Law on Protected areas includes lists of protected areas, as well as requirements for management plans. For our purpose, it establishes some potentially crosscutting key principles:

- Protected areas must be classified according to an independent and international standard³³.
- The protected areas can be instituted either on public or private land.
- The public territories declared as protected areas may not be privatized or transmitted to tenants.
- These areas should be demarcated.
- Their financing is the responsibility of the respective public authority.
- Central and local authorities are asked (Art.6) to make proposals for the enlargement of the protected areas fund³⁴.
- The review of sites must take place once per 3-5 years.
- In case the protected areas are enlarged on basis of private land, the holder is recompensed, receiving either the money equivalent to the land or a similar land area.
- Private protected areas can be instituted at the initiative of the landowner, remaining his/her property. A special regulation should be developed for describing the rights and obligations of all parties in such cases.

³³ In this case, the classification is provided by the *International Union for Conservation of Nature* (IUCN), an international organization working in the field of nature conservation and sustainable use of natural resources.

³⁴ Introduced by the *Decision concerning the approval of the Regulation on natural and built protected areas*, no. 1009 of 05 October 2000.



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The Law on Protected Areas designates the Ministry of Environment as the responsible body for regulating nature protection and includes an obligation for the Ministry to develop implementing legislation.

Coming to the above-mentioned Decision, responsibilities in the field of management of nature and forest areas have been delegated to a State Forest Agency named *Moldsilva*, including the management of most of the Protected Areas. PAs managed by Moldsilva are generally subjected to multi-annual (usually 10 years) management plans detailing natural resources' conservation and exploitation.

Local authorities have also significant responsibilities in the field of nature protection, mainly for the management of natural monuments and other PAs not managed by Moldsilva and lacking of management tool, plan or staff.

Finally, natural PAs have different levels of protection and allocations according to their role and importance. Those denominated *Scientific Reserves* for example have:

- a specific staff (a Director and from one to four scientific specialists) devoted to their management and conservation;
- a division into different management zones: an integral protection zone, a reserve zone and a buffer zone;
- a public participation body, whereby different stakeholders discuss on the their management;
- some public use facilities such as recreation areas, dustbins, signs and camping sites;
- an entrance fee that enables visitors to use the available public use facilities;
- some of their activities (scientific research, resources exploitation, potentially impacting leisure activities, etc.) subjected to permission by the Ministry of Environment.



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URBAN PLANNING AND PROTECTED ZONES IN SELECTED EU COUNTRIES

The French experience.

In France, the concept of urban heritage originates from its recognition as an expression of national identity and progresses through a sequence of legislative acts: initially linked to the preservation of individual monuments, later of the sites and protected areas, and then of the historic centres. This has been done by gradually increasing the reasons for such interest, initially founded on urban *décor* concerns and finally on the awareness that heritage would be a powerful contributor to social stability and sustainable economic development.

If, in general, this improvement is not very dissimilar from that of other European countries, the “French exception” is here reconfirmed and expressed by vigorous debates and a special attention paid to urban areas to which correspond administrative bodies and specific legal instruments.

Since the Haussmann’s decree of 1852 in which, although linked to a radical need of modernization, the notion of *ensemble historique* came, for the first time, into sight, France has constantly pursued its innovative vision of *patrimoine urbain*. Haussmann’s idea on the subject was based on the principle of the “overall perspective”, stressing the need for a coherent vision on the territorial scale. Haussmann considered that a “monument” was not the individual building, but the city itself, i.e. the sum of all its elements. This instrument also introduced into the French law, the concepts of zones and “urban complexes

In more recent years, by enacting the Malraux law on the safeguarding and valorisation of historic centres (1962), introducing the so-called *zones de protection du patrimoine architectural et urbain* (1983) and following the guiding principles of the 2002 Solidarity and urban renewal law (SRU), the notion of “heritage” has been integrated into an overall urban vision, striving to bring it into line with town planning traditional data. Moreover, the process of patrimonialization - the various means by which cultural features (either material or immaterial) are turned into a people’s heritage - now also concerns many buildings of the 20th century.

The first organic law on historical monuments is approved in 1887 (*loi du 30 mars sur la conservation des monuments et objets d’art ayant un intérêt historique et artistique*). This tool clarified in a systematic manner the modalities of protection and the role of the State in the process: the criterion of so-called “national interest” will be taken as the legal basis of the French politics of memory. In addition, the law introduced the legal concept of classification for the public monuments and the exclusivity of the intervention on national protected assets laying the foundations for the national heritage politics.

The law of 31 December 1913 introduced a dual organization of protection based on the one hand, on the *classement* and on the other on the inscription on the supplementary list. The first was applied to any type of good - movable and immovable - including those of private property, without necessarily obtaining the consent of the owner. The second provided for the possibility of entry of the goods worthy of protection, a sort of waiting list for the classification in order to make up for the slowness of the procedure. This Act marked the end of the 19th century evolution of the concept of heritage and its preservation by



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subordinating the right of ownership to the imperatives of heritage protection. This right now also assumed a social function: that of preserving the monumental assets not only for themselves but also for the community.

This new cultural sensibility would also be found in what most people consider the first French planning law: the *Loi Cornudet* of 14 March 1919, which created the zones of architectural protection in the areas near historic monuments. The law of 2 May 1930 related to the protection of natural monuments and sites of artistic, historic, scientific, legendary or picturesque interest defined a new category of “protected zones” guaranteeing the safeguarding for natural sites as well as for the areas around the monuments.

The *Loi Malraux* of 1962 introduced the concept of *secteur sauvegardés (SS)*: homogenous areas designated when having a character of historic or aesthetic value or such to justify their conservation, restoration and enhancement. This instrument was conceived in order to limit the systematic practice of renewal of that time, reducing the number of house demolitions and the phenomena of specialization and spatial segregation, while launching urban regeneration projects.

If the previous legal texts operated in a sort of closed circuit based on constraints and prohibitions, this innovative law aimed at preserving architectural and historic heritage and improving the living and working conditions of the French people. Its 1963 implementation decree introduced the *plan de sauvegarde et de mise en valeur (PSMV)*, a kind of master plan characterized by a cultural “vocation”, imposing strict controls on all works undertaken in the designated area, creating obligations for both public and private sectors and opening possibilities for the release of subsidies.

These plans later called “of first generation” extremely ambitious and seductive, often proved to be unenforceable due to a series of difficulties related to their implementation: such as, for example, the hostility of the Municipalities that, almost never really involved in decisions and forced to undergo a number of charges, often slowed down the process. In addition, these plans were generally marked by extreme choices that have left numerous scars in the historic fabric: a number of demolitions, the widening of road sections and the realignment of the fronts built to allow, according to the conceptions of the time, an automotive *circulation à grande vitesse*. Globally, they translated an idea of protection too selective, more careful to the quality of architectural objects than to the urban landscape as a whole and often caused the abandonment of the territories by the poorest populations, due to the increased costs of renting and/or sale of restructured buildings.

Beside the PSMV tool, in the framework of the ‘80s process of decentralization which also concerned the sharing of powers between the Central Administration and local authorities for the safeguarding and valorisation of their local heritage, French heritage policy has been enriched with other instruments.

The act of 7 January 1983 on Architectural, Urban and Landscape Heritage Protection Zones provided for the possibility of establishing the *zones de protection du patrimoine architectural et urbain (ZPPAU)*, in the vicinity of historical monuments and more generally in all the quarters and sites meriting to be protected and valorized for aesthetic or historical reasons. This mechanism has benefited from relatively flexible regulations allowing it to adapt to very different situations. It has been motivated by the opportunity of taking into



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account a variety of different places (built or natural, large or small, communal or intercommunal) equipped with a heritage asset. The enabling decree defines heritage is itself a concept that develops over time.

The law of 8 January 1993 has then extended this instrument to natural landscapes' protection by defining the *zones de protection du patrimoine architectural, urbain et paysager* (ZPPAUP). The ZPPAUP has gradually become an instrument very much appreciated by Municipalities and supported by heritage national associations.

In 2010, the article 28 of the law on National Commitment for the Environment has created new conservation perimeters, called *aires de mise en valeur de l'architecture et du patrimoine* (AVAP) in order to replace the ZPPAUP. The AVAP is not only a tool for the management and promotion of heritage, but also a way to enhance the quarters through its entire heritage (architectural, natural, social etc.).

Two of the most common tools for urban heritage protection foreseen by the French legislation are:

Concerted Development Area (ZAC).

The *zone d'aménagement concerté* (ZAC) is a public urban space development operation firstly introduced by the *loi d'orientation foncière* no. 67-1253 of 30 december 1967 to substitute the *zones à urbaniser en priorité* (ZUP) and modified several times since then. the concerted development areas are defined as areas within which a public community or a public institution having a vocation decides to intervene to carry out or commission the development and equipment of the lands, including those that the community or community this institution has acquired or will acquire with a view to assigning them or subsequently granting them to public or private users. the perimeter and the program of the concerted development zone are approved by deliberation of the municipal council or the deliberative organ of the public institution of intercommunal cooperation. however, after the opinion of the municipal council of the municipality or municipalities concerned or of the competent public inter-municipal co-operation establishment, the prefect shall create the zones of concerted development carried out on the initiative of the state, regions, departments or their public establishments and concessionaires and the concerted development zones situated, wholly or partly, within an operation perimeter of national interest. the same concerted development zone can be created on several territorially distinct sites.

Safeguarding and Enhancement Plan (PSMV).

The *plan de sauvegarde et de mise en valeur* (PSMV) is a document of town planning introduced with the Law Malraux of 1962 to replace the *plan local d'urbanisme* (PLU) in the perimeter of the *secteur sauvegardé* (SS) protection measures. The establishment of a protected sector in a city, in order to protect its historical and aesthetic heritage, theoretically implies the creation of a plan for safeguarding and enhancement, otherwise the safeguards measures provided for in the sector project would be deprived of effects. The PSMV once instituted will replace the PLU in the areas where it applies. The content of the PSMV is similar to that of the PLU except that it focuses mainly on the rules for the protection of existing built heritage as well as architectural prescriptions. The PSMV has the particularity to be very detailed, and can even contain



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provisions that can go up to regulate at the level of the parcel or even at the level of a building. In this sense, it is much more precise than the PLU, which sets the general framework of the rules relating to occupation and land use. The PSMV governs all private or public spaces of historical, aesthetic or conservation interest (presence of a large number of Historic Monuments for example), where all interior and exterior works and installations carried out by residents, individuals or merchants, must be the subject of a written request and an authorization after opinion of the architect of the buildings of France, in order to maintain a coherence.

The Italian experience.

In the Italian experience, protection of cultural heritage has been strongly complemented by legislation on urban planning, an early concern in the Italian context as proved by the first law for urban planning dating back to 1942.

It established that all the territory was to be managed through planning and, to this aim, three levels were defined: territorial, municipal, through masterplans, and sectorial, though detailed plans. The latter should regulate the urban configuration, the distribution of services, the buildings and areas to be restored or upgraded. The law also established that the detailed plans on areas including listed properties had to be evaluated by the Ministry of Cultural and Environmental properties, warranting the implementation of the protection mandate not only on individual monuments but also on their setting, even in the absence of formalized indirect restrictions.

In the 60s the safeguard of the historic centres as a premise for the development of the modern city requested that measures for the old city be integrated into the general planning and underlined the need for a preliminary historic- critic study to determine forms and levels of intervention and the need to identify and to retain the social structure of historic neighbourhoods.

This debate stressed the need for financial and fiscal incentives for private investors and the need that new urban settlements could correlate the old parts of the city with the new ones, to be designed as 'cultural properties' in progress, to form a significant urban landscape and to make of the historic centre part of a wider and more complex system of territorial resources.

In 1967, the debate finally led to issue the law n. 765, which introduced two key concepts for the safeguard and enhancement of the historic centres: their inclusion into the general planning system and the determination of specific standards aimed at safeguarding their ancient fabric and character. The law established also that each municipality had to map their historic centres and, in the absence of a master plan, building activity within these historic areas had to be limited to conservation and recovery with no volumetric modification; detailed plans for these zones strictly limited alteration to volumes, density, building height and distances between edifices.

Unfortunately, the competence on urban planning was transferred to the regions in 1977, marking negative consequences due to the lack of capacity of the regional technical staff to manage the urban planning matter, especially when dealing with historic urban environment. For our purposes, it may be now useful to analyze



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the process ruling the two capital assets made available by the Italian law and represented by the Impact Assessment and the Buffer Zones.

Indirect protection measures (Buffer Zones).

An important legislative asset to be taken into consideration is the one related to the so-called Indirect Protection Measures (*Buffer Zones*). With a view to ensure the protection of the cultural significance of protected cultural properties, the MIBACT, through its territorial branches, shall have the power to prescribe the distances, measures and other regulations aimed at preventing that the integrity of immovable cultural property be put at risk, that their perspective or natural light be damaged or that conditions of the setting or decorous aspect of the buildings be altered.

The delimitation of buffer zones is based on the characteristics of the cultural property to be protected, that is to say, there is no fixed defined delimitations (*e.g.* 100 around the property) as these need to be determined on the basis of an analysis of the qualities of the properties to be protected, the potential threats and impacts that are expected to be avoided through the definition of the indirect protection measures provisions for buffer zones and the type of measures they are supposed to assist in avoiding negative impacts. The provisions of indirect protection are given in the form of a detailed urban or territorial land-use plan, accompanied by written regulations.

When adopted and notified, the prescriptions shall be immediately enforceable. The territorial government bodies concerned shall incorporate the same prescriptions into building regulations and urban planning instruments.

The procedure to establish a buffer zone is initiated by the superintendent, also at the request of the Region or other interested territorial government bodies, and shall notify the proprietor, possessor or holder by whatever legal right of the building. If the number of recipients is such that personal notification is not possible or proves particularly burdensome, the superintendent shall communicate the start of proceeding by means of suitable forms of advertising (*e.g.* through announcement on the newspapers, by publication on the official noticeboard of the municipalities where the area is located). As precautionary measure, the notification of the commencement of this procedure shall entail the temporary prohibition to modify the building with regard to the aspects referred to in the prescriptions contained in the notification.

Administrative appeal against the provision containing the prescriptions for indirect protection are admissible according to the law. The intent to appeal, however, shall not entail the suspension of the effects of the provision contested.

EMERGING ISSUES AND POTENTIAL IMPROVEMENTS

The overview shows that a set of legal and normative tool exists in the Republic of Moldova: they contain principles and provisions, which, if implemented, would allow for the historic built environment, protected



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monuments and areas. In other words, the existing sector legislation seems to be robust enough to sustain the necessary measures.

However, even it probably overestimates the real capabilities of the involved administrations in terms of available personnel and competences.

As a matter of fact, the main emerging issue concerns the fact that the law has not been implemented, resulting in a general lack of national and regional urban plans, even if explicitly provided for by law no. 835. No general national territorial plan has been developed since 2008 and currently only 7 national/regional plans are active. Mostly only local urban plans are elaborated and most of them refer to Chisinau region only, where they cover some 90% of the area and account for the majority of all local plans developed in entire Moldova.

Where an urban plan is missing (most of cases) law no. 835 does not apply and only the general law no. 163 concerning the authorization of the execution of the construction works and law no. 1530 on protection of monuments (if any) are applicable. Specific measures have been envisaged by Law n. 163/2010 to overcome at least partly the lack of urban plans, that is to say, the urban certificate for design, which requires the public authority issuing the certificate to elaborate a sort of detailed planning scheme for the zone for which development is proposed, this scheme has to pass a series of approvals before it is valid and used as a basis for project proposals. This does not overcome the piecemeal approach in the development of built and unbuilt areas but is meant to at least reduce the complete unplanning of plot of lands to be developed or redeveloped. However, considering the limited number and capacity of the staff in many small towns and villages, even the above measure is unlikely to be implemented, unless some careful monitoring is activated and aggregated technical services for planning and building activity are set up to cover more than one locality.

The lack of planning instruments is caused by several factors, however, even when they are elaborated, control and approval procedures are reportedly complicated and old – fashioned, since mostly taken and adapted from those in use in the soviet period and only partially updated with EU regulations. This makes inefficient the overall approval process, so that the deadline shifts from the foreseen three years up to eight years. The process is always longer than envisaged and even in case of approval, the time spent in evaluation is so long that at the time of approval plans are surpassed and previsions outdated. It was suggested as a possibility to explore, to approve single sections of the plan (as it happens in Romania) instead of having to approve all the plan at once.

The lack of regional, local and urban plans (including zonal and detailed plans) jeopardise the protection of the historic built environment and of monuments and is not in line with the commitments that the Republic of Moldova has taken on when signing several international documents, including the Convention for the protection of the architectural heritage, adopted in 1985 (ratified in 2001) and the European Landscape Convention, adopted in Florence, 2000 (ratified on 14.03.2002) and, more recently, RM has committed to achieving 106 targets for a better life by 2030 included in the 2030 Sustainable Development Agenda's nationalization by adopting the UN Declaration of the Sustainable Development Summit (2015).



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Even more critical, is the fact that the national and regional plans envisaged by the law are not implemented while they are present at local level, even if mostly pertaining to the Chisinau municipality.

The lack of a set of severe sanctions in the relevant laws was indicated by several actors in different administration as a key issue both in relation to the infringement of plans and approved project and of intentionally or unintentionally damages caused to protected monuments. The sanctioning aspect has been found very problematic also by the MS experts and needs to be addressed with the maximum urgency in all sectors and laws related to the protection of heritage.

On the other hand, there is a strong need to provide the urban planning sector with some crosscut clear regulations to be used by all public actors and administrations involved. A possible solution, could be represented by the upcoming new Code on Urbanism and Constructions currently under approval by the parliament that will potentially address the identified issues by unifying and harmonizing some of the existing overlaps and conflicts shown by the current legal framework.

However, the critical situation of the planning instruments would call for a decided response from the State, which should go beyond the adoption of a new urban planning code and would need to be accompanied by considerable capacity building measures to accompany the various levels of the local administration to achieve the coverage of the Moldovan territory with the necessary planning instruments. In this regard, an interesting experience is the one of Albania, which in the last years has speeded up administrative reforms and has set up a framework for the cooperation of the central level, including ministries and departments responsible at different level for planning, including ministry of environment and ministry of culture, with the local levels of administration to speed up the process of territorial and urban planning. The experience is far from being perfect, however it indeed speeded up the development/ modernisation of planning instruments throughout the whole country.



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REVIEW OF THE LEGAL AND REGULATORY FRAMEWORK OF THE CONSTRUCTION SECTOR



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SUMMARY

The present document - which has been drafted by analysing, deepening and re-elaborating the different information gathered through the interviews carried out with MoECR staff and through the desk analysis of laws and procedures - intends to provide:

- an outline of the state of the art of the sector, with specific regard on how the legal and institutional system in constructions is adequate to tackle with historic built heritage and with protected historic monuments
- an outline on how interventions on monuments have been programmed and managed by MECR under the current legal framework on construction, public procurement and budget
- identification of the weaknesses and possible solutions to overcome these weaknesses.

It is worth here to briefly highlight that the main finding of the work, when speaking about criticalities, is that - apart from the necessity to improve the existing legislation in the sector - there is a strong need to provide the culture sector of MoECR with key competences that appear to be scarce or lacking at present: to “refill” culture sector, and in particular in the areas devoted to “constructions”, with the proper needed competences would improve the quality of the work at different levels, since in this case the HR optimisation is a transversal clue for the sector.

It has to be noted that the building work sector in the Republic of Moldova is very fragmented in several laws, regulations and technical norms that make it difficult to track and to consult all of them within a short timeframe and within a project which is not specifically targeted for the construction sector.

The present report therefore focuses on how the existing and developing legal and normative framework in construction impacts on the protection and conservation / restoration of built cultural heritage.

The legal and organisation frameworks for the construction sector impact an impact on built heritage protection under at least two aspect:

1. Authorisation process for construction and intervention on buildings
2. Technical qualities and requirements demanded for buildings in terms of structural and functional performances
3. Competences and capacities of the staff units in the various institutions.

It is therefore important to understand how the legal and institutional framework contribute to guarantee that within architectural and construction activity protected monuments and areas and, more in general, the



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historic built environment and the landscape are safeguarded and enhanced and, on the contrary, what weaknesses or gaps might exist and how to overcome them in order to ensure that current rules and practices in building activity do not negatively affect Moldovan built heritage.

THE MAIN ACTORS IN THE BUILDING WORKS SECTOR

According to what provided by laws, in Moldova the main actors of “Construction” sector include the following institutions.

Ministry of Economy and Infrastructure

Architectural and Urbanistic Council (at central Level) “Consiliul arhitectural-urbanistic”

The Council is a political and high – level technical organism; its functions include the examination of issues related to sustainable development considerations in planning, architecture, major projects and those impacting on historical, central and other areas of locales and those along main roads and motorways.

Agency of Technical Supervision

According to the Regulation approved by the Government Decision no. 360 of 25.06.1996 "On State Quality Control in Construction", the State Inspection of Construction's major attributions concern the organization and exercise of state control over compliance with the provisions of the normative acts and the regulations in force regarding the discipline in urbanism, the spatial planning and the quality in construction, including law enforcement, discontinuation of unauthorised construction works and application of sanctions.

In particular, State control on construction design include:

- a) the correspondence of the project documentation with the dates and conditions stipulated in the urbanism certificates;
- b) the completeness of the project documentation;
- c) verification of the project documentation;
- d) correction of the project documentation.

State control on the production of construction materials and articles include Control over the operation of the internal system for guiding and quality assurance of the works performed at the enterprise, comprising:

- e) Ensuring the enterprise with normative and legislative documents;
- f) quality control of the raw material and finished production;
- g) observance of technological discipline;



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State control on execution of constructions and construction works comprises the verification over all details of the project documents, execution phases, quality of materials and building techniques, existence of all authorisations, approvals, opinions required, conformity of the construction with the approved design documentation.

It is evident that the Agency for Technical Supervision is a key actor in the construction process. For a detailed description of the Agency's functions, please see the report on Activity 2.1.

Technical Committee "Comitete Tehnice"

(Technical Committees have 7-10 members: one secretary, one representative of the Ministry of Regional Development and Construction and representatives of public authorities, design and construction companies, educational institutions and scientific institutions, civil society). Its functions include the Initiation of proposals for elaboration / adoption of normative documents in new constructions or modification / revision of normative documents in existing constructions; Examination and coordination of drafts of normative documents in construction; harmonization of normative documents in national construction with international and European standards.

Ministry of Education, Culture and Research (MECR)

The key bodies with responsibilities related to the construction sector are the:

- National Council of Historical Monuments NCHM
- National Archaeological Agency - NAA
- National Agency for Inspection and Restoration of Monuments - AIRM

The NCHM issues the legal opinion on preliminary and executive projects on protected monuments or for works within protected areas and is also expected to express its opinion on planning instruments where they concern areas where protected monuments or zones are included. NAA issues the archaeological expertise whenever this is requested by the authorizing public body and ideally should monitor all digging in areas with archaeological potential, whilst AIRM would have several tasks, the most important being the inspection of building sites of protected monuments and of building sites within protected areas.

Ministry of Finance

Ministry of Finances is responsible for the Budget of the State, thereby impacting directly on the budgetary allocations to MECR and its related bodies. It also supervises the Public Procurement Agency.



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Public Procurement Agency

The mission of the Public Procurement Agency consists in the coherent implementation of state policy in the field of public procurement and the process of gradual harmonization of national legislation with Community law. The main tasks of the Agency include elaborating proposals for amending and completing the legislation on public procurement; developing and implementing standard documentation for public procurement procedures; granting methodological assistance and consultations to public procurement authorities in the field of public procurement, training personnel of contracting authorities involved in public procurement procedures and awarding public procurement contracts, among others.

Technical offices of the Local Public Administrations – Local organs of Architecture and Urbanism

Dedicated departments/services to architecture and urban planning were established through Government Decision n.499/2000: *Directorate of Architecture and Urbanism* sit within County Councils, ATU Gagauzia and municipalities with more than 100 thousands inhabitants; in Chisinau a *General Directorate of Architecture and Urbanism* has been created; services for architecture and urban planning are to be present in municipalities between 100 and 30 thousands inhabitants, finally town and spatial planning services need to exist in mayoralities and localities with less than 30 thousands inhabitants.

INCERCOM I.S. - Institute of Scientific Research in Construction

INCERCOM Institute for Scientific Research is a state enterprise which derives from the transformation of the Orgstroii Design Technological Trust, created in 1962. The institute is involved in the development of regulations, regulations, codes of practice and constructive agreements; laboratory tests and measurements; consultancy and construction expertise; the specialized database of construction and building materials. To date, INCERCOM covers most areas of construction research specific to the construction sector, including research, standardization and technical assembly, certification of construction products, research and laboratory testing, permanent training and requalification, technical, economic expertise, evaluation and expertise of constructions.

INCERCOM organises the qualification and training courses for all types of professionals in the sector, including Category A.4, that is to say the architects who have the right to design projects for historic monuments. It has to be noted that the only certification issued in this regard is for designers, nothing seems to exist for this category for the director of the building site (*Diriginte de Șantier în construcții*) or for the technical responsible of the building site (*Responsabil Tehnic în construcții*).

UrbanProiect

The National Institute for Research and Design "Urbanproiect" is a design institution, founded as part of the Republican Trust "Moldavstroiproiect" established in 1944, then becoming the



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"Moldghiprogorselestroi", and eventually the "Moldghiprostroii" State Institute for Construction Design in 1957. In 1998, the Institute obtained the status of National Urban Design and Research Institute. It is currently a State Enterprise, the number of its scripted staff is 210 collaborators. There is a full qualified staffing component for the execution of various urban, spatial and spatial-volumetric projects. 95% collaborators hold higher education certificates. It is included in the list of institutes with design right in the seismic zones, exercises the functions of the territorial design institution. The key functions and roles cover research activity in the field of sustainable development of the Republic of Moldova, urban and architectural activities and national spatial planning, separate territories and localities, development of urban and transport infrastructure, volumetric design, ecology. The institute also provides professional services for the republican, district and local urban planning projects; constructions and installations with locational, social and industrial purpose, including urban networks; evaluation of normative documents and joint projects, agreements in the development of Urbanistic Book of CIS countries; elaboration of project documentation, systematization and methodical documents on the territorial organization of the regimes and districts of the republic; systematization and building of localities; civil and industrial buildings; Systematization and valorisation of spa zones, protected natural areas; the regeneration of historical sites, their fragments or separate structures; revitalization of degraded objects as a result of calamities; the normative basis in design and construction.

RuralProiect

RuraProiect is a State Enterprise, founded in 1960. The structural elements of the institute are the specialized, autonomous sectors, equipped with computerized technique and programs, which allow the elaboration of full project documentation, without resorting to the services of other organizations. The Institute has a technical-scientific library with a vast informational background in the field of construction design, which maintains close links with informational centers in Republic and colorful borders. The Institute specializes in the design of residential, civil and industrial buildings and its field of activity cover design of social, cultural, housing and industrial objects; execution of design works for the reconstruction or restoration of existing buildings; technical expertise of buildings and constructions; preparation of technical documentation in the process of drafting normative acts in the construction field and their realization; proposals for the modernization of existing dwelling buildings, in order to reduce material and financial expenses, as well as the efficient use of land for construction; elaboration of new typology of village dwellings, with evidence of socio-economic changes in the villages; elaboration of efficient solutions regarding the rural - technical infrastructure with the application of non - traditional energy sources.

ChisinauProiect

It is a Municipal enterprise that has been created with the purpose to develop projects for the municipality of Chisinau and to respond to its needs.



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Emerging issues

None of the above - mentioned institutions with responsibilities in the field of construction hold specific expertise in the field of conservation/ restoration works, however they are tasked with roles that have an impact on the sector, for instance, INCERCOM is responsible for the training and issuing of all type of professional certification, including A4 category. Nowhere it is stated that training and certification in this field are carried out in collaboration and the full involvement of the MECR and its specialised bodies.

The criteria for issuing this qualification are not clear and the number of hours envisaged for the training – qualifying course – 50 hours – appear largely insufficient when considering that Conservation / restoration of historic buildings does not receive particular attention at the university level, as the work on the HE curricula (under preparation) has demonstrated.

AN OVERVIEW ON THE LEGAL FRAMEWORK

The authorisation process for building and conservation restoration activity

The main legal instruments concerning the building regulatory and authorisation process include the following:

- Law n. 835/ 1996 on principles for urban and territorial planning;
- Law n. 1350 of 2.11.2000 on architectural activity;
- Law n. 163 of 9.7.2010 on authorisation of execution of construction works;
- Law n. 160 of 22.7.2011 for regulating the authorisation of entrepreneurial activity
- Government Decision n. 91 of 18.12.2017 on the issuance of authorisation for works of public utility.

Most of these laws are expected to be superseded soon by the Code on Urban Planning and Construction which has been under development for a few years and it seems now to have reached its final stages in the Parliamentary approval process.

With regard to construction, the Law n. 835/1996 establishes that the way of construction or modification and use of buildings is regulated by spatial / urban planning documentation (regulatory part) and by other norms (art. 49). To this purpose, local public administration authorities issue urban planning certificate, in case of absence of the general urban plan, building permit, dismantling authorisation, where needed, authorisation to change destination, where needed (art. 50 and 52).

Law n. 1350/2000 sets out the system of architectural activity and aims at enhancing and protecting the intellectual work of the architect as a key category of professionals. The law sets out rights and obligations for the professionals and in the construction process (e.g. with regard to change to the project or to the building). It establishes that architectural and urban councils are to be established and their opinion is



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compulsory on the planovolumetric solutions for all social and public buildings where urban planning documentation does not exist.

Law n. 163/2010 sets out the framework to obtain authorisation for the execution of works in the building sector. Basically, two phases are envisaged: the first phase implies the issuance of the urban planning certificate, on the basis of a preliminary project (schită de proiect) and the issuance of the building permit, on the basis of an executive project. No 'definitive' level is envisaged.

The urban planning certificate is issued on the basis of a set of documents clearly listed in Law n. 163/2010 art. 3. This documentation must include, where necessary, the technical expertise report, regulated by Government Decision n. 936/2006, which can be prepared only by certified professionals, and the legal opinion of the NCHM for protected monuments and areas.

On the basis of the urban planning certificate, the proponent can proceed with the development of the project at the execution level. The content of the execution project is clearly outlined for all types of construction in the technical norms *NCM A. 07.02.2012. Procedure for the submission, submission, approval and framework content of the project documentation for construction. Main requirements and provisions.*

However, these norms are not designed for interventions on historic buildings and therefore are not adequate to respond to the needs of the sector in terms of the scope of information that is necessary to include in the project in order to assess the impact of the intervention on the cultural significance of the protected monuments and its supporting features.

Emerging issues

A key problem for the preservation of the historic built environment, of townscape and of the historic-cultural and traditional character of towns and villages in the Republic of Moldova, beyond the issues related to intervention on historic buildings, has to deal with the quality of the design of smaller and larger buildings. The Law n. 1530/2000 on architectural activity was meant to address this issue but its structure and provisions do not seem adequate to tackle the challenges.

The law seems to be more conceived as an intellectual property rights' instrument rather than a legal document able to renew the concept of the profession within society. No mention of the moral obligation of the architect to respect the human and social needs, to respect natural and cultural heritage in its design activity, it was not accompanied by other supporting measure, e.g. in education, to sustain the improvement of the quality in architecture within the country, nor was it complemented by a Code of Ethics, like it happened for the Archaeologists, for instance.

Art. 4 of the Law n. 163/2010 includes a provision which might be problematic for the protection of historic built up areas, because, in the absence of planning documentation, which is the case for many mayoralties in the Republic of Moldova, it obliges the issuer of the certificate to draw up, through its authorised services a scheme for the emplacement of the construction, to get it approved by all relevant bodies, as a basis for



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issuing the urban planning certificate. While the rationale is valid, taking into consideration the low technical capacity of most of the staff of local public authorities and little funds available to level I local authorities, it is likely that the preparation of these schemes will be asked to the proponents, in the absence however of preliminary criteria approved through the normal planning process this will result in a piecemeal approach with no positive impact on the built historic areas.

Paragraph 7 of art. 4 establishes that all preliminary opinions for issuing the certificate shall be obtained within a 10 -day timeframe, imposing a far too short time to the NCHM and NAA for issuing their opinion/ expertise. This timeframe needs to be extended, according to the provisions established in Law n. 160/2011, art. 6 (2).

Art. 14 establishes that building permit is not requested for several categories of work which do not change the structure of resistance, external appearance, initial characteristics of constructions and related installations. These categories include:

- a) repair for fencing, roofs, coverings or terraces, unless the structure changes;
- b) replacements and repairs of floors, interior and exterior joinery, if the shape and dimensions of the galleries are preserved;
- c) interior finishing works;
- d) exterior finishing works, if the façade elements and the chromatic solutions do not change;
- e) Replacement or repair of stoves, installations, systems, equipment and technical equipment within buildings;
- f) replacements or repairs to external connections, related to constructions, within the limits of ownership;
- g) current repairs of communication routes, transport access, parking, sidewalks and stairs;
- h) maintenance works, current repairs of the communications infrastructure, maintenance of the routes, functions, surfaces and volumetry;
- i) burial groundwork and underground in cemeteries;
- j) installation of urban furniture;
- k) landscaping of the related land of the existing building;
- l) auxiliary constructions, annexes with the built- up area of up to 15 m² at private homes, located on private lands.

If these interventions are to be carried out on monuments of history, art and architecture registered in the Register of monuments of the Republic of Moldova protected by the state, the categories of works described under (a), (b), (d), (e), (k) and (l) shall be executed on the basis of building design certificates and building permits, and the categories of works described in c), f), g), h), i) and j) shall be performed on the basis of the prior notice of the Ministry of Culture.

It should be clarified that the need for a building design certificate and a building permit require always the prior approval of the MECR to clarify that all above- listed interventions need the prior approval of MECR.



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Art. 17 of the same Law establishes that the dismantling authorisation can be issued by the relevant authorising authority only on the ground of a set of documents accompanying the request. For the monuments of history, art and architecture or for objects located in built areas listed in the state protected Register of monuments, the request shall include the positive opinion of the Ministry of Culture (today MECR). Such provision appears to be in conflict with the Law n. 1530/1993: complete demolition of a monument implies the disappearance of the physical evidence of the cultural interest of a protected property, thereby implying an implicit form of declassification, which can only be determined by the decision of the Parliament in the current state of the legal framework. This means that the complete or substantial demolition of a protected monument can only occur on the ground of a preliminary declassification. Therefore, if MECR intends to continue to give this prominent role to the Parliament in establishing what can enter in the Register, art. 17 in Law n. 163/2010 has to be modified on the basis of a clarified provision in the reformed Law on historic monuments.

Additionally, the Law n. 160/2011 establishes that tacit approval applies to all permissive acts which are not due within the stipulated timeframe, unless the law governing the legal regime of the permissive acts does not expressly provide for the non - application of tacit approval. At the moment therefore, it seems that if the NCHM and NAA do not issue their opinion / expertise within a 10-day timeframe, their silence is legally interpreted as approval, which is a serious *vulnus* in the protection of monuments and immovable cultural heritage. However, it seems that this issue can be overcome by a) extending the timeframe of issuing the opinion/ expertise directly in the relevant sectorial law and cross – referencing it into the Law n. 163/2010 and Law n. 160/2011 - and including explicitly in all relevant laws related to cultural heritage that the ministerial approval (including the opinion of the relevant Councils) is not subject to the provision of tacit approval.

Art. 23 of the Law n. 163/2010 establishes that the beneficiary must inform the Technical Supervision Agency and the Agency for Inspection and Restoration of Monuments about the initiation of works, if these concern a protected monument or a protected area. It would be advisable that the beneficiary also inform the MECR and the National Archaeological Agency, especially if their expertise has made specific recommendations on how to carry out excavations.

The above-mentioned obligation should be systematically recalled with clear reference to the law in each communication made by MECR when issuing its approval of project proposal.



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THE REGULATION CONCERNING THE TECHNICAL REQUIREMENTS FOR THE CONSTRUCTION SECTOR

The regulatory and normative instruments that are relevant for the sector with regard to the technical requirements include:

- Law n. 721 of 2.2.1996 on the quality in constructions;
- *Government Decision n. 360 of 25.6.1996 concerning the State control over the quality in construction;*
- *Government Decision n. 361 of 25.6.1996 on ensuring the quality in constructions;*
- *Government Decision n. 285 of 23.5.1996 approving the Regulation for the reception of construction and related installations;*
- *Government Decision no. 1570 of 09.12.2002 on the urgent measures for the transition to the new normative base for estimations in constructions.*
- *Government Decision n. 936 of 16.8.2006 approving the Regulation for the technical expertise in constructions;*
- *NMC A.07.02-2012. Procedure for elaborating, issuing opinion, approving and content framework for of project documentation for construction*

Law n. 721/1996 establishes the key criteria for quality in construction, which include strength and stability, safety in operation, fire safety, hygiene, human health, restoration and protection of the environment, thermal insulation, waterproof and energy saving, noise protection. The Law sets out the obligation of permanent training of professionals, which is verified every 5 years, and a system of accreditation for enterprises entitled to carry out technical expertise

The last technical norm does not apply however to capital repair and restoration of historic -cultural monuments, for which a specific technical norm has been found necessary due to the specificity of the topic.

Content of the project documentation for interventions on protected monuments or zones

The content of the documentation of projects of buildings is outlined in the legislation on authorisation for execution of construction is described in the technical norms *NCM A. 07.02.2012 - Procedure for the submission, submission, approval and framework content of the project documentation for construction. Main requirements and provisions.* These norms outline in detail the content of the execution project but do not provide sufficient indications for the preliminary project.

Additionally, they do not apply to the sub-sector of conservation / restoration of historic buildings.



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Content of the project for construction

The content of the execution project is clearly outlined for all types of construction in the technical norms *NCMA. 07.02.2012. Procedure for the submission, submission, approval and framework content of the project documentation for construction. Main requirements and provisions.*

The description of the content and rationale of the content of the different documents composing an execution project is clearly provided in these norms that therefore represent a useful general reference to understand the requirements for projects in the Republic of Moldova.

The chapters of the execution project consist of written and drawn documents. Written pieces contain information on adopted technical solutions, other solutions, clarifications, references to normative acts and / or technical documents used in drawing up the project documentation and the results of the calculations that substantiate the solutions adopted.

The key documents include the following:

- general explanatory memorandum;
- general and transport plan;
- technological solutions;
- plant, machinery, networks and systems;
- architectural-constructive solutions;
- the organization and working conditions of workers;
- leadership with the production process and the enterprise;
- measures to ensure fire safety;
- environment protection;
- basic exploitation requirements;
- organization of construction works;
- the documentation for each compartment (if the compartment is provided with the technical design theme).

However, these norms are not designed for interventions on historic buildings and therefore are not adequate to respond to the needs of the sector in terms of the scope of information that is necessary to include in the project in order to assess the impact of the intervention on the cultural significance of the protected monuments and its supporting features.

Technical Expertise Report

Particularly relevant in the field of conservation / restoration is the *technical expertise report* which is compulsory preliminary document for any project / intervention to be carried out on existing buildings, including the protected monuments. this report should contain at least the following: indication of



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documentation on the base of which the expertise is prepared, architectural, functional and structural characteristics of the construction, beneficiary, designer, contractor, phase of construction, the proposed building scheme and solutions, the geotechnical conditions, the technical conditions of the construction elements and its whole, potential non-compliance with project or norms, level of degradation, conclusions and recommendations for strengthening, substantiating, optimizing the building from a technical, technological, economical and functional point of view, sketches, execution details and other graphic material. It is the expertise report that sets out the main needs and determine therefore the major lines of the projects on existing buildings.

This is a key document and, ideally, it would represent a very useful basis for the development of any intervention on existing buildings and particularly on monuments. The main issue related to this document relates to the area of expertise that is necessary, engineering, and the limited number of certified professional in the sector, of which apparently none possess the necessary educational background to deal with historic structures.

Content of the project for intervention on historic – cultural buildings

The Norms on construction do not outline the content of the preliminary phase of projects and the legislation is rather generic in this regard. Therefore, the Regulations of the National Council of Historic Monuments set out the minimum content of projects to be examined by the Council at the preliminary stage. This documentation includes: a) the historical note on the object; b) the plan for the placement of the object in the territory / land; c) the general plane of the object (with indication of adjacent buildings); d) real estate / building status with monument status (including decorative elements and exterior and interior carpentry, building elements, domestic fixed furniture, etc.); e) full photographic documentation of the existing real estate / buildings (including architectural, technical and interior details, etc.), of the architectural surveys carried out; f) draft conservation / restoration project, rehabilitation / adaptation, consolidation or new construction, as the case may be, elaborated by architects with practical experience in designing conservation / restoration works at monuments, authorized / certified in the field of historical architectural heritage; g) the chromatic solution of facades; h) on the street, in the yard, etc.

Technical Norms on the content of projects in the conservation of historic buildings, *CP C.01.16:2017. Code of Practice in Constructions. Monuments of history and culture. Principles and modalities to design restoration of constructions*, are currently under elaboration.

The document contains a definitions section which provides for the definitions of the relevant terms in use throughout the document, the general principles of the elaboration of a conservation/ restoration project, the content of the technical documentation forming the project, including the preliminary and research documentation necessary to develop the project.



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6. Content of research and design documentation

6.1. The research and design documentation for the execution of the works for the protection of historical and cultural heritage real estates, in whole or in separate stages, consists of the following compartments:

1. Preliminary work with the initial-permissive documentation;
2. Complex scientific research;
3. Technical Prospects;
4. The restoration project;
5. Project execution and valuation;
6. Scientific restoration report.

The research-design documentation compartments are determined depending on the execution stages.

The contents of the research and design documentation, as well as the execution schedules, are set out in the specifications and determined in the contract for entrepreneurship. The project of adaptation of the object of the historical-cultural heritage can be both part of the restoration project, as well as a separate compartment, which is determined by the specification.

For each of the compartments identified in the list above, the norms provide for a description of the content of each of them, in the different phases of the process, preliminary, executive and during implementation. The articulation of the documentation required is expected to much more extensive of what is today required and should therefore improve the situation substantially, if training on the use of these norms will be provided to all professionals and their use will be supported in the didactic activity at VET and HE educational institutions.

Some remarks on the draft technical Norms are presented in the emerging issue section below.

Norms for the estimation of the costs of conservation / restoration interventions

The technical norms for the construction sector are articulated in several chapters – Indicator in the original language – dealing with different sub-sectors of construction.

Since 2012-2013, the development of the norms on cost estimation on conservation/ restoration work in the form of "Collection R. Restoration works on historic buildings".

However, more general technical norms still hold valid in the sub-sector of conservation / restoration of historic building. The main references include the following:

- *NCM L.01.01-2012 Construction Economics. Rules for determining the value of NCM construction objectives*
- *L.02.05-2012 Construction economics. Building rules and building regulations for special temporary constructions*
- *NCM L.02.06-2012 Construction Economics. Drafting rules for the execution of cold-construction construction work*
- *CP L 01.01.2012 Construction Economics. Instructions for drawing up estimates for construction-assembly works by the resource method*



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- *CP L.01.02-2012 Construction Economics. Instructions for the determination of the cost of conversion to pay in construction*
- *CP L.01.03-2012 Construction Economics. Instructions on calculating overhead costs when determining the value of goals*
- *CP L.01.04-2012 Construction Economics. Instructions for determining the foreign exchange costs for the operation of construction equipment*
- *CP L.01.05-2012 Construction Economics. Instructions for the determination of the value of the gain on the price formation in the construction output*

Collection R of the technical norms include several sub-chapters, mainly oriented to regulate the estimation of the costs of this category of works.

- *RCs (vol. I-IV) - Valuation rules for restoration works. Restoration works and consolidations for civil, industrial and social-cultural damages*
- *Chapter R1 Architectural and archaeological works and earthworks in the area of cultural heritage objects.*
- *Chapter R2 Restoration and rebuilding of foundations and structural elements of stone.*
- *Chapter R3 Restoration and reconstruction of brickwork.*
- *Chapter R4 Restoration and reconstruction of structural elements and natural stone decoration.*
- *Chapter R5 Restoration and reconstruction of structural members and parts of wood*
- *Chapter R6 Restoration and reconstruction of coverings.*
- *Chapter R7 Restoration and reconstruction of structural members and decorative elements of metal.*
- *Chapter R8 Restoration and restoration of plastering finishes.*
- *Chapter R9 Restoration and reconstruction of artificial marble plywood.*
- *Chapter R10 Restoration and reconstruction of paintings on facades and interiors.*
- *Chapter R11 Restoration and reconstruction of ceramic decoration.*
- *Chapter R12 Restoration and reconstruction of the modeling architectural decoration.*
- *Chapter R13 Restoration and reconstruction of inlays, wood sculptures.*
- *Chapter R14 Restoration of furniture.*
- *Chapter R15 Restoration and reconstruction of parquet flooring.*
- *Chapter R16 Reconstruction of non-ferrous metal cast articles.*
- *Chapter R17 Abrasive, hammering and pressing work.*
- *Chapter R18 Restoration and reconstitution of inlaid surfaces.*
- *Chapter R19 Upholstering of restoration of upholstered furniture.*



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- *Chapter R20 Restoration and reconstitution of gold plating.*
- *Chapter R21 Miscellaneous works.*
- *Chapter R22 Restoration and reconstruction of door and window seals.*
- *Chapter R23-1 Restoration and reconstruction of fabrics and goblets.*
- *Chapter R23-2 Restoration of art fabrics.*
- *Chapter R24 Artistic processing of decorative metal products by galvanisation.*
- *Chapter R25 Restoration and reconditioning of decorative and applied art of non-ferrous metals and crystal pendants.*
- *Chapter R26 Restoration and reconstruction of applied ornamental and applied arts.*
- *Chapter R27 Restoration of the monumental and easel painting.*
- *Chapter R28 Complete and partial reconstruction of the monumental and easel decorative painting on architectural monuments.*
- *Chapter R29 Restoration and reconstruction of the mosaic.*
- *Chapter R30 Restoration and reconstruction of the fittings of decorative arts and applied arts from amber.*

Some of these norms do not exist yet and are currently under development. On the web platform www.particip.gov.md it was possible to identify the following:

NCM L.02.08-07:2017. Rules for restoration works. Indicator R. Restoration works of cultural heritage objects.

- *Chapter R07. Restoration and reconstitution of construction elements and decorative metal elements*
- *CHAPTER R17. Slabs, tapping and pressing.*
- *CHAPTER R22. Restoration and reconstruction of door and window seals*
- *Chapter R2.5 Restoration and reconditioning of decorative and applied art of non-ferrous metals and crystal pendants.*

The set of this technical norms offers a basis for the improvement of the sector that need to be fully capitalised.

The Twinning intends to further analyse these norms during the HE professional training that will be held from September 2018 through July 2019: the pilot case study which will be the object of the practical part of the training will be useful as a test also for these specialised norms. It will be possible to identify gaps, weaknesses and strengths by using these regulations in an international environment and in dialogue with professionals from the MS, who will bring in their experience and the Italian norms.



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Emerging issues

The Moldovan “Constructions” legal and normative framework does not contemplate, at present, any specific legislation explicitly regarding Cultural Heritage: this means that all construction works performed on cultural objects are done according to the provisions for the general Construction sector (for which it does not exist a Code of Laws on Constructions, thus it is difficult to collect all the relevant legislation)³⁵. This apply to the elaboration of project documentation as well as to all other specific sectors, such as structural reinforcement, installations, fire-safety, thermal insulation and other energetic requirements.

Unfortunately, the Draft Code on Urban Planning and Construction does not address this issue and does not envisage a specific section of the code dedicated to the historic buildings which provides for specifications or reference to ad-hoc regulations to be developed in relation to the need to adapt technical requirements to the nature of the historic building concerned. In particular, specific frameworks for: a) structural assessment and structural / seismic rehabilitation of historic buildings, b) technical and installation and health requirements, c) fire - safety requirements, d) accessibility requirements, e) energy efficiency requirements.

In this regard, the MS Twinning team has begun to share technical documentation in use in the MS for the above. A suitable platform for further work and discussion on the needs for developing ad – hoc criteria and requirements is represented by the HE Training on conservation of historic buildings.

On the other hand, the draft technical norms represent a considerable advancement in respect of the current situation and need to be supported. Improvement to the current draft include an alignment of definitions with the draft law on historic monuments, more developed and articulated definitions of the project phases, with particular regard to the clarification of the objectives and function of each document within the project, in order to clarify to the reader and the user for what purpose each document is expected to be elaborated. In some cases, despite the high level of detail of the document, further specifications may be offered. For the detailed analysis of this document see the commented draft in Annex.

The Italian experience in this regard may be a useful reference and further below an overview of the documentation required for interventions on protected historic heritage is provided.

Another aspect that need further deepening is the qualification system of enterprises and professionals. At the moment the Moldovan system is not fully clear and established and would need to be revised, at least for what it concerns the built heritage sector.

³⁵ We hereby indicate the following website: <http://ednc.gov.md/> where all Moldovan legal documentation in Constructions is collected, together with the EU legal documentation in the field.



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The Italian experience may be relevant also in this regard, as this field has been recently entirely reorganised and regulated. Considering the specific nature of the Moldovan built heritage, the approach needs to be adapted and may be simplified but the basic element of the system may be considered.

THE ITALIAN EXPERIENCE ON CONSERVATION PROJECT DOCUMENTATION

The issue of how to document the projects for conservation / restoration interventions on buildings with historic- artistic and cultural significance has been at the centre of the disciplinary debate in Italy since the inception of the discipline but has been addressed by the legal and regulatory framework only recently, since 1996 with the approval of the first framework law on public works and its successive regulation DPR n. 554/1999 and further addressed in the Code of Public contracts D.Lgs. 163/2006 and its regulations D.P.R. 207/2010, which has been superseded by the new Code of Public Contracts D.Lgs. 50/2016, which innovates the previous Code and also partly its regulations which are progressively being replaced by updated regulations and guidelines.

The Ministry of Cultural Goods and Activities adopted in 2017 through Ministerial Decree the regulations concerning the contracts and works on cultural heritage (immovable assets, including archaeology, and movable objects).

With the new decree, the Mibact lightens some requirements to qualify in the tenders on protected properties; for example, on the front of the technical eligibility requirements it requires that, in order to participate in the contract, the company must have carried out work on cultural heritage for at least 70% of the amount (and no more than 90% as prescribed before) of the classification for which registration is requested.

Moreover, if the continuity of the activity is demonstrated, no time limit will be envisaged, whereas previously it was necessary to demonstrate that the amount had been executed in the five years preceding the signing of the contract.

Among the evaluation criteria of the offers, a specific bonus system has been introduced for the offers presented by companies that make use in the design and execution of the work of personnel holding securities issued by specialist schools in the sectors of conservation and enhancement of the cultural heritage, in order to improve the quality of interventions and sustain the educational sector for VET and HE education.

In addition, in the event of a transfer of an enterprise, it will be possible to transfer the technical requirements from the assigning company to the assignee company.

Finally, the Ministerial Decree specifies that a person who holds the position of technical director in a building enterprise cannot hold a similar position for the duration of the contract on behalf of other qualified companies; in fact, the subject must present a declaration of uniqueness of appointment to the contracting



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authority. This provision is meant to guarantee that the technical director is fully dedicated to the enterprise, considering its key role in ensuring the timely execution and the quality of the works carried out.

The new decree provides that the assignment of works concerning cultural heritage is, as a rule, laid down on the basis of the executive project, but the cases in which the definitive project may suffice are also specified.

Furthermore, it establishes that, for each intervention, the sole responsible of the procedure, during the feasibility planning phase, establishes the next project level to be based on a tender and motivated evaluation, exclusively on the basis of the nature and characteristics of the asset; of the conservative intervention, the possibility of reducing the levels of design definition and the relative contents of the various design levels, safeguarding their quality.

The performances related to feasibility, definitive and executive design must be carried out by an architect or may be carried out by a person with the status of restorer of cultural heritage and anybody else (e.g. an engineer or a surveyor).

For the supervision of the works and technical support for the activities of the sole manager, it is necessary to use an architect, a cultural heritage restorer or, according to the type of job, another professional referred to in article 9-bis of the Code cultural assets (archaeologists, archivists, librarians, restorers of cultural heritage, etc.) with at least five years' experience and specific skills consistent with the intervention.

The Decree also sets out the content of the different levels of project design, which in Italy include traditionally three: preliminary/ feasibility, definitive, executive level for the following categories of intervention:

- a) archaeological excavation, including underwater archaeological investigations;
- b) monitoring, maintenance and restoration of immovable cultural heritage;
- c) monitoring, maintenance and restoration of movable cultural heritage, decorated surfaces of architectural heritage and historicized materials of historical, artistic or archaeological real estate.

Below key articles of the ministerial decree are quoted as a reference for future discussion on the improvements that can be achieved for the documentation of the project of conservation/ restoration in the RM.

Ministerial decree n. 154/2017 Regulation on public procurement of works concerning protected cultural assets pursuant to Legislative Decree no. 42 of 2004, referred to in Legislative Decree n. 50 of 2016

Excerpt

[....]



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Art. 15. Project of technical and economic feasibility

1. Without prejudice to the provisions of Article 23, paragraph 5, of the Code of Public Contracts, the technical and economic feasibility project consists of a programmatic report of the knowledge framework, developed by survey areas, as well as intervention methods, with attached the necessary graphic elaborations. The framework of knowledge is the result of reading the existing state and consists in indicating the types of investigation that are considered necessary for the knowledge of cultural heritage and its historical and environmental context.

2. They are documents of the feasibility project:

- a) the general report;
- b) the technical report;*
- c) preliminary investigations and research;
- d) the general plan and graphic drawings;
- e) the first indications and provisions for the drafting of the security plans;
- f) the technical file referred to in Article 16;
- g) summary calculation of expenditure;
- h) the economic framework of the project;
- i) the time program of the intervention;
- l) the feasibility document of design alternatives, with the exception of works that do not involve new constructions;
- m) the preliminary environmental study, with the exception of works that do not involve new buildings or installations or systems.

3. The feasibility project involves investigations and research aimed at acquiring the appropriate and necessary elements for the choices of the types and methods of intervention to be studied in the final project as well as for the estimate of the cost of the intervention itself.

4. The surveys and research referred to in paragraph 4 concern:

- a) historical-critical analysis;
- b) the constituent materials and the execution techniques;
- c) the relief and photographic documentation of the artifacts;
- d) diagnostics;
- e) the identification of structural behavior and analysis of the state of conservation, degradation and instability;
- f) the identification of any contributions from other related disciplines.

5. Due to the complexity of the intervention in relation to the conservation status and the historical-artistic characteristics of the artefact, the feasibility project can be limited to understanding those



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researches and those investigations that are strictly necessary for a first real identification of intervention choices and related costs.

Art. 16. Technical report

1. The technical sheet describes the characteristics, the execution techniques and the conservation status of the cultural assets on which it intervenes, as well as any changes due to previous interventions, so as to give a detailed and exhaustive picture of the characteristics of the asset and it also provides general indications of the planned interventions and the methodologies to be applied.

2. In the technical data sheet are identified and classified, also on the basis of the declaration of cultural interest affecting the asset object of the intervention, the decorated surfaces of architectural assets and historicized materials of real estate of historical, artistic or archaeological interest 'intervention.

3. In the case of monitoring, maintenance or restoration of movable cultural heritage, surfaces decorated with architectural heritage and historical materials of historical, artistic or archaeological heritage, the technical sheet is drawn up by a cultural heritage restorer, qualified according to of the current legislation. In the case of archaeological excavation work, the technical file is written by an archaeologist.

4. As part of the authorization procedure referred to in Articles 21 and 22 of the Code of Cultural Heritage and Landscape, the technical sheet, before defining the technical and economic feasibility project, is submitted to the competent superintendent, who approves the contents within forty-five days, updating, where necessary, the provision for declaring the cultural interest that interests the asset object of the intervention.

Art. 17. Definitive project

1. The definitive project, drawn up on the basis of the indications of the approved technical and economic feasibility project, studies the asset with reference to the whole complex and to the environmental context in which it is inserted; deepens the necessary disciplinary contributions and defines interdisciplinary links; defines in a complete way the techniques, the intervention technologies, the materials concerning the single parts of the complex; prescribes the execution modalities of the technical operations; defines the cultural guidelines and the compatibility between the project and the function attributed to the good through a complete knowledge of the actual state; overall, it constitutes a general assessment aimed at identifying the priorities, types and methods of intervention with particular regard to the need for protection and factors of decay.

2. They are documents of the final project:

a) the general report;

b) technical and specialist reports;



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- c) surveys and photographic documentation;
- d) the graphic works;
- e) the executive calculations of the structures and plants;
- f) the list of unit prices and any analyzes;
- g) the metric-estimate calculation and economic framework;
- h) security and coordination plans;
- i) the time schedule;
- l) the descriptive and performance specification of the technical elements;
- m) the outline of the contract and the special contract specifications, in the case of assignment of the works on the basis of the final design;
- n) the maintenance plan of the work and its parts.

Art. 18. Executive project

1. The executive project indicates, in a complete manner, entering in detail and on the basis of the investigations carried out, the exact operating methods, the techniques, the intervention technologies, the materials to be used regarding the individual parts of the complex; prescribes the technical-executive modalities of the interventions; it is elaborated on the basis of direct investigations and adequate intervention samples, justified by the uniqueness of the conservative intervention; indicates the checks to be carried out on site during the works.

2. They are documents of the executive project:

- a) the general report;
- b) specialist reports;
- c) graphic drawings including those of the structures and plants;
- d) the executive calculations of the structures and plants;
- e) the monitoring and maintenance plan of the work and its parts;
- f) the security and coordination plan;
- g) the metric-estimate calculation and economic framework;
- h) the time schedule;
- i) the list of unit prices and any analyzes;
- l) the special contract specifications and contract outline.

Art. 19. Planning of the archaeological excavation



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1. The project of technical and economic feasibility of archaeological excavation works for archaeological research purposes regulates the construction of the research site and identifies the criteria for defining the temporal progression of the works and the priorities of the interventions during the execution of the excavation activities, as well as the types and methods of intervention. The feasibility project consists of a programmatic report of the necessary and illustrative surveys of the framework of previous knowledge, developed by survey areas, to which the relevant graphic drawings are attached.
2. The report referred to in paragraph 1 illustrates the times and methods of the intervention, relating both to excavation and conservation of the finds, and to their study and publication, and is written by archaeologists with specific experience and professional skills consistent with surgery. It also includes a summary calculation of the expenditure, the economic framework of the project, the time schedule of the intervention and the first indications and measures aimed at protecting the health and safety of the workplace for the drafting of security plans.
3. The framework of prior knowledge consists of a critical reading of the existing state updated in the light of the elements of knowledge collected in possible discoveries.
4. The investigations referred to in paragraph 1 consist of:
 - a) general relief;
 - b) territorial surveys and diagnostic investigations;
 - c) necessary complementary investigations.
5. The feasibility project, if it has not been prepared by the competent offices of the Ministry of Cultural Heritage and Activities and Tourism, is communicated to the competent Superintendent.
6. The final project of the archaeological excavation works for research purposes, in which the results of the investigations foreseen in the feasibility project merge, includes detailed technical-scientific and economic forecasts related to the different phases and types of intervention and indicates the quantity and the duration of them and also includes the security and coordination plan.
7. The steps referred to in paragraph 6 include:
 - a) surveys and investigations;
 - b) excavation;
 - c) excavation documentation, such as excavation papers, stratigraphic sheets, graphic and photographic documentation;
 - d) restoration of movable and immovable artefacts;
 - e) preliminary catalog of the finds and their storage together with any samples to be analyzed;
 - f) study and publication;
 - g) forms of fruition also with regard to the arrangement and musealisation of the site or of the context recovered;



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h) scheduled maintenance.

8. The final project of the archaeological excavation works for research purposes also contains the definition of the types of interventions, distinguishing those of prevalent scientific merit, possibly to be entrusted to companies in possession of specific requirements where not handled by the same contracting authority. In this case, the definitive project is communicated to the competent Superintendent.

9. The executive project, drafted pursuant to Article 147 of the Code of Public Contracts, fully indicates, entering in detail and on the basis of the investigations carried out, the technical and executive procedures of the various operational phases, indicating the checks to be carried out in the yard during the works.

Art. 20. Design of technical installations, engineering and safety works

The projects relating to installations, engineering and safety works, drawn up at the various and subsequent levels of in-depth analysis, provide for the use of the most suitable technologies to guarantee the correct insertion of the plants and of what is necessary for safety in typological and morphological organization. of complexes of historical-artistic interest and to offer performances, compatibly with the limitations imposed by the respect of the historical-artistic pre-existences, similar to those required for new buildings. In addition, safety plans during operation are required, as well as the scheduled maintenance program with the inventory needed to ensure continuity of service.

Art. 21. Verification of projects

1. Without prejudice to the provisions of Article 26 of the Code of Public Contracts, for works projects relating to cultural heritage, the contracting authority shall directly perform the verification activity, also making use of:

a) in the case of interventions on cultural movable property, surfaces decorated with architectural heritage and historicized materials of real estate of historical, artistic or archaeological interest:

1) of the person who prepared the technical sheet referred to in Article 16, provided that he did not assume the role of designer of the intervention to be implemented;

2) or a technical official belonging to the roles of the public administration, with a professional profile of restorer, in possession of specific experience and professional skills consistent with the intervention, which did not participate in the drafting of the project;

b) in the case of interventions on immovable cultural heritage:

1) of the person who prepared the technical sheet referred to in Article 16, provided that he did not assume the role of designer of the intervention to be implemented;



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2) or a technical official belonging to the roles of the public administration, with a professional profile of an architect, in possession of specific experience and professional skills consistent with the intervention, which has not participated in the drafting of the project;

c) in the case of archaeological excavation work, including underwater archaeological investigations:

1) of the person who prepared the technical sheet referred to in Article 16, provided that he did not assume the role of designer of the intervention to be implemented;

2) or a technical official, belonging to the roles of the public administration, with the qualification of an archaeologist with specific experience and professional skills consistent with the intervention, who has not participated in the drafting of the project.

2. The person in charge of the proceedings may reasonably order that the verification only concerns the level of planning at the basis of the assignment of the work.

[...]

Art. 25. Maintenance work

1. Maintenance work, due to the nature of the asset and the type of intervention that is carried out, may not require the preparation of all documentation as well as the investigations and research required by the rules on the feasibility, definitive and executive design levels, and are carried out, consistently with the provisions of the monitoring and maintenance plan, also on the basis of an expense assessment containing:

a) the description of the property accompanied by sufficient graphic and topographic drawings drawn up on an appropriate scale;

b) the special conditions with the description of the operations to be carried out and the relative times;

c) the metric-estimate calculation;

d) the list of unit prices of the various processes;

e) the economic framework;

f) the security and coordination plan.

Art. 26. Scientific background and supervision of the execution of the works

1. At the end of the work, the director of the works shall prepare the documents required by article 102, paragraph 9, of the Code of public contracts containing the graphic and photographic documentation of the state of the building before, during and after the intervention as well as the



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outcome of all the researches and analyzes carried out and the problems open for future interventions.

2. The report is kept at the contracting authority and is transmitted in copy to the competent superintendency, also for purposes of monitoring the application of this regulation.

3. During the execution of the works, the contracting authority and the office responsible for the protection of cultural heritage constantly monitor compliance with Article 29, paragraph 6, of the Code of Cultural Heritage and Landscape, and on the maintenance by companies executing the special qualification requisites in the categories OS 2-A, OS 2-B, OS 24, OS 25 and OG 2, adopting, in case of non-compliance, the sanctioning provisions foreseen by the current legislation.

Art. 24. Final Testing

1. For the testing under construction referred to in Article 150 of the Code of Public Contracts, the composition of the body that provides for it is determined by the subsequent paragraphs of this article.

2. For testing the goods related to the OG 2 categories, the testing body also includes a restorer with at least five years' experience in possession of specific skills consistent with the intervention.

3. For testing the goods related to the categories OS 2-A and OS 2-B the test body also includes a restorer with at least five years' experience in possession of specific skills consistent with the intervention, as well as an art historian or an archivist or librarian with specific experience and professional skills consistent with the intervention.

4. For the testing of goods related to the OS 25 category, the testing body also includes an archaeologist with specific experience and professional skills consistent with the intervention as well as a restorer, both with at least five years' experience in possession of specific skills consistent with the 'intervention.

5. Can be part of the testing body, limited to only one member, and without prejudice to the total number of members required by current legislation, the officials of the contracting authorities, graduates and classified with qualifications as an art historian, archivist or librarian, who have worked for contracting authorities for at least five years.

It should be noted that the description of the aim and function of each document at each phase of the design project is provided for in the regulations D.P.R. 207/2010. The relevant provisions set out the overall framework for the elaboration of projects and can be considered key criteria, principles and guidance for the elaboration of project documentation. Due to their length, they are provided in annex to the present report (in Italian).



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PUBLIC CENTRAL AUTHORITIES EXPENDITURE IN THE CONSTRUCTION SECTOR

The state of the art cannot be complete without a mention to the regulations and procedures under which central public authorities develop and manage their budget and their expenditures for “construction works” necessary to implement their mission.

The focus will be on how the Ministry of Culture has been dealing with the subject and how MECR is now addressing the topic, following the 2017 reform.

According to law, the public expenditure can fall in one of the following categories³⁶:

1. Public capital Investments - Investitie capitală publică - budget expenditure for the creation of fixed assets, including the construction and / or renovation, reconstruction or extension of existing fixed assets.
2. Capital Repairs - Reparatii capitale - replacement or complete restoration of spaces (other than complete replacement of stone and concrete foundations, walls and carcasses), thermal rehabilitation of buildings in operation, replacement of municipal systems, adjoining territory; investments in already existing assets that lead to an increase of the balance sheet value as they lead to a prolongation of the term of use.
3. Current Repairs - Reparatii curente – dyeing, whitewashing and paperhanging on walls and bridges, painting of floors, doors and windows, scraping of parquet, etc; technical service, repair and reconstruction of residential, communal and social-cultural buildings

“Restoration works” are included among Public capital Investments works, even though works on cultural objects can be made also through the use of Reparatii Capitale amounts, usually managed with no specific attention to cultural objects (as it is done instead for the Investitie capitală, under which restorations are realised).

It must be anyway underlined that in almost all laws regarding constructions/architectural works, it is specifically provided that: “to carry out construction or demolition works on a monument of historical or cultural value, it is needed to obtain the favorable opinion of the Ministry of Culture, in particular from the National Council of Historical Monuments”³⁷ or for instance that “the urban certificate, building o dismantling

³⁶ The definition can be find in the Law "NCM L.01.03: 2015, Methodological Norms and Classifier of Repair Works for Buildings and Objects in the Domains of the National Economy" - “NCM L.01.03:2015, Norme metodologice si clasificatorul lucrărilor de reparatie a clădirilor si obiectelor din domeniile economiei nationale” and in the NCM 09.02.2005 about current and capital repairs

³⁷ see Law No. 163 of 09.07.2010 regarding the authorization of the execution of the construction works - LEGE Nr. 163 din 09.07.2010 privind autorizarea executării lucrărilor de construcție



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permit are issued by the Ministry of Construction but only on the basis of documentation endorsed by the Ministry of Culture”³⁸

Process for project/ intervention design and Public Procurement before July 2017

Public procurement has been regulated by the “Law n. 96 of 13/04/2007 on Public Procurement” (LEGE Nr. 96 din 13.04.2007 privind achizițiile publice) where the different price thresholds and the related different ways to submit and evaluate offers are clearly indicated.

1) Starting the process

The input to start the process of projecting a work for a cultural object may come both:

- from the bottom – with a request coming from the holder of the object
- from the top – as a consequence of a survey made by the Ministry to identify cultural objects needing an intervention

The greater part of the inputs come from the bottom, in form of letters sent to the Ministry.

It must be noticed that – according to the laws “Hotărârea de Guvern nr.1029/19.12.2013, privind investițiile capitale publice” (Government Decision nr.1029/19.12.2013 on investments of public capital) and “Ordin n.185/03.11.2015 Ministerul Finantelor, aprobarea instructiunii privind managementul proiectelor de investitii capitale” (Ordin n.185/03.11.2015 of the Ministry of Finance, to approve instructions on the management of public investments projects) –

A specific project feasibility study must be submitted to the MECR in order to get funds for the needed intervention. Such a project should be prepared by an engineer - employed in the institution from which the request comes from (this should be valid at least for the bigger public institutions such as libraries or theatres), who should also be in charge of monitoring the state of conservation of the cultural object by filling in a “technical fiche” twice per year (before and after winter)³⁹.

Not all the institutions asking for interventions have among their ranks the engineer, thus they do not always fill in the “technical fiche” about the state of conservation nor are able to fill in the feasibility project to ask for the money needed to carry out the necessary works⁴⁰.

³⁸ Law No. 1350 of 02.11.2000 regarding the architectural activity - LEGE Nr. 1350 din 02.11.2000 cu privire la activitatea arhitecturală

³⁹ The indication and the model of “technical fiche” to be filled in, is an annex to the NCM 09.02.2005 regulating Current and Capital repairs

⁴⁰ In this case they need to be helped, and previously it was the employee of the former Direction Management of Public Investments



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2) Processing the requests within the Ministry of Culture

The requests of intervention containing all the needed documentation (see above) are evaluated by the MECR and, if the NCHM opinion (“aviz”) is positive, such intervention projects are inserted by the Direction into the proposed Medium-Term Plan of the Ministry of Culture (“Cadrul Bugetar pe Termen Mediu” CBTM), where the total costs for each project is clearly indicated.

The Plan contains both new proposed projects and the ones already approved but still in progress (at the moment the analysis was elaborated, there were 3 in progress projects: - Museum of Arts; Cahul Musical Drama Theatre; Sala cu Orga).

Then the Medium-Term Plan is sent to the signature of the MECR.

3) Approval by the Ministry of Finance

The Medium-Term Plan is sent from the Ministry of Culture to the Ministry of Finance, where there is a Commission assigning scores to the projects, in order to decide whether financing them or not.

One of the criteria to assign new fund to the Ministries is the level of expenditure capacity: in case the use of funds granted in previous years are not spent at the expected pace, the Ministry of Finance may refuse to allocate new funds. As a matter of fact, it has emerged that funds on both Investments and Repair works budget line are not completely used⁴¹ by the MECR. This low expenditure capacity impacts negatively on the amount assigned each year to the MECR.

It is therefore a practice for the Ministry of Finance not to grant further money to ministries, if the amounts already disbursed for previously approved projects has not been spent yet. This is precisely the situation in which the Ministry seems to be: moreover such a circumstance leads the Ministry of Finance to further reduce the amounts to be allocated for the “construction works” of Ministry of Culture.

The amounts allocated to the Ministry of Culture for construction works are divided between funds for Investitie capitală and money for Reparatii (both “capitale” and “curente”).

The requests for interventions on cultural heritage should be submitted to MoECR already as Repairs or Investment works (depending on the kind of work to be carried out according to the definition provided by the Law on what has to be considered as an Investments and what as a repair). Indeed, the projects are

who did provide to the requesting institutions such a kind of support. Alternatively the feasibility study is often prepared without the necessary attention and competence and risks to be rejected by the MoECR. It appears that only rarely an external private expert is paid to fill in the requested documentation.

⁴¹ In some cases the amount of non-utilised money for approved projects is very high: this means the funds are granted but no work is realised afterwards



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presented without such a distinction, and it is normal practice that such a distinction is made at the MoECR⁴² before presenting the Medium Term Plan to be submitted to the Ministry of Finances. This means that the allocation of funds from Ministry of Finance between Repairs and Investments depends on the repartition previously made by the MoECR, that must be accompanied by a detailed report explaining the necessity of each proposed project.

It is noted that at the Ministry of Finance there is an ad hoc Commission for Investitie capitală, but not at the MoECR.

Regarding the possible needed **“exceptional maintenance”** interventions, the request must arrive to the MECR from a technical expert (charged by the holder of the historical monument). At the Ministry a special Committee for Unexpected Situations gathers for giving a technical advice. If positive, the funds for the intervention is funded through the “reserve fund for exceptional maintenance”, which requires the approval of the government.

Management of Constructions-related activities at the Ministry of Culture⁴³

It is difficult to return the precise picture about how Constructions' Sector is managed within the Ministry, since the whole organisation has been in a transition period since July 2017 according to which the Ministry of Culture became Ministry of Education, Culture and Research.

It is therefore useful to present the situation before and after the reform.

The Organisational Unit primarily involved in the management of Constructions' Sector was, up to the reform, the Direction “Management of Public Investments”, with its three Services:

- Immovable Assets Service (40 cultural institutes - linked to cadastre)
- Projecting and Public Procurement Service (“proiectare si contractelor de achiziții”)
- Studies Service

The Direction “Management of Public Investments”, and specifically its service “Projecting and Public Procurement”, was in charge for managing the amounts for Investitie capitală, in which “Restoration works” are included.

Differently, the Reparatii, both “capitale” and “curente”, were managed by the former Planning Direction, and followed a different procedural path.

⁴² At least it was normal practice, before the organisational reform, that the division between Repair and Investment Projects was done by the former Management of Public Investments Direction.

⁴³ Interview held on 21/12/2017 to Ms Emila Ristic - former employee of the Direction Management of Public Investments



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After the reform it appears that the competence both of the former Direction “Management of Public Investments”⁴⁴ and of Planning Direction have been transferred into the “Financial and Administrative Section” of the Direction “Institutional Management”. (see the new organisational chart of the Ministry of Education, Culture and Research).

Only 2 persons were employed in the Direction, out of the 3 envisaged (1 vacancy).

EMERGING ISSUES AND PROPOSALS FOR IMPROVEMENTS

The analysis suggests that the main criticalities can be regrouped into 3 main areas:

A. Legal framework

Given the circumstance that at present “Constructions” legal framework lacks of a specific legislation explicitly regarding Cultural Heritage, the main emerged criticalities are the following ones:

- The major criticality appears to be related to the works done on cultural objects through the “Capital Repairs (Reparatii Capitale)” funds, which do not foresee any specific measure to safeguard cultural objects (as it is done instead for the Investitie capitală funds, under which restorations are realised).

It is suggested in that respect:

- *To foresee specific provisions on how performing Repairs (Reparatii) on cultural objects for ensuring that no harm is caused to them during the works, expressly providing that also Repair works on cultural objects need to be carried out according to the (binding, see below) opinion of the National Council of Historical Monuments*
- The little expenditure capacity of the MECR in the case of large-scale interventions affects also the allocation of funds for other more important interventions – in a country where several protected monuments suffer from lack of maintenance, abandonment, lack of use.

It is suggested in that respect:

- *to establish a fund for emergency repair and safeguard measures in order to ensure that protected buildings in state of dilapidation are safeguarded through ad hoc measures (e.g. temporary roofing/ cover, supporting scaffolding and shoring, etc.) so as to prolong their life while elaborating the project for their conservation/ restoration and preparing the funding programme. This solution would allow for a much more effective use of the available budget of MECR (as well as of local authorities) to guarantee the preservation of many more*

⁴⁴ The employee working at “immovable assets service” was transferred in the Financial Section, together with a colleague, formerly working in the public procurement sector at Ministry of Education, now replacing Ms Ristic in projecting and public procurement for Culture Sector.



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monuments. An ad-hoc programme should be pursued and elaborated with the assistance of the reformed subordinated bodies, namely Agency of Inspection for Monuments and Sites.

- Even when the role of the Ministry of Culture is explicitly foreseen by the law (e.g. “to carry out construction or demolition works on a monument of historical or cultural value, it is needed to obtain the favourable opinion of the Ministry of Culture, in particular from the National Council of Historical Monuments”⁴⁵ or “the urban certificate, building or dismantling permit are issued by the Ministry of Construction but only on the basis of documentation endorsed by the Ministry of Culture”⁴⁶), it seems that several times the advice of the Ministry of Culture is not taken into consideration or, worse⁴⁷ that the advice of National Council of Historical Monuments is not considered as binding

With regard to the process in force for designing an intervention on a cultural object, the following criticalities emerged from the analysis:

- An evident problem is that the 3 phases of the process (starting the process; processing the request within MoECR; passage for financing at the Ministry of Finance), seem to be not fluidly linked among them: each phase is managed by different subjects, so that it becomes difficult to draw together the disparate strands of the course of actions.

It is suggested in that respect:

- *To foresee the figure of the “procedure’s responsible official” in charge for managing the administrative process from its very beginning to the final step, representing the qualified interlocutor within the Ministry of Culture about the whole concerned procedure. Such a role is not envisaged at present by the Ministry⁴⁸.*
- When speaking about the input for the work coming from the bottom – with a request from the holder of the object – it appears that a major problem is the lack of capacity to draft such a project -

⁴⁵ see Law No. 163 of 09.07.2010 regarding the authorization of the execution of the construction works - LEGE Nr. 163 din 09.07.2010 privind autorizarea executării lucrărilor de construcție;

⁴⁶ Law No. 1350 of 02.11.2000 regarding the architectural activity - LEGE Nr. 1350 din 02.11.2000 cu privire la activitatea arhitecturală

⁴⁷ according to what sorted out from the interview to a former employee of the Ministry of Culture working in Public Investments Direction, now at the Ministry of Finance

⁴⁸ What happens is that, in case of particularly important projects, the Minister issues an order (Ordinul Ministrului) to indicate who is formally in charge for the project within the Ministry (often one State Secretary) and which is the dedicated technical staff. The instrument of the Ordinul Ministrului could be used as well to designate the “procedure’s responsible official” whose tasks should be punctually described in a related job description.



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which foresees, among the others, a precise feasibility study - so that the request for intervention often is not even taken into consideration.

It is suggested in that respect:

- *As for the previously mentioned criticality, even in this case to foresee the figure of the “procedure’s responsible official” could represent a valid support for correctly drafting the project of work on a cultural object: he could actually help the holder of the good in better understanding which is the requested documentation and how correctly fill it in so as to reduce the possibilities that the project is rejected for formal defects*
- *To increase the cooperation with the National Agency for Inspection and Restoration of Monuments, officially charged for realising surveys on monuments⁴⁹, in order to find shortly a joint solution aimed at optimising the work of human resources currently working for the Agency so as to identify the staff that can be dedicated to this work*

and/or in the meanwhile

- *To verify the availability of staff, within the MoECR, to cover the needed position, and to foresee an ad hoc training to transfer the competences which are necessary to perform the requested tasks. Such a suggestion is aimed at a quite rapid solution of the identified problem, provided that an indispensable support should come in this case from the “Human Resources” Sector of the Ministry, that should assist Culture Direction (and the Secretary of State in Culture) in individuating the appropriate candidates to cover the needed positions.*

Financial management area

When examining the state of the art of Constructions’ sector with regard to the financial area, it seems that the main problem is not linked to the scarcity of resources allocated for construction projects on cultural objects, while:

- It appears that the substantial criticality, that shall be urgently solved, is the scarce capacity of the institutions asking for works to correctly and timely use the financial resources allocated for the projects: also the implementation and monitoring capacity like (together with planning capacity -see above) must be supported and increased in Moldova, even because such a circumstance leads the Ministry of Finance to further reduce the amounts to be allocated for the “construction works” of Ministry of Culture.

⁴⁹ According to Agency’s Regulation , art. 2.2 in Chapter II , the Agency “Carries out inspections on monuments which are subject to official protection of central or local public authorities, including the related protection areas”



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It is suggested in that respect:

- *To create a small pool of experts at the Ministry of Culture dedicated to support, follow and monitor project implementation after their approval. This staff could be the same individuated for carrying out the surveys (see above) with the support of Human Resources Sector in order to verify the availability of personnel, within the MoECR, to cover the needed position, and to foresee an ad hoc training to transfer the competences which are necessary to perform the requested tasks.*
- *To foresee training for the cultural institutions on planning, implementing and monitoring construction works and related budget.*



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TRANSPARENCY, ACCOUNTABILITY AND INDIVIDUAL RESPONSIBILITY IN PUBLIC ADMINISTRATIONS



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SUMMARY

The present overview of the legal framework concerning the public administrations and their functioning is a response to the need to understand the wider legal framework in which central administrative entities with responsibilities on the protection, conservation and promotion of cultural heritage operate.

Shortcomings in the implementation of the legal framework on cultural heritage in the Republic of Moldova do not only depend on weaknesses and gaps in the legal and regulatory framework regulating the specific sector but also on the level of adequacy and implementation of the wider legal / regulatory framework on the functioning of public administrations.

This report is the outcome of a brief survey on the legislation, focusing specifically on how key principles for good practice in public administrations are embedded in the legislation and how provisions respond to the specific need of the cultural heritage sector.

The analysis has implied deskwork and 'fieldwork' through interview with the BC public officers and it has concerned the following Laws:

- Law Nr. 793 of 10.02.2000 administrative litigation
- Civil Code, Cod n. 1107 of 6.6.2002
- Law n. 239 of 13.11.2008 on transparency in decision making;
- Law n. 158 of 4.7.2008 on the on the public function and status of the civil servant
- Government decision n. 96 of 16.02.2010 on the implementation of Law on transparency in decision-making
- Law n. 199 of 16.07.2010 on the status of persons with public dignity functions
- Government Decision Government Decision, n. 471/2011 to approve the National Action Plan for Implementation in The Republic of Moldova Convention on Access to Information, Justice and public participation in environmental decision-making (2011-2015)
- Administrative Code of 5.7.2018 (only the final draft version available).

The focus has been put primarily on understanding how 'transparency', 'accountability' and 'individual responsibility' of civil servants and staff of public bodies is understood and regulated. Additionally, it has been examined how the conflict of interest and incompatibility of functions of civil servants and staff of public bodies is regulated.

One of the first identified criticalities in the administrative system is represented by the fact that not all the staff of central administrations has the status of civil servants, even when the bodies which they work for have key responsibilities delegated by ministries and these bodies depend from ministries, their structure, functions, staff units are regulated through legal provisions. In particular, in the cultural heritage sector, this applies to the NAA and the AIRM, which have crucial functions in the implementation of the legislation for the protection of cultural heritage.



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This situation not only generates a disparity between Agencies' staff, invested of key responsibilities for heritage protection, and ministerial or Institute's staff, who enjoy the status of civil servants. It also gives rise to ambiguities in the application of several other key provisions that apply to civil servant but do not seem to apply to the staff of other public institutions. This is particularly important when it comes to conflict of interest, incompatibility of functions as public officials, e.g., with elective functions.

The different regime in terms of staff selection criteria, requirements for recruitment, obligations between civil servants and staff of bodies subordinated to central public authorities is not beneficial to the efficiency and effectiveness of these bodies, at least in the cultural heritage sector. It is therefore suggested that irrespective for the regime – civil servant or non- civil servant – the rules for recruitment, obligation in terms of impartiality, conflict of interest and incompatibility be extended to the staff of all authorities subordinated to ministries.

A short overview of the European Union common regulatory frame and of the relative Italian sector regulation together with some general information on some EU Member states complete the overview. The quick review of the EU countries, done with the goal of outline the main principle applied, is focused the great importance attribute to the citizens participation, the information available to the public and to the public accountability as well.

Specific consideration of specific provisions of the Italian system regulating public administrations, procedures and civil servants may be beneficial to RM, particularly with regard to provisions and mechanisms to:

- *strengthen the individual responsibility of civil servant in the administrative procedures*

At the moment, no provision is in place in the administrative legislation – not even in the recently approved code – that identify the person responsible to follow a procedure from its inception until it is concluded. Art. 35 of the new administrative code states that public authorities and individuals representing them shall be liable for criminal, contraventional, civil or disciplinary reason: it is important to clarify who are the individuals representing the public authorities and to what extent liability concern also individual civil servants.

- *reinforce the necessity to justify the decisions of the public administrations in order to ensure that not only the interests and rights of private citizens are guaranteed but also the larger collective interests of society/ communities and the specific mission of each public administration*

The new Administrative Code seems to include provisions that may guarantee the above. Art. 118 regulates the motivation of administrative acts and establishes the structure of the motivation in administrative acts. Motivation is compulsory for individual administrative acts. But it is not compulsory when “a) the public authority admits a petition in its totality, if its decision of resolving does not affect the rights or legitimate interests of other persons; b) this is provided in law, or c) the public authority issues individual administrative acts of the same kind in a larger or more automated way, and according to the factual circumstances of the case, no motivation is required.” However it appears important that



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the notion of legitimate interests is better clarified and may include the notion of collective/public interest.

- *expand the notion of conflict of interest and incompatibility of functions to a larger spectrum of situations and roles beyond family ties and patrimonial advantages*

it would be advisable that a reappraisal of the notion of conflict of interest and incompatibility be expanded and mechanisms of temporary suspension (e.g. unpaid or paid leave) at least for high- rank officials in public administrations or bodies subordinated to them and funded by the state, for instance, in case of election as political representative and not only in case of appointment to specific positions, as it seems the case now according to the legislation. This would embody EU principles and would contribute to ensure impartiality in the exercise of public function and protect servants in these bodies from potential external pressure.

The suggested improvements of the larger legal framework on the point mentioned above would greatly contribute to the strengthening of the implementation of the legislation in the cultural heritage sector.

MOLDAVIAN NATIONAL LEGAL AND REGULATORY FRAME IN THE FIELD OF ADMINISTRATIVE PROCEDURE

National laws face this issue both related the responsibilities and the citizen participation.

A baseline assessment of the Moldovan public administration was launched in October 2015, which is a complete picture of the public administration of the Republic of Moldova from the perspective of principles of public administration elaborated by SIGMA.

SIGMA (Support for Improvement in Governance and Management) is a joint initiative of the OECD and the European Union. Its key objective is to strengthen the foundations for improved public governance, and hence support socio-economic development through building the capacities of the public sector, enhancing horizontal governance and improving the design and implementation of public administration reforms, including proper prioritization, sequencing and budgeting.
<http://www.sigmaweb.org/countries/moldova-sigma.htm>.

On the ground of the SIGMA report, the *Public Administration Reform Strategy 2016 – 2020* has been adopted by the Government of Moldova by Decision n.911 of 25.7.2016, in order to implement what agreed upon in the Association Agreement between the Republic of Moldova, on one side, and the European Union and the European Atomic Energy Community and their Member States, on the other side (*Law no.112 of 02.07.2014* of ratification).

By its Action Program for 2016-2018, the Government of the Republic of Moldova committed itself to continue modernization of the public administration as to provide services to the citizens at the highest level



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of compliance with the practices of European democracies. This commitment is reflected in the 2016-2020 Public Administration Reform Strategy.

The Strategy has the objective to set up the general framework of public administration reform for the period 2016-2020 and proposes a staged approach, which builds on the prior reform actions. It contains some recommendation to be addressed by the Moldavian Government in order to approximate the national approach to public administrations to the principles enshrined in the European Union legal framework.

Key lines of the strategy include:

Accountability of public administration - streamline the Government structure; strengthening of public administration; decisional transparency; institutional responsibility;

Openness and transparency. Decisions must be taken, approved and implemented according to clear rules and procedures. All the public information is accessible. Information on decisions, policies' implementation and results is available to the public, so that any citizen could have the possibility to oversee and contribute to the activity of central and public authorities;

Participation, impartiality and inclusion

Responsibility. The role and decision-making responsibilities are provided clearly for each institution, collegial body and stakeholder in the development of public policies. All the decisions are presented and explained. There are effective mechanisms against improper administration and against actions taken by authorities that violate the law and people's rights.

In details the Reform Strategy 2016-2020 reports that *there is no clear mechanism to establish the conditions and terms for compensating the administrative errors. The existing provisions focus on the assessment of individual and collective performances of public authorities, but not on the aspects related to the accountability for the damages caused by the public authority when fulfilling its duties. The best practices recommend to establish clear administrative mechanisms, that would allow individuals to claim compensations outside the judicial system. In general terms, the State Chancellery was appointed as in charge of controlling the implementation of normative acts and national policy documents by the ministries and other administrative authorities. However, the existing legal provisions are not enough to ensure administrative monitoring and risk assessment, the dimension of administrative errors and control points.*

The same document contains two phases in which some of those problems should be faced and solved:

Phase I (2016-2018)

Finalize and promote the Code of Administrative Procedure, by promoting clear and coherent norms to govern the relations between ministries and reporting bodies, creating management systems for institutional performance, improving the procedures in the administrative appeal, enhancing as well the capacity of responsible authorities for proper enforcement of this code.



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Phase II (2019-2020)

- 1) Promote the draft Law on Ministerial Accountability, which will include aspects related to collective ministerial accountability before the Parliament and individual political responsibility that will imply checking the performance of the authorities and institutions subordinated to ministries.*
- 2) Carry out a comprehensive analysis of state owned enterprises which perform administrative functions, assess comprehensively and relevantly the performance of state-owned enterprises and include them in the general framework on public sector accountability for the public functions that they perform and for the public money and public funds that they manage.*
- 3) Introduce a mechanism to monitor the legal cases that are results of public administration obligations, by identifying and recording them, determining the cause that led to public accountability on the basis of a court judgement, and determining their financial value.*
- 4) Examine existing normative provisions on public accountability so that the principles of liability and procedural rules for claiming compensation are clear and exhaustively regulated.*

TRANSPARENCY IN DECISION MAKING

According to the interviews realized with civil servants in Moldavia among the Ministry of Finance, Ministry of Regional Development, Ministry of Economy and other public national agencies, and to the documents provided the current public administration procedure accountability and public participation seems mostly fulfilled so far.

The legislative path and the territorial planning procedure seem to allow the citizen participation in the decision-making process, but in some other specific public procedure the information reach the public only when the procedure itself is already completed instead of allowing participation since the inception of the procedure.

With regard to the cultural heritage sector, which is the one relevant for this analysis, it has to be noted that transparency, in terms of making public and accessible decisions, seems to be fulfilled. However, transparency is not implemented when it comes to the clear identification of the functions of each directorate within the ministry, for instance, which are not regulated by Government Decision and by Ministerial Order, functions of individuals being defined by the Minister through the approval of the Status of the Staff, which is not made public (see also report on Activity 2.1. on the organization and functions of the MECR).

Additionally, the dimension of transparency that relates to the traceability of the logic, motivations and consistency with the law of decisions, does not appear adequately understood and implemented – this remark applying specifically to the legal opinions expressed by the NCHM.



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The identification of individual responsibility in the administrative procedure of the tasked civil servant is not envisaged, a factor that could grant more transparency and more conscience among civil servants in the sector of their individual responsibility (and liability) in fulfilling the mission and mandate of the administration they work for. For instance, the opinion of the NCHM are taken collegially on the base of a vote, however there is no requirement for individual explicit expression in written form of the motivations on which the position of each voter is based. As a matter of fact, in the light of the provisions of the new administrative code, it would seem that the expression of the opinion of the NCHM will have to be substantially reformed, in order to comply with the requirements of the Code on individual acts.

Responsibilities and accountability of Public Authorities are strictly connected to the transparency and to the citizen participation in the process. In each Ministry, Agency or local authority, single tasks and consequently evaluations on civil servants are carried out by the head of units. Yearly tasks are developed both for a whole unit and for the individual members of the Public Administration unit.

A number of Moldavian legislative sources guarantee the effective participation of stakeholders, citizens, groups of interest, local authority and other subject which have an interest on the issue.

The “Law no.982–XIV of 11 May 2000” sets the legal framework that facilitates the information, consultation and participation of the population, with the goal to set up the general regulatory framework on the access to formal information.

Law no.239-XVI of 13 November 2008 sets out the applicable norms to ensure transparency in the decision-making process in central and local public administration authorities, other public authorities and regulates their relationships with individuals, legally established entities and other stakeholders interested to participate in the decision-making process.

Article 6 establishes what citizens, law-based associations, other stakeholders are entitled to. Article 7 regulates the obligations of public authorities, such as ensure multilateral information on decision-making within public authorities; ensure the direct participation of the citizens, of the associations formed in accordance with the law, of other stakeholders in the decision-making process; streamline decision-making in public authorities; increase the accountability of public authorities towards citizens and society; ensure the transparency of the activity of the public authorities.

Furthermore, also the Government Decision n. 96/2010 contains rules about the information process under the chapter III, as follow: “Information on the decision-making process shall be made by means of general information for a broadly indefinite public and by targeted information for defined stakeholders or other interested parties who have requested writing information. General information is mandatory in the case of the announcement of the initiation of the draft decision and the organization of all the public consultations, and the targeted one may be applied in addition to the general information, at the discretion of the public authority.”



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The law set rules about how to present a request to a public authority, about how the Public Administration shall provide the information to the stakeholders interested and on the kind of information to produce upon request.

The right to be informed and to participate to the public decision and procedure has been regulated by Government Decision, n. 471/2011 “to approve the National Action Plan for Implementation in The Republic of Moldova Convention on Access to Information, Justice and public participation in environmental decision-making”, based on the Aarhus Convention entered into force in the 2001. The Aarhus Convention also reflects the public's right to access environmental information. Free access to environmental information as information of public interest. Public interest information is considered to be those regarding the activity or activity resulting from the activities of a public authority or public institution, irrespective/regardless of its support or its form or mode of expression. The Aarhus Convention is not just an environmental agreement, it means the responsibility of the Government, transparency and receptivity.

During the interviews, it has been confirmed that citizens can request information to the Public Administration related to a public procedure. The Public Administration must answer and provide the information requested applying the schedule foreseen by the regulation. Their Code of Conduct confirms that civil servant shall inform the citizens about issues of public interest in an active, fair, and timely manner; guarantee free access to information; observe the timeframes for delivering the information set by the legislation.

ACCOUNTABILITY OF PUBLIC ADMINISTRATION STAFF

The evaluation of performance of civil servant is ruled by the Law on Public Function and Statute of Civil Servant issued in 2008. In detail on Section 2. Evaluation of civil servant's professional performances are regulated the procedure of evaluation of the professional performances of the civil servants, art. 34, of the professional performances of the senior civil servants, art. 35 and of the professional performances of the management and executive civil servants, art. 36.

With the Government Decision n. 94 of 01.02.2013 rules related to the collective evaluation of the civil servant and single evaluation form inside the administration rule were set out.

However, the whole system of evaluation that was established in 2013 has been abrogated in 2017 by Government Decision n. 145 of 15.3.2017, by which a different system is established, linking productivity with rewards.

The volume of allowances used annually for the payment of the monthly labour intensity increase is 15% of the annual salary fund, calculated in relation to the salaries of the function specified in the public authority classification scheme. The monthly labour intensity increase is determined by the head of the subdivision / public authority differentiated for each civil servant, within the limits of the amount calculated according to the provisions, depending on their contribution to the achievement of the results. The amount of the monthly



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increase for the intensity of the work cannot exceed 30% of his / her salary. To the heads of the public authorities subordinated to the central public authorities, as well as to the managers of the structural subdivisions, the increase is determined by the leader who directly coordinates their activity or, as the case may be, by the head of the public authority. The assessment of the civil servant's contribution to the results will be based on the following criteria:

- knowledge and experience;
- complexity and diversity of activities;
- assuming responsibility;
- initiative and creativity;
- the volume, quality and efficiency of the performed tasks.

The definition of the criteria for assessing the public servant's contribution, their weight and the methodology for determining the monthly increase for labor intensity are also established.

Internal disciplinary commission are instituted in order to evaluate the behavior of the civil servant responsibility and eventually allow an external Court to proceed against him /her at administrative or penal level. - *Law 158 of 2008 related to the Public Administration and Government Decision on Regulation of Disciplinary Commission n. 519/22.06.2010.*

The responsibility of the civil servants in his institutional activity and his behavior has been also regulated the Law n. 793 of 10.02.2000 related to the administrative litigation, which set out that Citizens can react to a damage caused by the Public Administration and can also act directly against the civil servant.

Article 20 "Introducing the civil servant in the procedure" and following articles rules this particular aspect: *"The petition may also be filed against the civil servant of the respondent public authority who has drafted the disputed administrative act or refused to resolve the claim if claim was entitled to compensation for damages. If the action is admissible, the civil servant may be required to pay joint and several damages to the public authority concerned. The civil servant thus brought to justice may summon the hierarchical superior who has ordered him to draw up the administrative act or to refuse to settle the application, being brought in the proceedings as a third person."*

As a consequence of the infringement of his/her work obligations and norms of conduct, as well as for material damage, contraventions and offences committed during work or in connection with the fulfillment of job-related duties, the law on Public Function and Statute of Civil Servant foreseen at section VII, from the article 56 to article 60, the civil servant liability, with the related disciplinary sanctions and its application.

CONFLICT OF INTEREST

The issue of the conflict of interest is relevant in all public administration and certainly in a sector such as protection of cultural heritage, taking into consideration the problems suffered with regard to illegal activity



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on cultural heritage, including demolitions, and not sufficiently developed decision – making process and the ambiguities emerging from the current legislation on this topic.

The Law on Public Function and Statute of Civil Servant set some rules with supposedly have remarkable consequences on incompatibility, conflict of interest, the evaluation of performance and the liability. Annex 1 of the law lists all administrations to which the provisions are applied and include the following:

- a) Parliament's Secretariat
- b) Apparatus of the President of the Republic of Moldova
- c) State Chancellery
- d) Secretariat of the Superior Council of Magistracy
- e) Secretariat of the Constitutional Court
- f) Secretariat of the Supreme Court of Justice
- g) Office of the People's Advocate
- h) Unit and units of the Court of Accounts
- i) National Anticorruption Center
- j) Central Electoral Commission Apparatus
- k) Apparatus of the National Council for Accreditation and Attestation
- l) National Integrity Authority Apparatus
- m) Council Apparatus for preventing and eliminating discrimination and ensuring equality
- n) Apparatus of other public authorities set up by the Parliament, the President of the Republic of Moldova or the Government
- o) The central public administration authorities and other administrative authorities (central offices, decentralized public services, other public administration bodies subordinated to the specialized central public administration authorities)*
- p) Apparatus of the local public administration authorities, of the autonomous territorial unit with special status and their decentralized services
- q) The secretariats of the courts, the apparatus, the prosecutor's office, the bodies of the diplomatic service, the customs, the defense organs, the national security and the public order (persons holding public positions in the listed public authorities whose activity is not regulated by special legislative acts)



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The wording of the point o) above is not clearly cross- referenced with the relevant law n. 98 on the law on specialized public administration sets; however, art. 14 of this law on Administrative authorities subordinated to ministries establishes that:

(1) In order to ensure the implementation of state policy in certain sub-domains or spheres in the fields of activity entrusted to a ministry, *subordinate to it may be administrative authorities with the form of legal organization of **agencies, state services and state inspectorates.***

(2) *The administrative authorities subordinated to the ministries are **legal entities of public law.***

Paragraph 2 clearly states that subordinated authorities of ministries – as is the case for NAA, AIRM and NICH – are entities of public law, thereby subjects to the provisions of law for these entities.

(3) The Agency is a separate organizational structure in the administrative system of a ministry, which is constituted for the exercise of the functions of management of certain subdomains or spheres in the fields of activity of the ministry.

[...]

(7) The administrative authorities subordinated to the ministries shall be constituted, reorganized and dissolved by the Government, at the proposal of the minister. The provisions of art. 10 par. (2) to (13) also apply to administrative authorities subordinated to ministries and other central administrative authorities.

The Last paragraph is interesting in relation to the possibilities offered to reform the ICH to turn it into NICH with revised functions and staff profile and units.

The Electoral code approved in 2015 states at Article 13. Restrictions. paragraph (3) that “Citizens of the Republic of Moldova who, due their positions, are not entitled to be members of a political party or other socio-political organisations, as well as high-ranking officials whose appointment or election is regulated by the Constitution of Republic of Moldova and /or organic laws, shall suspend their position in office upon their registration as candidates. These provisions concern: a) deputy prime-ministers, ministers and deputy ministers, ex-officio members of the Government; b) heads of central public authority organs; c) chairpersons and deputy chairpersons of rayons; d) mayors and vice-mayors; e) praetors and vice praetors.

The provision above limits significantly the scope of application of incompatibility between elective role and administrative function and should be expanded, for instance by envisaging suspension at the moment of the election for all other political roles. In this regard it is noted that the combined provisions of art. 79 and art. 187 of the Moldovan Code of labour envisages the possibility of suspension of contract for d) occupying an elective office in public authorities, trade unions or employers' bodies –the law provides for this suspension to be at the employee's initiative, because the Code of Labour regulates all type of employment and not specifically those of civil servants or for employees in public administration's subordinated bodies: for them the provision of the Code of Labour or the relevant legislation regulating the compatibilities and incompatibilities should be different and the suspension should be ex- officio. The Code of Labour at art. 187 establishes that the employees has the right to be reinstated in the position or a similar one at the end of his/ her mandate.





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On the other hand, the law on conflict of interest n. 16 of 15.02.2008 rules this sector with a main focus on the civil servants, and, furthermore includes articles (from n.19) on the incompatibility and on liability.

Article 12 of this law identifies three different situations of conflict of interest:

- a) conflict of potential interests;
- b) conflict of real interests;
- c) conflict of interests consumed.

2) The potential conflict of interest is the situation in which the personal interests of the subject of the declaration could lead to the occurrence of a real conflict of interest and which are declared under Art. 4-7. The senior hierarchical advisor advises on avoiding a real conflict as a potential one.

(3) The conflict of interest occurs if the subject of the declaration is called upon to resolve a request / request, to issue an administrative act, to conclude a legal act, to make a decision or to participate directly or through a third party in making a decision in which he or she has personal interests or concerns persons close to him, the natural and legal persons with whom he has patrimonial relations and which influence or may influence the impartial and objective exercise of the mandate, public function or public dignity.

(4) In the event of a real conflict of interest, the subject of the declaration shall be bound:

- a) to inform the hierarchical superior immediately, but not later than 3 days from the date of the finding, about the conflict of interests in which he / she is located;
- b) not to resolve the request / request, not to issue the administrative act, not to conclude, directly or through a third party, the legal act, not to take or not to participate in the decision making in the exercise of his mandate, public office or dignity until the conflict of interest is resolved.

(5) The information on the occurrence of a real conflict of interest shall be made up to the resolution of the request / request, the issuance of the administrative act, the conclusion, directly or through a third person, of the legal act, the participation in the decision making or the decision making a written statement that should contain information about the nature of the conflict of interest and how it influences or may influence the impartial and objective fulfillment of the mandate, public function or public dignity.

6) The Statement of Conflict of Interests is recorded in the Register of Conflicts of Interests Declarations, kept according to Annex no. 4 by the person designated by the head of the public organization.

The penal code and the Law n. 190 of 26.07.2007 on the prevention and combating of money laundering and the financing of terrorism among the other allow a proper response of the community.

Conflict of interest has been mainly interpreted in relation to personal or family ties rather than in relation to possible associational or political connections and ties. A reappraisal of the environmental conditions in which conflict of interest and corruption can arise may be beneficial to



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the whole system and certainly to the effectiveness of cultural heritage protection and the implementation of the spirit and word of the legal framework.

PRINCIPLES AND RULE FOR PUBLIC ADMINISTRATIONS IN EU COUNTRIES

EU main regulatory base

The base of the application of the administrative procedure is the European Union and the Member States is “The Charter of Fundamental Rights of the European Union”, which enshrines fundamental principles that have an impact also on aspects related to conflict of interest and incompatibility, e.g. the right of freedom of thought and conscience, fair and just working conditions, the right to good administration, which implies impartiality, fairness, timeliness, being heard, being informed, and, more importantly, to obtain motivations for administrative decisions.

Key articles of the Lisbon Treaty concerning the administrative procedure include the following:

Article 41 Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. 26.10.2012 Official Journal of the European Union C 326/403 EN

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42 Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

It is clear that the simple application of the two above mentioned articles would grant the potential citizens participation to the administrative procedure and, at the same time, the identification of the individual responsibility among the public administration, which permit the achievement of a higher level of procedure transparency.



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More recently, a step forward has been done based on the ReNEUAL.

The Research Network on EU Administrative (ReNEUAL) is a collaboration of mostly, but not exclusively, academic lawyers from various European countries with the objective of developing an understanding of EU public law as a field which ensures that the constitutional values of the Union are present and complied with in the exercise of public authority. This objective resulted in a concrete project, the so called ReNEUAL Model Rules on EU Administrative Procedure, initially elaborated since 2009 and published on-line in September 2014.

So in 2014, a real Code of the administrative procedure for EU countries was made available, which is not limited to codifying the general principles and institutions in force in the national legal systems, but reorganizes them in an organic way to make them applicable to the complexity of the institutional system of the Union, according to the so-called "innovative codification" 572.

The Code consists of a Preamble and six books:

- a) The Preamble contains a summary of the general principles of administrative activity;
- b) Book I regulates the scope of application of the Model rules, the definitions of the terms used, the relations of the rules with the rules of the sector and with those inside the States;
- c) Book II concerns the rulemaking activity of the European administration (Article 290 and 291 TFEU);
- d) Book III deals with administrative procedures as traditionally understood (adjudication);
- e) Book IV relates to contracts;
- f) Books V and VI concern the procedures of composite administration and regulate the exchange of information between public administrations.

There are some details particularly relevant for the purpose of this work.

The Article 4 of Book II acquires particular importance in the light of the objectives of the Code, as it is dedicated to the institutions of consultation and participation. The rule intends to allow the public concerned to contribute at a stage where the content of the draft of the act is sufficiently determined, to the point that it allows the formulation of concrete comments and suggestions, so that the latter can be incorporated into the same draft of the act itself. For this purpose, the authority responsible for drafting the deed shall publish the draft of the act and the explanatory report on a centralized website of the European Union, with a view to facilitating consultation procedures and allowing the participation of more subjects, bearers of the different existing interests, to the activity of regulation. In addition to addressing an open invitation to the public, the Union authority may also address certain parties with an interest in the matter to solicit their contribution to the regulatory activity. Finally, based on art. 5 of Book II, following the consultation, the European authority must draw up a motivated report (reasoned report), which must include the preparatory acts, explain how the comments presented during the consultation have been taken into account and sufficiently motivated to allow effective judicial and administrative control.

The Book 3 contains principles related to the identification of the individual responsibility.



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Once the administrative procedure has been initiated, the public authority will appoint an official responsible for the management of the same, whose name and references must be communicated to the parties simultaneously with the opening of the procedure. This is an innovative provision imported from the Italian law on the administrative procedure: the rationale of the rule is to increase the transparency of proceedings and avoid dilution of responsibilities that could take place when there is no formal person indicated as responsible, promoting a more satisfactory procedure and greater protection of procedural rights.

Those provision should be applied not only to the EU Institution but adopted gradually by every single member state.

Italy

Italian regulations in this field have their background in the text of the Constitution: articles 38 and 113 set out the basis for the accountability of the Public Administration and at the same time for the protection of the citizens.

Crucial for the improvement of the accountability and effectiveness of public administration activity and of their performance has been the Law n. n. 241 of 7 August 1990 on New rules on the administrative procedure. This law has reformed completely the sector by integrating key principles for good public administration in the national legislation.

The law has extended to all administrative act the obligation of motivating it.

In the Italian administrative law, the motivation consists in enunciating the conditions and reasons on which a given provision is based. More specifically, by presuming the permissive or constitutive facts whose occurrence permits the adoption of a given act, and for reasons the interests involved in the procedure, based on its object, is distinguished between a broader motivation, as a set of assumptions and reasons, and a reason in the strict sense, circumscribed to the exposition of the motives alone.

The motivation can also be divided, from the logical point of view into two parts: the exposition of the factual and legal circumstances, that is, of its presuppositions, also called 'justification', and the exposition of the reasons in the strict sense, is valid to say the logical-legal path that has presided over and led to a specific provision.

Operating mainly against the administrators, the administrative provision can not fail to account for its so-called assumptions, ie the permissive or constitutive facts assumed at the base of the adoption of a given act, under penalty of the possibility of a defect of the same premise, susceptible to determine its cancellation. Through the motivation, the administration justifies the legitimating factors the power exercised by adopting a specific provision.

Article. 3 of the law n. 241/1990 has accepted the request for the generalization of the obligation to state the reasons for the measures, dictating precise indications on the structure of the same, which must "indicate the conditions of fact and the legal reasons that determined the decision of the administration, in report on the findings of the preliminary investigation ', and excluding only the regulatory acts and those with a general content from the obligation. The co. 3 of the same article has also regulated the motivation for relationem, providing that, if the reasons for the decision result from



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another deed of the administration, referred to by the decision itself, together with the communication of the latter must be indicated and made available also the deed to which it refers. The omission of the justifying path and of the logic followed by the administration therefore determines the illegitimacy of the provision.

The provision of the mandatory nature of the statement produces significant effects with reference to judicial protection: pursuant to art. 3 of the aforementioned law, the lack of motivation, or the omitted indication of the reasons that led the authority to adopt the act, constitutes a defect of the provision that may lead to its annulment for violation of the law. Through the motivation, therefore, the administrative authority must explain the way in which it has carried out its function. With the consequent effect that the provision of the obligation to state reasons is structurally reconnected to the 'findings of the preliminary investigation', so that through the motivation the administrative authority will have to explain the way in which it performed its function.

The motivation must be clearly expressed through suitable expressions, and must be perceptible to the outside, to the subjects in whose sphere the provision is going to affect. Jurisprudence and prevailing doctrine have also underlined a sort of multifunctionality of the motivation, which would fulfill a function of private guarantee against the work of the public administration, but that should above all be recognized as a fundamental tool for the interpretation and control over the exercise administrative power, as well as for the judicial investigation of the consequent act. *The same European Community interpretation seems to move on this path*, according to which the obligation of motivation would respond to the dual need to allow the interested parties to know the justifications of the measure adopted, and thus to defend their rights, and on the other, to clarify on which basis the the administration has taken its decision and thereby make it possible for the judge to exercise his union on the legitimacy of the measure itself.

A key figure for the entire system is the introduction of the unique responsible for the procedure.

The Article 5. "Responsible for the procedure" aim at identifying the individual civil servant who will be responsible for the entire process. This is a key element in the frame of setting clear accountability of the public administration and at the same time a clear reference for the citizen or for any stakeholder with an interest in the procedure itself.

The person responsible for the procedure is appointed by the manager of the office and is tasked first with the preliminary investigation and any other fulfillment concerning the individual proceedings and, where appropriate, the adoption of the final provision.

In art. 6 the key tasks of the person responsible for the procedure are set out.

1. The person responsible for the procedure:

- a) evaluates, for the purposes of the investigators, the conditions of admissibility, the requisites of legitimation and the conditions that are relevant for the issue of the provision;
- b) ascertains the facts of the office, arranging for the necessary deeds to be carried out, and adopts all measures for the proper and prompt execution of the investigation. In particular, it may request the issuance of



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declarations and the correction of erroneous or incomplete declarations or instances and may carry out technical inspections and inspections and order documentary performances;

c) proposes the call or, having competence, indicates the service conferences referred to in Article 14;

d) takes care of communications, publications and notifications required by laws and regulations;

e) adopts, where it has the power, the final provision, or transmits the documents to the competent body for adoption. The competent body for the adoption of the final provision, if different from the person in charge of the proceeding, can not deviate from the results of the investigation conducted by the person in charge of the proceeding if not indicating the justification in the final decision.

The article 9. (Intervention in the proceeding) support the right of the citizens on the protection of their interest among the public procedure, underlining once again the role of reference play by the “responsible of the procedure”. Article 10 regulates the Rights of the participants in the proceeding. Each subject has the right to accede to the single procedure act and to present documents, which the administration is obliged to assess where they are relevant to the subject matter of the process.

In the Italian Digital Administration Code (Codice per l’Amministrazione Digitale) are identified the instruments that could help and realize a smoother communication between the public administration and the public interested in the procedure subject.

The Italian legislative frame envisages five different responsibilities among the Public Administration d.lgs. n.165 del 30 march 2001.

- Civil (if it causes damage to third parties, insiders or outsiders to the administration, or to the same public administration),
- Criminal (if there is a crime),
- Administrative-accounting (if it causes a tax loss to the public administration),
- Disciplinary (if mandatory violation foreseen by the behavioral code)
- Managerial (for the manager who do not reach the results from the political summit or deviate from the directives of the political organ).

Public Administration could be responsible for the civil servant behavior, but only if he act in the frame of its institutional tasks.

This is common to other EU countries. Also in other jurisdictions, such as the French one, the public administration cannot be called upon to reply to “faute personnelle” of its employees, but only to “faute de service”.

Other Member States

Other EU public administration system are focusing the reform efforts in order to stress and improve the accountability of the PA and its members together with a wider and easier participation of the citizens to the PA process.



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Republic of Ireland. Legislative reform could help put in place a framework enabling clearer personal accountability for the delivery of specific governmental objectives and priorities delegated or assigned to the administrative level ... The experience from other jurisdictions highlights the benefit of focusing on a limited number of key deliverables which are afforded a particular priority by political leadership as well as the importance of regular engagement on performance and crucially for that process to be well-informed. These would be published and reviewed periodically (Government Reform Unit, 2014: 45).

The Netherlands Code for Good Public Governance is focus on the following aspects:

1. Openness and integrity of the public executive bodies. Openness means in any case that the executive body is open about procedures and decisions. It also makes relevant information accessible. Openness demands a receptive attitude, in other words that the executive body must be receptive to concerns raised by the public/stakeholders, and makes clear how it responds to them.
2. Participation. The executive body knows the public's concerns and interests, and makes clear how it is responding. Participation means involving the citizen and important parties in creating or adjusting policy.
3. Appropriate contact with the public. The executive body ensures that it and the rest of the organisation act in an appropriate manner in their contacts with the public.
4. Effectiveness and efficiency. The executive body announces the objectives of the organisation and takes the decisions and measures necessary to achieve those objectives. The executive body ensures that the set objectives are achieved (and where necessary adjusted). It shoulders the responsibility assigned to it and works effectively with other government organisations.
5. Legitimacy. The executive body takes the decisions and measures that it is empowered to take and that are in accordance with the applicable legislation and regulations.
6. Capacity for learning and self-improvement. The executive body improves its performance and that of the organisation, and structures the organisation in a way that ensures this.
7. Accountability. The executive body is prepared to render an account of itself to stakeholders, regularly and willingly. It is essential for executive bodies to be accountable if our democratic society is to function. Bearing responsibility demands that one be accountable. In order to make democratic control possible, the executive body must be ready and willing to account for how it bears and interprets its responsibilities.

POSSIBLE IMPROVEMENT OF THE SECTOR FOR AN ENHANCED EFFECTIVENESS IN THE TECHNICAL-ADMINISTRATIVE PROCEDURES CONCERNING PROTECTION OF CULTURAL HERITAGE IN REPUBLIC OF MOLDOVA

The general Public Administration Moldavian system seems so far, to have development legal and practical instruments allowing to share information and to support transparency the decision-making process with the public. This holds true particularly in the context of the legislative procedure.



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On the ground of the analysis, the participation and the possibility to participate in the administrative procedure appear more advance in some fields (the territorial planning) but less developed in other administrative intervention fully managed by public institutions.

Furthermore, it seems that internal mechanism and administrations tools to grant the evaluation and eventually assess the responsibility of the civil servants are effective.

Among the administrative procedure, the public administration is still considered collectively responsible but without a clear indication of the individual responsibility. This prevent the citizens and interested parties to identify the civil servant appointed or in charge of the procedure.

The publication of the procedure motivation, integrated part of the transparency frame, is not yet part of the regular procedure but with the adoption of the Administrative Code which is expected to enter into force by April 2019, it will be soon reality and all administrations, including the one dealing with protection of cultural heritage should adapt its set of procedures. In particular there will be the necessity to adapt some procedures to the new principles, criteria and provisions set out in the Administrative Code, to revise the structure of the motivations in administrative acts, e.g. approval of projects, legal opinions, archaeological expertises, etc.

However, the Administrative Code does not identify a responsible for the procedures (sets of procedures or individual ones) but only a person responsible for the external contacts. Therefore, despite a as-of-august-2018 rather adequately regulated framework, a clearer definition of the civil servant accountability is advisable. The clear identification and appointment of a public officer in charge of the administrative procedure would serve the purpose.



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COMPARATIVE REVIEW OF LEGISLATION ON CULTURAL HERITAGE IN EU COUNTRIES



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AIM OF THE COMPARISON

The **legislation** in use in some European countries on the protection of tangible cultural heritage is compared in this paragraph, in order to highlight similarities and differences in their approach, provisions, level of details of these provisions.

The comparative analysis of the laws adopted by Italy, France, Germany and Spain, which, for the purpose of this document, are considered to bear the most significant experiences in heritage protection, is first conducted by providing a general overview and comparison of the structure of the laws and subsequently by taking as a reference the following categories of survey:

- a) the notion of cultural heritage and its extension;
- b) actions and obligations in which interventions on cultural heritage are concretised from time to time;
- c) Financial intervention, facilitations and granting of public funds.

The examples are drawn from countries with a stronger centralised administrative organisation, like France or Italy, from one country – Germany – with a federal organisation, in which however the role of the Regional State is prominent in implementing the protection of cultural heritage and finally from Spain, in which the system for heritage protection combines elements of centralised – and federal- like systems.

ITALY - CODE OF CULTURAL HERITAGE AND LANDSCAPE ⁵⁰

The Italian Code of Cultural Heritage and Landscape (hereinafter Code) is an organic text that has normative value for itself, without reference to previous laws and is intended to regulate the totality of a vast field of legal activity.

The Code came into force on May 1, 2004: its most significant change compared to previous legislation is represented by the introduction of a general part, which includes nine articles, which set out the principles and the rationale for the cultural heritage protection in Italy, and which are therefore the key to reading all the rules contained in the following sections.

The first provisions of the Code specify the competences of cultural heritage to the articles of the Constitution, outlining the scope of state and regional competences in the matter of protection and enhancement and to community legislation and international agreements.

In short, the regulatory body consists of 184 articles and 1 annex (A), structured in five parts:

⁵⁰From: A. Ferretti, *Diritto dei Beni Culturali e del Paesaggio*, Edizioni Giuridiche Simone, Napoli, 2009.



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- Part one: General provisions (articles 1-9). It defines, as mentioned, the cultural heritage and draws the relationship between State and Regions on the competence in matters of protection and enhancement;
- Part two: Cultural heritage (articles 10-30). Identify cultural heritage by governing its protection (Title I), use and valorisation (Title II); a last title is dedicated to the transitional and final reference standards;
- Part Three: Landscape Heritage (Articles 131-159). It is dedicated to the landscape with a single title referred to protection and enhancement;
- Part Four: Sanctions (Articles 160-181). It regulates administrative and penal sanctions with reference to the second and third parts of the Code;
- Part Five: Transitional provisions, repeal and entry into force (Articles -182-184);

Annex A refers to a list of categories of goods and to the values applicable with reference to trade (Article 63, paragraph 3) and to the return of cultural assets unlawfully removed from the territory of an EU Member State.

As highlighted in the previous paragraphs, the first part of the Code introduces the framework of the new protection and enhancement of cultural heritage, identified in art. 3 in correlation with art. 6 dedicated to the enhancement, for the purpose of public use. In this assumption the state has the exclusive ownership of the protection of cultural heritage and with the art. 5 provides for the cooperation of the Regions and other local authorities in the field of cultural heritage protection with the Ministry for cultural heritage and activities and not generally with the State.

In the second part the cultural heritage is regulated, while in the third the landscape features that merge into the only category of cultural heritage.

FRANCE - CODE DU PATRIMOINE

In the very same year in which Italy adopted its Code, in France the *Code du Patrimoine* was issued by decree dated February 20, 2004. It is an instrument that is much closer to a consolidated text than to a real code, in that it is aimed at rationalizing the legislation concerning cultural heritage, by which the provisions already provided for by previous laws have been substantially confirmed.

The French Code structure includes nearly four hundred articles distributed over five levels: book, title, head, section, subsection. It contains both the legislative and regulatory parts.

In particular, the French code of cultural heritage is structured into seven books: general provisions ("communes à l'ensemble du patrimoine culturel"); archives; libraries; museums; archaeology; historical monuments, sites (landscape) and protected areas; provisions relating to overseas territories.

Thus, the text is divided into categories of good or institution (archives, libraries, museums, archeology, historical monuments): after the art. L1, which provides the notion of "patrimoine", and book I on general provisions, each book contains all the rules relating to a given type of properties or to a given institution.



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GERMANY – CULTURAL HERITAGE PROTECTION IN THE RE-UNIFIED GERMANY ⁵¹

The Federal Republic of Germany is characterized by a decentralized system in which the Land have the legislative powers in the field of cultural heritage.

The fundamental German law on the matter (Grundgesetz, GG), elaborated by the Constitutional Convention and published in 1949, contains only the norms that guarantee freedom of expression, therefore it is the Constitution of each State (Land) that dictates the discipline of cultural heritage, defining the criteria of protection.

The numerous and extensive reforms experienced over the years by the German administrative structures and by its legislative apparatus have seen a sharp reduction in personnel and a clear shift of the competences of the federal offices to the local ones, this has led several States to the elimination of intermediate level. The result is that today the municipalities are the main actors of protection, with all the problems that this may involve, linked to a not always adequate qualification of employees and a freedom limited by powers and local balances.

Until a few years ago one of the major differences in the administration of protection was the heritage property listing method. Today all the States, with the exception of the North Rhine-Vestafalia, use the declarative system, which consists in a simple communication to the owner of the inclusion of the property in the list of monuments or the book of monuments. This insertion takes legislative form only following a subsequent administrative act, issued by the competent offices for the authorization or denial of work. Since the lists have only an informative and orientation function, the description of the asset can be limited to a short text that allows its univocal identification.

SPAIN – LAW N. 16/1985 ON HISTORIC HERITAGE OF SPAIN (PATRIMONIO HISTÓRICO ESPAÑOL)

Article. 46 of the Spanish Constitution of 1978 expressly states that "the public authorities will guarantee the preservation and promote the recognition of the historical, cultural and artistic heritage of the peoples of Spain and of the assets that integrate it, whatever the legal regime and its ownership. The Penal Law will sanction the attack against this patrimony. "And finds a concrete application in the law on the Spanish historical patrimony n. 16 of 25 June 1985 (Ley del Patrimonio Historico Espanol), which constitutes a real code of cultural heritage.

The law consists of 79 articles divided into 9 titles that contain general provisions and specific provisions concerning declarations of cultural interest of the Real Estate, Movable Goods and the protection rules of such Goods (Titles I-IV). Titles V and VI refer in particular to the archaeological and ethnographic heritage. The title VII to the documental and bibliographic patrimony and in specific chapters are treated the libraries,

⁵¹From: B. Accettura, *I beni culturali tra ordinamento europeo e ordinamenti nazionali*, Aedon 2/2003 e R. D. Cogliandro (a cura di), *I Beni di interesse culturale*, Rogiosi Editore, 2014.



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the archives and the museums. The last titles define the promotion measures and the part related to violations and sanctions.

The Spanish Code has a coordinating function between the central State and the Autonomous Communities. After the entry into force of the law and with the subsequent ruling by the Spanish Constitutional Court (1991), there was a gradual reduction of state power in favour of a process of decentralization (Royal Decree of 21 January 1994, n 64) and to a distribution of responsibilities between the Autonomous States and the Autonomous Communities: "the original state competence in the matter of protection against illicit exportation and dispossession ended up being limited to certain categories of goods and to be transformed for the other categories in a subsidiary type action, while the Community, as well as enjoying broad autonomy in terms of protection of the historical heritage and as well as being responsible for the qualification of the same cultural goods, have ended up with the manage the majority of cultural institutions, including state ownership ".

This process, therefore, allowed the construction of a model that is defined as autonomous protection and enhancement, which sees an active participation by the Autonomous Communities, local administrations. As far as the State is concerned, in matters of historical and artistic heritage, it enjoys exclusive competence (Article 149 of the Spanish Constitution) in relation to the protection against illicit exportation and the spoliation of museums, libraries and archives owned by the State while, with respect to the general task of protecting and managing the cultural, historical and monumental heritage of Spain, the exclusivity of its competence is limited to the following categories of goods: goods of public services managed by the administration of the State; assets that are part of the national heritage.

In the remaining cases, that is not expressed directly by the law, the State can only intervene in a subsidiary way to exercise the protection and management of assets, the defence against loss or dispossession.



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Table 1 – Comparison between the four European laws

<p>Act on the protection and care of monuments n the Federal State of Rhineland-Palatinate (Monument Protection Act, DSchG)</p> <p>adopted on 23 March 1978</p> <p><i>Latest available version of the full version, dated 16 April 2012</i></p> <p>Contents</p> <p>Section One Principles Article 1 The duty of monument protection and monument conservation Article 2 The obligation to maintain and conserve</p> <p>Section Two Cultural monuments Subsection One General introduction Article 3 The term 'cultural monument' Article 4 Immovable and movable cultural monuments, protection of the associated area Article 5 Monument zones Article 6 Information Article 7 Right of access to properties</p> <p>Subsection Two Protected cultural monuments Article 8 Protected cultural monuments, placement under protection Article 9 Public display Article 10 List of monuments Article 11 Temporary protection Article 12 Duty of disclosure and notification requirements</p>	<p>CODE DU PATRIMONIE decree 20 February 2004</p> <p><i>Table des matières</i> Partie législative</p> <p>LIVRE Ier: DISPOSITIONS COMMUNES À L'ENSEMBLE DU PATRIMOINE CULTUREL TITRE Ier: PROTECTION DES BIENS CULTURELS Chapitre 1er : Régime de circulation des biens culturels. Chapitre 2 : Restitution des biens culturels Chapitre 3 : Prêts et dépôts. Chapitre 4 : Dispositions pénales. Chapitre 5 : Commission scientifique nationale des collections Chapitre 6 : Fonds régionaux d'art contemporain TITRE II : ACQUISITION DE BIENS CULTURELS Chapitre 1er : Acquisition de biens culturels présentant le caractère de trésor national et faisant l'objet d'un refus de certificat d'exportation Chapitre 2 : Dispositions fiscales Chapitre 3 : Préemption des oeuvres d'art. Chapitre 3 : Préemption des biens culturels Chapitre 4 : Annulation de l'acquisition d'un bien culturel en raison de son origine illicite Chapitre 5 : Transfert de propriété de biens culturels entre personnes publiques TITRE III : DÉPÔT LÉGAL</p>	<p>CODE OF CULTURAL HERITAGE AND LANDSCAPE, IN ACCORDANCE WITH ARTICLE 10 OF THE LAW NO. 137 OF JULY 6, 2002 (LEGISLATIVE DECREE NO. 42 OF JANUARY 22, 2004, AS LAST AMENDED BY LEGISLATIVE DECREE NO. 63 OF 2008)</p> <p>FIRST PART – General dispositions Article 1 – Principles Article 2 – Cultural Heritage Article 3 – Protection of the Cultural Heritage Article 4 – Functions of the State in the Protection of the Cultural Heritage Article 5 – Co-operation of the Regions and of Other Territorial Government Bodies in the Protection of the Cultural Heritage Article 6 – Enhancement of the Cultural Heritage Article 7 – Functions and Tasks Relating to the Enhancement of the Cultural Heritage Article 8 – Regions and Provinces with Special Autonomy Article 9 – Cultural Property of Religious Interest</p> <p>SECOND PART – Cultural Property TITLE I – Protection Chapter <u>Chapter I – Object of Protection</u> Article 10 – Cultural Property</p>	<p>Ley 16/1985, de 25 de junio, del Patrimonio Histórico Español. Jefatura del Estado</p> <p>Preámbulo.</p> <p>TITULO PRELIMINAR. Disposiciones Generales. Artt. 1-8 TITULO I. De la declaración de Bienes de Interés Cultural. Artt. 9-13 TITULO II. De los bienes inmuebles Artt. 14 – 25 TITULO III. De los bienes muebles Artt. 26 - 34 TITULO IV. Sobre la protección de los bienes muebles e inmuebles Artt.35 - 39 TITULO V. Del Patrimonio Arqueológico Artt. 40 - 45 TITULO VI. Del Patrimonio Etnográfico.... Artt. 46 - 47 TITULO VII. Del Patrimonio Documental y Bibliográfico y de los Archivos, Bibliotecas y Museos... CAPITULO I. Del Patrimonio Documental y Bibliográfico. Artt. 48 - 58 CAPITULO II. De los Archivos, Bibliotecas y Museos Artt. 59 - 66 TITULO VIII. De las medidas de fomento Artt. 67 - 74</p>
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<p>Article 13 Approval of changes, notification of repairs</p> <p>Article 13a Approval procedure</p> <p>Article 14 Restoration and preservation, substitute performance</p> <p>Article 15 Free access to cultural monuments</p> <p>Section Three</p> <p>Finds</p> <p>Article 16 The term 'finds'</p> <p>Article 17 Notification</p> <p>Article 18 Preservation</p> <p>Article 19 Scientific analysis</p> <p>Article 20 Treasure trove</p> <p>Article 21 Approval of investigations, notification of works, reimbursement of costs</p> <p>Article 22 Protected excavation areas</p> <p>Section Four</p> <p>Special provisions for churches and religious communities</p> <p>Article 23</p> <p>Section Five</p> <p>Organisation</p> <p>Article 24 Monument protection authorities</p> <p>Article 25 State Conservation Office</p> <p>Article 25a Archival conservation</p> <p>Article 26 Monuments Advisory Board</p> <p>Article 27 Voluntary monument conservationists</p> <p>Article 28 Recognised monument conservation organisations</p> <p>Section Six</p> <p>Financial aid from Rhineland-Palatinate</p> <p>Article 29 Principles of funding</p> <p>Section Seven</p> <p>Expropriation, measures triggering compensation, right of first refusal</p> <p>Article 30 Expropriation</p> <p>Article 31 Measures requiring compensation</p> <p>Article 32 Right of first refusal</p> <p>Section Eight</p> <p>Administrative Offences</p>	<p>Chapitre 1er : Objectifs et champ d'application du dépôt légal</p> <p>Chapitre 2 : Modalités et organisation du dépôt légal</p> <p>Chapitre 3 : Dispositions pénales</p> <p>TITRE IV : INSTITUTIONS RELATIVES AU PATRIMOINE CULTUREL</p> <p>Chapitre 1er : Centre des monuments nationaux</p> <p>Chapitre 2 : Cité de l'architecture et du patrimoine.</p> <p>Chapitre 3 : Fondation du patrimoine</p> <p>LIVRE II : ARCHIVES</p> <p>TITRE 1er : RÉGIME GÉNÉRAL DES ARCHIVES</p> <p>Chapitre 1er : Dispositions générales.</p> <p>Chapitre 2 : Collecte, conservation et protection</p> <p>Chapitre 3 : Régime de communication</p> <p>Chapitre 4 : Dispositions pénales</p> <p>TITRE II : ARCHIVES AUDIOVISUELLES DE LA JUSTICE</p> <p>Chapitre 1er : Constitution.</p> <p>Chapitre 2 : Communication et reproduction.</p> <p>LIVRE III : BIBLIOTHÈQUES.</p> <p>TITRE III : BIBLIOTHÈQUES DÉPARTEMENTALES .</p> <p>LIVRE IV : MUSÉES</p> <p>TITRE 1er : DISPOSITIONS GÉNÉRALES. .</p> <p>TITRE II : MUSEES NATIONAUX</p> <p>TITRE III : HAUT CONSEIL DES MUSÉES DE FRANCE.</p> <p>TITRE IV : RÉGIME DES MUSÉES DE FRANCE</p> <p>Chapitre 1er : Définition et missions.</p> <p>Chapitre 2 : Appellation "musée de France"</p> <p>TITRE V : COLLECTIONS DES MUSÉES DE FRANCE</p> <p>Chapitre 1er : Statut des collections</p> <p>Chapitre 2 : Conservation et restauration.</p> <p>LIVRE V : ARCHÉOLOGIE</p> <p>TITRE 1er : DÉFINITION DU PATRIMOINE ARCHÉOLOGIQUE.</p> <p>TITRE II : ARCHÉOLOGIE PRÉVENTIVE</p> <p>Chapitre 1er : Définition. .</p>	<p>Article 11 – Properties Subject to Specific Protection Provisions</p> <p>Article 12 – Verification of Cultural Interest</p> <p>Article 13 – Declaration of Cultural Interest</p> <p>Article 14 – Declaration Procedure</p> <p>Article 15 – Notification of Declaration</p> <p>Article 16 – Administrative Appeal against Declaration</p> <p>Article 17 – Cataloguing</p> <p><u>Chapter II – Supervision and Inspection ...</u></p> <p>Article 18 – Supervision</p> <p>Article 19 – Inspection</p> <p><u>Chapter III – Protection and Conservation</u></p> <p><i>Section I - Protection Measures</i></p> <p>Article 20 – Forbidden Actions</p> <p>Article 21 – Actions subject to Authorisation</p> <p>Article 22 – Authorisation Procedure for Construction</p> <p>Article 23 – Simplified Building Permit Procedures</p> <p>Article 24 – Work on Public Property</p> <p>Article 25 – Conference of Services</p> <p>Article 26 – Assessment of Environmental Impact</p> <p>Article 27 – Emergency Situations</p> <p>Article 28 – Precautionary and Preventive measures</p> <p><i>Section II – Conservation Measures</i></p> <p>Article 29 – Conservation</p> <p>Article 30 – Conservational Obligations</p> <p>Article 31 – Voluntary Conservation Work</p> <p>Article 32 – Obligatory Conservation Work</p> <p>Article 33 – Procedures for the Execution of Obligatory Conservation Work</p> <p>Article 34 – Charges for Obligatory Conservation Work</p> <p>Article 35 – Financial Contribution by the Ministry</p> <p>Article 36 – Disbursement of Funding</p> <p>Article 37 – Interest Subsidies</p>	<p>TITULO IX. De las infracciones administrativas y sus sanciones....</p> <p>Artt. 75 - 79</p> <p>Disposiciones adicionales</p> <p>Disposiciones transitorias</p> <p>Disposiciones finales</p> <p>Disposiciones derogatorias</p>
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--omissis--
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--omissis--
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THE NOTION OF CULTURAL HERITAGE IN THE EXAMINED EUROPEAN LEGAL SYSTEMS

The protection regulations in use in some European countries are essentially based on two different models:

- 1) listing/ classification functional to the identification of assets to be protected, through inclusion in constituent lists, as in England, France and Spain;
- 2) recognition of some specific characters in the object, which therefore becomes protected de jure, as in Germany and Austria, with an approach similar to that of the Italian system.

Countries like Sweden and the Netherlands refer to the English classification. In reality, within this gross separation there are also substantial differences, ranging from the centralization on which the state action of France is incardinated, to the widespread distribution of voluntary organizations active in the United Kingdom.

The classification of protected buildings is present in countries that pragmatically subordinate the protection action to the planning of the use of those assets, as in the Spanish or French model, which distinguishes monuments in classified (classés) or simply inscribed (inscrit) in ministerial lists, or in the English one, which precedes the ancient buildings, in turn divided into three degrees deserving of decreasing protection.

In the following paragraphs we will highlight the criteria for identifying cultural heritage according to the regulations of the main European countries examined.

Italy - Code of Cultural Heritage

The notion of cultural heritage is relatively recent, going back to its first use on the occasion of the Hague Convention (May 14, 1954).

In Italian law this phrase replaces the previous one of "things of historical, artistic or archaeological interest", absorbing the archival and documentary heritage and library assets. The cultural good is no longer considered as a unique creation of the human spirit, or at least not only, but as a representation of an immaterial value, external to the thing and expressive of the historical and social context. As defined very clearly by T. Alibrandi and P.G. Ferri "The various human activities project an historical context of civilization with which the culture is identified, of which art is one of the expressions".

It is clear that the notion of the Cultural Good is a notion that suffers from what is considered culture by society and which relies on the role of witness of the age and the context in which it was formed. Historically in Italy the debate on cultural good has evolved starting from the second half of the 60s, when the Franceschini Commission introduced the definition of cultural good as a good that constitutes material testimony of civilization, regardless of the ownership of the good.

The Code, from this point of view, represents the synthesis of the previous legislation, adding to the historical, artistic and archaeological or ethno-anthropological interest of cultural heritage and to the nature of witnessing value of civilization, also to the necessary link to membership in terms of property.

Article. 2 in fact maintains the phrases 'immobile and mobile things' and is significant of the fact of wanting to highlight the relationship between the good and its materiality, while leaving open the way to further



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identification as cultural heritage of other objects characterized by materiality by introducing the definition of 'things identified by law or according to the law'.

Finally, the difference between "goods" and "things" in the Code is significant. The goods are those things for which the existence of an interest has been positively ascertained, while for what is meant the object in its materiality in consideration of the possible existence of a cultural interest.

With the Code, in fact, Italy has overcome the concept of a list by introducing for public goods the concept of verification of the cultural interest referred to in art. 12, with the intention of correcting situations of uncertainty that in practice had produced in many cases the ineffectiveness of forms of protection for cultural assets belonging to public subjects in the absence of the formal drafting of the lists provided by the previous legislation and never established.

With the art. 12 the idea of the lists (born in the early years of the last century) is definitively abandoned, given the generalized non-compliance with the obligation to provide for them, and replaced by the idea that things belonging to public (and private non-profit-making and including civilly recognized ecclesiastical bodies) should be subjected to the verification of the interest, remaining, until its outcome, provisionally subject to the rules of protection.

The article 13 and subsequent ones rule the declaration of cultural interest for real estate and mobile things belonging to private individuals. This is a differently graduated interest in relation to its existence in the individual cultural heritage, differentiating in part from the verification procedure pursuant to art. 12, where only the existence of simple cultural interest is required.

In Italy, the listing procedures requires compulsorily that the owner of the 'object' to be listed is informed about the triggering of the procedure and is given the possibility to participate in the procedure; although it is always preferable to have the consent by the owner to list an 'object' as a cultural good, this is not necessary and the owner can make a hierarchical appeal to the administration or appeal directly the administrative court against the decision of the competent administration to list the object.

*France - Code du Patrimoine*⁵²

The heritage code gives a very broad definition of patrimony in its article since it "includes, within the meaning of this code, all property, immovable or movable, belonging to public or private property, which presents a historical, artistic, archaeological, aesthetic, scientific or technical interest ". According to the explanatory memorandum, this code has the double interest of inventorying all the hitherto scattered heritage law and making it accessible to all.

This definition includes movable and immovable property (the preservation of which has a public interest), the historical and protected sites, the surrounding monuments (until 1962 there was a prohibition to intervene for a perimeter of 500 m). The cultural heritage, according to the content of the Code, is distinguished from the natural heritage, because while the former includes the things produced by man, the

⁵²G. Totaro, *Attività di manutenzione e cura sui Beni Culturali Architettonici*, Tesi di Laurea del Politecnico di Milano, AA. 2009-2010, pp.77-79.



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second is the result of natural forces, without human intervention. From this distinction there derive separate juridical disciplines (law on heritage – droit du patrimoine and law on environment - droit de l'environnement), different administrative competences (Ministry of Culture and Ministry of Environment).

With regard to the protection measures envisaged by the current Code, already the previous law of 1913 introduced, alongside the classification of cultural assets (consolidated over time), the regime for the inclusion of an additional inventory.

The Code, by virtue of the setting that favours the typology of goods, addresses in a distinct manner the classification and the relative inscription of historical monuments (divided into real estate and furniture) and of sites (where there is a reference to other norms) contained in the Code of Environment).

Taking as an example the procedures for the protection of historical real estate assets, the classification procedure (Book V, Title II, Chapter 1, Section 1) constitutes the most rigorous constraint and is applicable to any type of property, movable and immovable, owned public or private, provided there is a public interest from the point of view of the history of art, science and technology.

There are three distinct phases in the classification procedure, regardless of the legal nature of the asset. In the first phase, a special body must comment on the interest in the conservation of the asset; in particularly important cases the opinion of the Higher Commission of Historical Monuments is requested (Commission supérieure des monuments historiques). The second phase involves the establishment of a relationship between the administration that proceeds to the classification and the owner of the asset. In the case of a private owner, his consent is sought after payment of compensation, in the case of the public one proceeds directly to the classification - classement.

The last phase that concludes the classification - classement consists of advertising, which takes place through a transcription in the register of mortgages. In France the consent of the owner is generally the preferred option for the classification, although the law envisages also the possibility to list a property ex-officio, although this requires the opinion of the Higher Commission of Historic Monuments and the issuance of a decree by the State Council (Conseil d'Etat).

Germany - Law for protection of Cultural Heritage

In Germany cultural heritage is defined a priori, based on the essential characteristics of the 'object', which makes it suitable to be a cultural asset, and to the public interest that makes it worthy of protection. It does not even distinguish between public and private property.

The first condition that a good must meet to be considered a monument is that there is a public interest in its conservation. The recognition of a cultural asset takes place on the basis of objective scientific criteria, of evaluation of the values embedded in / attributed to the 'object'. These values are for all the States of an artistic, historical, scientific and urban type. In addition to these, depending on the State, landscape, technological, folkloric and symbolic criteria are taken into consideration. Unlike the Italian Code, the age of a monument alone is not a value in itself, but only shows that it has good qualities of durability over time.

Most federal protection laws distinguish between types of goods: architectural assets, archaeological assets, and movable property.



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In 1995, the legislation of the city of Berlin introduced the concept of "green monument", which defines a green area, a garden or a park, a cemetery or an avenue or other evidence of landscape design. To date, 13 out of 16 are the Landers who explicitly refer to these green monuments, although all implicitly provide for their protection. In addition to these categories, German protection defines protective instruments aimed at monumental or landscape complexes.

Although a common approach in the discipline of cultural heritage cannot be identified, it is possible to outline some trends in the field of cultural heritage. A definitely common element is the definition of cultural heritage (with small variations according to the different State) that includes "those tangible, movable, immovable goods, that have artistic or historical, archaeological value, or that are elements that characterize a territory or a city, the conservation of which is appropriate for artistic, historical or scientific reasons or for the promotion of historical and national awareness, which establish a public interest in this sense ". The elements of definition of a cultural asset, therefore, are the characteristic of "culturality", the public interest and the lack of temporal limitation (the age of a cultural artefact has no influence on the existence of the mentioned requirements), while the disciplines they do not distinguish between public and private property.

The identification of assets can take place according to different systems or procedures that have been adopted by the Landers on the basis of internal autonomous administrative decisions.

The declarative system states that we are dealing with a cultural asset when it presents the characteristics listed by law and there is public interest in its conservation. In this case the asset is cultural ex-lege without the need for any administrative provision or insertion in a list or register, even for the purpose of notification. It is always possible that the owner of a property applies to the administration for the purpose of expressing the existence of the requirements. The obvious disadvantage of this solution involves both private individuals, who are not in a position to determine whether they own a protected asset, and the public administration, especially the municipal one, which finds itself having various problems, for example during urban planning.

The second system aimed at identifying assets provides for the inclusion of the asset in public directories with a constituent value. The registration takes the value of an administrative measure against the owner, who receives notice of it.

A third method presents common elements with both the first systems: it requires the adoption of a provision by the public administration with a constitutive effect of the cultural aspects of the asset, while the lists have a mere publication value. Generally, for buildings, the declarative principle is used, while for movable assets, administrative measures are applied. In the event that the cultural asset is identified and protected according to the last two systems exposed, the public administration is obliged to inform and to feel in advance the owner (guarantee system). In the phase that leads to the identification and application of the special protection regime, the principle of indifference of the owner's identity (private or public) applies in order not to vitiate the decision and evaluate in the most objective way possible the existence of the public interest in conservation and the subsistence of culture.



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Spain - Code of Cultural Heritage

Only with the law on the Spanish historical heritage n. 16 of 25 June 1985 (Código del Patrimonio Cultural), Spain has elaborated a broad definition of what can be considered the historical heritage of Spain, recognizing such assets as testimonial value and local identity, but also as a resource for development. In particular, the concept of Spanish historical heritage includes real estate and movable assets of artistic, historical, palaeontological, archaeological, ethnographic, scientific or technical interest, bibliographical heritage, deposits and archaeological sites, natural places such as parks and gardens, having artistic, historical, anthropological value.

Law 16/85 establishes distinct categories and protection orders: from this point of view the maximum protection regime corresponds to the so-called Bienes de Interés Cultural (Bic), movable property (governed by Article 335 of the Spanish Civil Code) and buildings (monuments, architectural constructions and works of considerable size that have historical, artistic, scientific, social, historical gardens, historical complexes, grouping of real estate that constitute a settlement unit, a morphological structure representative of the evolution of civilization, historical sites, archaeological areas) for which a formal declaration is required; less stringent rules are aimed at protecting movable assets included in the General Inventory, by virtue of their singular significance (relevancia); a third category contains the goods which do not exhibit the relevancia assigned to the previous two but which nevertheless have importance under the profiles indicated by the law; finally, a special regime is provided for goods integrated into the archaeological heritage and for those that comprise the documentary and bibliographic heritage.

The Autonomous Communities hold the competence related to the implementation of the protection, conservation and management of assets bound by the Law on historical heritage. They also deal with the declaration of property of cultural interest (the law provides for five categories of Bic: Monumentos del Patrimonio Histórico de España, Jardín Histórico, Conjunto Histórico, Sitio Histórico, Zona Arqueológica) or registration in the General Inventory of Heritage and implementation of their safeguard. Most of the CCs. AA. has drawn up its own Statute autonomous on the historical heritage, consequently the law 16/85, therefore, the state interference, has an increasingly limited scope of application.

As far as regional administrative organization is concerned, regional government institutions are present, coordinated by a President: regional ministries are generically called Consejeriade Gobierno and have both executive and administrative functions.

ACTIONS AND OBLIGATIONS CONCERNING CULTURAL HERITAGE DERIVING FROM THE LAW

Below a summary of the main obligations deriving from the laws for the protection of cultural heritage in force in Italy, France, Spain and Germany is presented. A comparative table concerning the most important provisions is also presented, in order to provide an overview of the way in which key obligations to guarantee effective protection and safeguard have been conceived in different EU member states.



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Italy - Code of Cultural Heritage

In Chapter II of Title I, of Part Two (articles 18-19) the rules concerning supervision and the power of inspection are ruled. Chapter III deals with protection and conservation, according to a tripartition: protection measures (section I), conservation measures (section II) and other forms of protection (section III).

As for the notion of conservation, the choice made by the delegated legislator was to proceed with its definition by referring to other concepts. In this sense, art. 29 provides the definition of conservation, indicating the manner in which it is ensured, i.e., through a coherent, coordinated and planned activity of study, prevention, maintenance and restoration.

The procedure involves a progressive trend that, starting from prevention, analyses maintenance and ends up identifying in the restoration, the final moment, aimed at maintaining the material integrity of the asset.

In particular for prevention, it intends the set of activities suitable to limit the risk situations connected to the cultural good in its context.

For maintenance the Code means the set of activities and interventions aimed at controlling the conditions of the cultural good to maintain the integrity, functional efficiency and identity of the asset and its parts.

Finally, as for restoration, the provision contained in paragraph 4 of the art. 29 of the code defines restoration as the direct intervention on the property through a series of operations aimed at material integrity and the recovery of the asset itself, the promotion and transmission of its cultural values. The provision concludes with a reference to the restoration of real estate located in areas with a seismic risk, for which the restoration intervention includes structural improvement.

Conservation obligations are specified by art. 30. The law introduces a distinction between subjects required to preserve assets.

In the following articles the distinction between voluntary and imposed conservative interventions is set. In the first case, the intervention is defined as an initiative not only of the owner, but also of the owner or holder for any reason and must be authorized pursuant to art. Article 31, which also states that the intervention may be restoration or other conservative intervention. Upon authorization, if the person requesting it, the superintendent decides on the admissibility of the intervention to state contribution, certifying the necessary character of the same, for the purposes of granting the tax benefits provided for by law.

As for the conservation measures imposed these can be implemented directly by the MiBACT on the owner, the owner or holder with the indication of the necessary interventions, alternatively the Ministry can carry out directly the imposed conservation measures.

Conservative interventions are under the responsibility of the owner, owner or holder of the asset, as their realization constitutes an increase in the economic value of the asset. However, the provision contained in the first paragraph of art. 34 outlines an exception where the interventions are of particular relevance or are performed on assets in use for public enjoyment. In these cases, the Ministry can contribute in whole or in part to the relative expense, determining the burden it intends to support and communicating it to the interested party.



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The Ministry provides full or partial reimbursement, also by means of the payment of advances on the basis of the progress of regularly certified works (articles 35, 36 of the Code). The financial contribution of the Ministry to the expenses incurred can also be made for voluntary interventions, that is at the initiative of the owner, which are justified as a result of the obligation imposed on the owners or holders of the assets to guarantee the conservation of their assets (Article 30 of the Code).

Furthermore, the State holds the right to grant interest subsidies on loans granted by credit institutions to owners for carrying out authorized conservation interventions. "The contribution is granted to the maximum extent corresponding to the interest calculated at an annual rate of six percentage points on the capital provided. It is paid directly by the Ministry to the credit institution according to procedures to be established with agreements "(Article 37 of Legislative Decree 42/04).

Finally, the art. 121 of the Code provides that the Ministry, the regions and other territorial entities may stipulate memorandums of understanding (with bank foundations, which do not pursue for-profit purposes and necessarily operate in some sectors envisaged by the legislator (including the sector of cultural assets and activities) can contribute to financing with their own financial resources.

France - Code of Heritage (Code du Patrimoine)

The French administration exercises a permanent control over the conditions of use and conservation of classified assets. While the public owner is under the obligation to ensure the safekeeping and conservation of the object, the private owner is only required to refrain from any modification, repair or restoration action in the absence of the necessary authorization. In fact, the classified good is unalterable, unmodifiable and not exportable without the permission of the Ministry and without the supervision of the administration, the non-observance of these rules is punished with penal sanctions and controlled by a periodic survey.

The owner, public and private, bears the duty to request prior authorization from the administration to implement repairs, maintenance or restoration and must perform them under its control and must perform actions that the state, after consultation with the National Commission of the historical monuments, identify as necessary. In addition, the properties located within a perimeter of 500 meters around the classified historic building cannot undergo any alteration without prior administrative authorization by the *Architect des Batiments de France*.

The inclusion in the supplementary inventory represents, instead, a weaker protection system compared to the *classement* (both in terms of information obligations and in terms of job controls) but from the procedural point of view less expensive and simpler. Originally, it was a cautionary form pending the ruling on the cultural value of a good. Subsequently, it has become a second permanent procedure, valid for movable and immovable property of artistic or minor historical value, public or semi-public. Thus, for example, the owner is only required to inform the Prefect of the Region of the sale of the property and to inform the buyer of the existence of the registration. With regard to works on the property, a preliminary declaration is sufficient: in general, the works cannot be started within four months of sending a complete file and the owner can receive a reimbursement of these expenses up to a total of 40% of the total (Book V, Title II, Chapter 1, Section 2).



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The registration, which obliges the owner to notify the transfer of the asset or its transfer before the administration, is implemented by order of the Prefect of the Region (for real estate) and by the prefect of the Department (for movable property).

Germany - Law on Protection of Cultural Heritage

In German Fundamental Law the discipline of cultural heritage results as the exclusive competence of the Federation (Bund), limited to the protection of the German cultural heritage against exportation (article 73, paragraph I, of the GG).

In the absence of further determinations, according to the federal principles of residual general jurisdiction of the States referred to in articles. 30 and 70 of the Fundamental Law the regulation of cultural heritage must be included among the (few) matters within the exclusive competence of the States of the Federation.

From the end of the Sixties with the overcoming of the post-war phase and with the influence of the new international and European sensibility towards cultural heritage (especially thanks to the publication of the Venice Charter of 1964) the States, starting from the western ones, adopted laws and administrative apparatus for the protection of heritage. The Constitutions of each Land dictate the regime of cultural heritage and defines the protection criteria.

At federal level, the main normative reference is represented by the building law. It rules that the needs of protection and conservation related to areas and monuments, historical interest and particular areas must be taken into consideration while drawing up building projects. At the level of territorial planning a conservation status is envisaged, that is an instrument with which specific areas are identified that are subject to limitations and to a particular authorization regime for what concerns modifications and use of buildings.

Spain - Code of Cultural heritage

The Autonomous Communities hold the competence related to the protection, conservation and management of assets bound by the Law on historical heritage. They also deal with the declaration of property of cultural interest (the law provides for five categories of Cultural Heritage Assets: Monuments of the Historic Patrimony of Spain (*Monumentos del Patrimonio Histórico de España*), Historic Garden (*Jardín Histórico*), Historic ensemble (*Conjunto Histórico*), Historic Site (*Sitio Histórico*), Archaeological Area (*Zona Arqueológica*) or registration in the General Inventory of Heritage and in the execution of their safeguard. Most of the Autonomous Communities has drawn up its own autonomous Statute on the historical heritage, following the law 16/85, therefore, the state law has an increasingly limited scope of application.

The regional government is responsible for the protection and management of heritage, the so-called *Consejería de Cultura y Deporte*. The regional ministry of culture is organized on several general directorates, including the *Dirección general de Patrimonio Histórico*, which is responsible for drawing up annual intervention programs and for following planned restorations aimed at real estate assets and movable property and stipulating agreements for restoration and maintenance works with the specific institutions of each Autonomous Community.

Finally, the competence of local administrations, although subject to state and regional law, has its own weight both in the context of historical heritage, as they establish criteria for intervention on buildings



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declared to be of historical-artistic interest, and in the sphere of urban planning competences, they carry out planning actions, thereby making the provisions of the master plan enforceable. They also carry out building interventions as well as catalogue the assets of minor cultural interest, for which the protection is carried out according to the techniques envisaged in urban planning) and elaborate the special planning of the Conjuntos históricos, sign declaration of ruin or of the expropriation of protected buildings that are in danger or buildings that disturb the contemplation of others endowed with historical-artistic interest.

For example, in the case of the *Comunidad autónoma andaluza*, within its governing structure (the Junta de Andalucía), the administration concerned is named of *Consejería de Cultura y Medio Ambiente*. Within the organizational structure of the Consejerías competent in the field of culture we often find a structuring on the basis of General Directions and still on a lower level, Special Sections.

Regional laws generally convey the competence to the corresponding Consejería, without specifying concretely the internal organ that must effectively carry out the bureaucratic procedures that it implies. In the Andalusian case, within the Consejería there is the General Direction of Cultural Heritage, to whom the main competences in the matter of protection and conservation are recognized (adoption of provisions to guarantee the conservation obligation, control of urban planning, adaptation to the criteria of conservation, promotion of research), which has specialized sections and other specific technical bodies depending on the structure of the Consejería: the *Instituto Andaluz del Patrimonio Histórico* (IAPH) and the *Centro Andaluz de Arqueología Subacuática*.⁵³

CONSERVATION OBLIGATIONS – COMPARISON OF PROVISIONS IN LAWS FROM DIFFERENT EUROPEAN COUNTRIES

Below a comparative table of articles relating to the conservation obligations envisaged by the legal systems in three different German countries (Bavaria, Hesse, Rhineland-Palatinate) and Italy, France and Spain is presented.

It should be noted that the ‘obligation to conserve’ in EU countries is a general principle that applies to all legally protected objects and is not the object of a specific ‘agreement’ or ‘contract’ with the owner, being the principle and the necessary provisions for compliance enshrined in the primary legislation, thus giving to the obligation to conserve a higher status and providing clear provisions concerning the implementation in practice of this principle.

This approach facilitate the implementation of conservation measures and can lead to imposed conservative measures from the State on the owner (be it private or public).

At the end of the document a table comparing the structures of the main laws from EU countries is presented.

⁵³ L. SANCHEZ MESA, *L'assetto delle competenze in materia di beni culturali nell'ordinamento spagnolo: la centralità della regione*, in “Aedon”, 3/2003, pag. 15.



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Tab. 2 - Comparative table - provisions regulating the obligations for conservation of protected cultural heritage

Bavarian Law for the Protection and Preservation of Monuments from 25 th June 1973 , last revised 27 th July 2009	Act on the Protection of Cultural Monuments (Monument Protection Act) of the Land of Hesse	Act on the protection and care of monuments in the Federal State of Rhineland-Palatinate (Monument Protection Act, DSchG) adopted on 23 March 1978	Code Patrimoine (France)	Code of Cultural Heritage and Landscape, in accordance with Article 10 of the Law No. 137 of July 6, 2002 (Legislative Decree No. 42 of January 22, 2004,
<p>Article 4 Preservation of Built Monuments</p> <p>1) The owners and those otherwise having legal responsibility for the disposition of real property must maintain, repair and appropriately treat their built monuments and protect them from danger.</p> <p>If the owner or another party having legal responsibility for real property disposition is not the direct occupant, then the provisions of Sentence 1 are also valid for the direct occupant, insofar as he has the possibility to act accordingly.</p> <p>(2) The persons named in the Paragraph 1 can be obligated to carry out certain preservation measures, in whole or in part, insofar as this can be reasonably demanded, giving due consideration to their other responsibilities and obligations. Insofar as they cannot carry out these measures themselves, they can be obligated to allow measures to be</p>	<p><i>Sec. 11 Maintenance Duty</i></p> <p>(1) Owners, possessors and other persons responsible for the maintenance of cultural monuments are required to maintain them and treat them with reasonable care.</p> <p>(2) The Land of Hesse, the communities and associations of local governments shall contribute funding within their means for the maintenance of cultural monuments.</p> <p><i>Sec. 12 Enforcement of Maintenance Duty (1)</i></p> <p>(1) If owners, possessors or other responsible persons do not fulfill their responsibilities under Sec. 11 and if a cultural monument is endangered thereby, the monument protection authorities may obligate such persons to carry out the necessary maintenance measures.</p>	<p>Article 2</p> <p>The obligation to maintain and conserve</p> <p>(1) Owners, occupants and other parties disposing over cultural monuments have an obligation to make every reasonable effort to maintain and conserve them. Other provisions of this Act shall remain unaffected.</p> <p>(2) What may be deemed a reasonable effort shall be determined with due consideration of the monument's situation-specific character within the context of the social restrictions on property ownership and its private use. In particular, it is deemed unreasonable for the costs of preservation to constitute an economic burden if this outlay is not offset in the long term by revenue or by the utility value of the cultural monument. In such a scenario the maintenance requirement may be limited to leaving the cultural monument in an unaltered condition, provided that</p>	<p>L. 621-11 Ordonnance 2004-178 2004-02-20 JORF 24 février 2004 - NOR: MCCX0300157R</p> <p>L'autorité administrative peut toujours faire exécuter par les soins de son administration et aux frais de l'Etat, avec le concours éventuel des intéressés, les travaux de réparation ou d'entretien qui sont jugés indispensables à la conservation des monuments classés au titre des monuments historiques n'appartenant pas à l'Etat.</p> <p>L. 621-12 LOI n°2016-925 du 7 juillet 2016 - art. 75 - NOR: MCCB1511777L</p> <p>Indépendamment des dispositions de l'article L. 621-11, lorsque la conservation d'un immeuble classé au titre des monuments historiques est gravement compromise par l'inexécution de travaux de réparation ou d'entretien, l'autorité administrative peut, après avis de la Commission nationale du patrimoine et de</p>	<p>Article 32</p> <p><i>Obligatory Conservation Work</i></p> <p>The Ministry may oblige the proprietor, possessor or holder by whatever legal right, to carry out work necessary to ensure the conservation of cultural property, or it may take direct action.</p> <p>The provisions in paragraph 1 shall also apply to the obligations set out in article 30, paragraph 4.</p> <p>Article 33</p> <p><i>Procedures for the Execution of Obligatory Conservation Work</i></p> <p>For the purposes of article 32, the superintendent shall compile a technical report and declare the necessary nature of the measures to be carried out.</p> <p>The technical report shall be sent, along with notification of start of procedure, to the proprietor, possessor or holder of the property, who may submit his/her</p>



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<p>carried out by others. The previous consent of the Highest Monument Protection Authority is necessary for decisions which are binding on the federal government or state governments.</p> <p>(3) If the condition of a built monument requires measures for maintenance, repair or protection and an enforceable ruling according to Paragraph 2 does not exist, the responsible Monument Protection Authority can carry out the measures or allow them to be carried out. The costs of the measures must be borne by the persons named in Paragraph 1. insofar as they were or could have been obligated to carry out the measures according to Paragraph 2; in other cases, cost are borne by the Compensation Fund (article 21, Paragraph 2).</p> <p>(4) Treatments which damage or endanger a built monument can be forbidden.</p>	<p>(2) If the condition of the cultural monument requires measures to conserve, restore or protect it, the omission of which would endanger the monument, the monument protection authorities may themselves carry out the measures necessary to avert the immediate danger to the existence of the cultural monument. Owners and possessors are required to tolerate such measures. Owners, possessors and other responsible persons may be held liable for reasonable costs incurred.</p>	<p>and as along as the special character and significance of the cultural monument demands this, also taking account of the interests of the parties under obligation as per paragraph 1. It shall be incumbent on the parties under obligation as per paragraph 1 to demonstrate that a preservation requirement is unreasonable. Said parties may not invoke the burden of rising maintenance costs prompted by the fact that conservation measures were not taken, contrary to the provisions of this Act or any other public law.</p> <p>(3) When implementing or planning measures, especially regarding town and country planning, the federal state of Rhineland-Palatinate, the federal government, local authorities, associations of local authorities and all corporations, institutions and foundations under public law must take account of the interests of monument protection and monument conservation and meet the obligation to conserve cultural heritage in accordance with the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage adopted on 16 November 1972. For any measures and plans impacting on the interests of monument protection or monument conservation, the state conservation office must be involved from the outset.</p> <p>(4) Construction work, technical or economic measures that could pose a</p>	<p>l'architecture, mettre en demeure le propriétaire de faire procéder auxdits travaux, en lui indiquant le délai dans lequel ceux-ci devront être entrepris et la part de dépense qui sera supportée par l'Etat, laquelle ne pourra être inférieure à 50%. La mise en demeure précisera les modalités de versement de la part de l'Etat.</p> <p>La mise en demeure est notifiée au propriétaire. Si ce dernier en conteste le bien-fondé, le tribunal administratif statue sur le litige et peut, le cas échéant, après expertise, ordonner l'exécution de tout ou partie des travaux prescrits par l'administration.</p> <p>Le recours au tribunal administratif est suspensif.</p> <p>L. 621-13 Ordonnance n°2005-1128 du 8 septembre 2005 - art. 8 - JORF 9 septembre 2005 - NOR: MCCX0500149R</p> <p>Sans préjudice de l'application de l'article L. 621-15, faute par le propriétaire de se conformer, soit à la mise en demeure s'il ne l'a pas contestée, soit à la décision de la juridiction administrative, l'autorité administrative peut soit exécuter d'office les travaux, soit poursuivre l'expropriation de l'immeuble au nom de l'Etat. Si les travaux sont exécutés d'office, le propriétaire peut solliciter l'Etat d'engager la procédure d'expropriation. L'Etat fait connaître sa</p>	<p>observations within thirty days of receipt of the documents.</p> <p>If the superintendent does not deem direct execution of the measures to be necessary, he/she shall assign the proprietor, possessor or holder a time limit for the presentation of the plans for the work to be carried out, in execution and pursuance of the technical report.</p> <p>The plan presented shall be approved by the superintendent with any prescriptions that may be deemed necessary and a time limit shall be fixed for the start of work. For immovable property, the plan presented shall be forwarded by the superintendent to the Municipality or to the Metropolitan Area, which may express a reasoned opinion within thirty days of receipt of notification.</p> <p>If the proprietor, possessor or holder of the property fails to fulfil the obligation to present the plan, or fails to take action to modify it according to the indications of the superintendent within the time limit fixed by the latter, or if the project is rejected, the Ministry shall proceed to direct execution.</p> <p>In cases of urgency, the superintendent may immediately adopt the necessary conservation measures.</p> <p>Article 34 <i>Charges for Obligatory Conservation Work</i></p>
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		<p>threat to or compromise the continued existence, appearance or scientific value of cultural monuments must be limited to bare minimum required. Paragraph 1 sentence 2 shall apply accordingly.</p> <p>Art. 9 Duty to preserve</p> <p>(1) The cultural monuments enjoy the protection of this Act. They should be used in such a way as to ensure their preservation in the long term. The state and associations of local governments should help owners, possessors and other parties with rights of disposition in respect of cultural monuments to meet this objective.</p> <p>(2) The owners, possessors and other parties with rights of disposition in respect of cultural monuments must undertake to preserve, care for, maintain and protect them from danger in accordance with the principles of monument conservation as far as is financially reasonable and, where possible and reasonable, to make them publicly accessible. The interests of the disabled must be taken into account when providing access to cultural monuments owned by the state or local authority. Cultural monuments whose purpose and utilisation serve public education must gradually be made barrier-free unless the public interest in preserving the monument in its present state pre-vails.</p>	<p>décision sur cette requête, qui ne suspend pas l'exécution des travaux, dans un délai de six mois au plus et au terme d'une procédure fixée par décret en Conseil d'Etat. Si l'autorité administrative a décidé de poursuivre l'expropriation au nom de l'Etat, une collectivité territoriale ou un établissement public peut décider de se substituer à l'Etat comme bénéficiaire, avec l'accord de cette autorité.</p> <p><u>L. 621-14</u> Ordonnance 2004-178 2004-02-20 JORF 24 février 2004 - NOR: MCCX0300157R</p> <p>En cas d'exécution d'office, le propriétaire est tenu de rembourser à l'Etat le coût des travaux exécutés par celui-ci, dans la limite de la moitié de son montant. La créance ainsi née au profit de l'Etat est recouvrée suivant la procédure applicable aux créances de l'Etat étrangères à l'impôt et aux domaines, aux échéances fixées par l'autorité administrative qui pourra les échelonner sur une durée de quinze ans au plus, les sommes dues portant intérêt au taux légal à compter de la notification de leur montant au propriétaire.</p> <p>Eventuellement saisi par le propriétaire et compte tenu des moyens financiers de celui-ci, le tribunal administratif pourra modifier, dans la même limite maximale, l'échelonnement des paiements. Toutefois, en cas de</p>	<p>The expenses incurred for measures carried out on cultural properties, whether they have been imposed or directly executed by the Ministry under article 32, shall be paid by the proprietor, possessor or holder. Nevertheless, if the measures are of particular significance or if they are carried out on properties granted in use to, or for enjoyment by, the public, the Ministry may participate in the expenses in whole or in part. In this case, it shall determine the amount of the expenses it intends to sustain and shall notify the party concerned.</p> <p>If the expenses of the measures have been sustained by the proprietor, possessor or holder, the Ministry shall proceed to their reimbursement, and may also do so by part payments on account under article 36, paragraphs 2 and 3, keeping within the amount determined under paragraph 1.</p> <p>With regard to expenses incurred in direct action measures, the Ministry shall determine the amount to be charged to the proprietor, possessor or holder and shall pursue recovery of the expenses in the forms provided for by the laws in force regarding the compulsory collection of government property revenues.</p>
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		<p>(3) Anyone who, while working or engaged in other activity in the earth or water, finds objects which can reasonably be assumed to be cultural relics or monuments (archaeological and structural archaeological finds), must preserve them and report them to the responsible subordinate monument protection authority. The find and the site where it was discovered must be left unaltered until one week after they have been reported, and must be protected from anything which might compromise their preservation. The State Conservation Office and its agents are entitled to examine the site for archaeological finds and recover ground finds.</p> <p>(4) The state and associations of local governments shall contribute financially to the preservation of cultural monuments pursuant to Para. 2 within the constraints of the available budget.</p> <p>(5) The monument protection authority can, by order, declare delimited areas in which archaeological cultural monuments exist, or where there are reasonable grounds for suspecting their existence, to be temporary protected excavation sites.</p> <p>(6) If owners, possessors and other parties with rights of disposition fail to meet their obligations under this Act, the subordinate monument protection authorities can order or themselves conduct measures to prevent any</p>	<p>mutation de l'immeuble à titre onéreux, la totalité des sommes restant dues devient immédiatement exigible à moins que l'autorité administrative n'ait accepté la substitution de l'acquéreur dans les obligations</p> <p>du vendeur. Les droits de l'Etat sont garantis par une hypothèque légale inscrite sur l'immeuble à la diligence de l'Etat. Le propriétaire peut toujours s'exonérer de sa dette en faisant abandon de son immeuble à l'Etat.</p> <p>L. 621-15 Ordonnance 2004-178 2004-02-20 JORF 24 février 2004 - NOR: MCCX0300157R</p> <p>Pour assurer l'exécution des travaux urgents de consolidation dans les immeubles classés au titre des monuments historiques ou des travaux de réparation ou d'entretien faute desquels la conservation des immeubles serait compromise, l'autorité administrative, à défaut d'accord avec les propriétaires, peut, s'il est nécessaire, autoriser l'occupation temporaire de ces immeubles ou des immeubles voisins.</p> <p>Cette occupation est ordonnée par un arrêté préfectoral préalablement notifié au propriétaire et sa durée ne peut en aucun cas excéder six mois.</p> <p>En cas de préjudice causé, elle donne lieu à une indemnité qui est réglée dans les conditions prévues par la loi du 29 décembre 1892 relative aux dommages</p>
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		<p>endangerment of the monument. The owners, possessors and other parties with rights of disposition are obliged to tolerate such measures.</p> <p>(7) The subordinate monument protection authorities are entitled to demand restitution of costs arising pursuant to Para. 6 from the owners, possessors and other parties with rights of disposition.</p> <p>(8) Anyone who causes damage to a cultural monument must, by order of the monument protection authority, discontinue the action concerned and reinstate the monument to its earlier condition, or maintain the cultural monument in another prescribed way.</p> <p>Art. 10 Restrictions on interference with cultural monuments</p> <p>(1) Interference within the meaning of this Act means changes to the substance or use of cultural monuments which might seriously compromise the quality of the monument or lead to its destruction. Any interference with a cultural monument must be kept to the minimum degree necessary.</p> <p>(2) Interference with a cultural monument is to be approved if</p> <ol style="list-style-type: none">1. the interference is in the public interest on proven scientific grounds;2. overwhelming public interest of another type requires the measure or3. the preservation of the cultural monument in its current state would	<p>causés à la propriété privée par l'exécution des travaux publics.</p>
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		<p>place an unreasonable burden on the obligated party.</p> <p>(3) If the cultural monument is likely to be seriously compromised within the meaning of Para. 1 as a result of interference, then such interference shall be prohibited if, after weighing up all the various arguments, the interests of monument protection and conservation prevail. 5</p> <p>(4) Measures to preserve the monument cannot be insisted upon if this would place an unreasonable burden on the obligated party. A financial burden is considered unreasonable if, in particular, the costs of preservation cannot be offset by income from or the practical value of the cultural monument, and other income of the obligated party cannot be drawn on.</p> <p>(5) The obligated party must make a credible case that preservation is financially unreasonable. If the obligated party is able to claim assistance from public or private funds or tax benefits, these should be taken into account. The obligated party may not appeal against increased preservation costs which result from a failure to take preservation measures in violation of this Act or other public legislation.</p> <p>(6) Interference with a cultural monument which deprives it of its essential quality or leads to its destruction should be approved only if all</p>	
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		possibilities of preserving it have been exhausted.		
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FINANCIAL INTERVENTION, FACILITATIONS AND GRANTING OF PUBLIC FUNDS

Italy - Code of Cultural Heritage

In addition to the provisions contained in the Code, cultural assets may be subject to financial intervention within the ordinary planning of public activity, benefiting in this case of public funding.

The State intervenes for the conservation of cultural heritage also with funds deriving from specific budget lines. For instance, it is possible to take advantage of the eight per thousand income tax contributions of natural persons that can be allocated, in relation to the choices expressed by taxpayers in the annual declaration of income, for purposes of social interest or humanitarian character directly managed by the state and partly for religious purposes directly managed by the Catholic Church (articles 47, 48 of the law 222/1985 "Provisions on the bodies and ecclesiastical assets in Italy and for the sustenance of the Catholic clergy"). It should be noted that interventions related to cultural assets of religious interest can therefore receive funding, albeit under different profiles, both from the State and from the Church.

In particular, the art. 2, paragraph 5, of the D.P.R. 76 of 1998 "Regulation containing criteria and procedures for the use of the IRPEF's eight per thousand share devolved to direct state management" specifies the interventions allowed for the allocation of the share of eight per thousand: "interventions for the conservation of cultural assets are aimed at the restoration, enhancement, and usability of the public of immovable or immovable property, which have a particular interest, architectural, artistic, historical, archaeological, ethnographic, scientific, bibliographic and archival".

There are also other requisites (Article 3 of Presidential Decree 76/98) according to which the distribution of the eight-per-thousand share can be attributed to public administrations, legal entities and public and private bodies, provided they do not pursue a profit, and objective requisites (art. 4) for which, in order to benefit from the quotas, it is necessary to complete the initiative or at least to implement a functional part of the initiative.

Another source of financing is the law of December 23, 1996, n. 662 "Measures to rationalize public finance", which established that every year a portion of the profits deriving from the lottery is reserved to the Ministry for cultural assets and activities and destined to the recovery and conservation of cultural and archaeological heritage, historical, artistic, archives and libraries, for landscape restoration interventions (article 3, paragraph 83). To ease law implementation an order was issued on June 5, 1997, n. 127, which specified that the projects to be implemented must be aimed at increasing the public use of cultural heritage and must not be considered as substitutes for ordinary protection and maintenance. In fact, with this funding, some projects of great importance and considerable financial commitment should be promoted.

A possible source of funding for interventions concerning churches and other religious buildings is identified by art. 16 of the D.P.R. 380/01 "Consolidated law of the laws and regulations on building": those who request the issue of building permits usually have to pay a contribution commensurate with the impact of the urbanization charges as well as the cost of construction; "Alternatively, the holder of the permit, with total or partial deduction of the amount due, may compel himself to carry out the works directly, which may concern various interventions including those concerning churches and other religious buildings".





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The law of 21 December 1999, n. 513, concerning "Extraordinary interventions in the sector of cultural heritage and activities", finances restoration, conservation and enhancement of cultural heritage, museum construction, upgrading of library equipment, acquisition and restoration of the library heritage. The criteria for access to contributions are established by D.M. October 25, 2000: 70% of the expenditure is allocated to initiatives aimed at enhancing the value and public usability of the activities carried out by cultural institutions and institutions. These funds can be accessed by cultural institutions and institutions supervised by the Ministry that have carried out research or cultural promotion activities for at least five years.

These types of financing are also supplemented by European funding sources, including the Community structural funds through which multi-annual Community grants are allocated; the framework programs dedicated to culture; loans from the European Investment Bank, granted to public and private entities.

The Italian legal system also envisages ways for the participation in the conservation and promotion of cultural heritage of the private sector. This is analysed in the ad-hoc report "Encouraging private support to cultural heritage"-

France

In France, the public intervention that subsidizes and supports the cultural heritage protection policy is complemented by a legal regime that favours the contribution of private sector to cultural heritage and culture in general through the deduction for companies and private individuals of the expenses incurred to contribute to the enhancement of the artistic heritage and for the sums paid in favour of no-profit foundations or associations. In France there are also special institutions (Heritage Foundation) that provide other contributions to public bodies to promote cultural activities and enhancement of heritage. With the law 571/87, modified in 2003, the French State has tried to encourage the patronage of private individuals and companies in favour of the purchase of works of art, sponsorships of activities of a scientific, cultural or competing nature to promote the heritage and non-profit institutions of general interest. Moreover, for Departments, Municipalities, Public Bodies or public utilities, it is mandatory to allocate a special fund, weighing on its budget, aimed at preserving protected assets: to fulfil these charges, these institutions are authorized to introduce entrance fees to historical monuments. Naturally, the State can intervene with financial aid, subsidies as the conservation of assets is mandatory and requires often very expensive restoration and maintenance (For more details please see the ad-hoc report on the mechanisms supporting the contribution of the private sector to conserve and promote cultural heritage "...").

Germany

The growing interest in cultural heritage in recent years is closely linked to the present regime of deductions and tax exemptions related to income tax, but also on property and inheritance taxes and on donations (deductibility of sponsorships, without the provision of a maximum ceiling, and donations, with the provision of a maximum ceiling). In addition, there are state contributions for restoration and conservation which are an interesting investment opportunity.

The Compendium's Country Profile for Germany (2016) reports that indirect state support for the arts and culture in the form of tax deductions can be found in several regulations. In the case of VAT, some cultural products are subject to a lower rate of 7% instead of the standard 19%; under certain conditions, public



cultural operations and non-profit activities (e. g. theatre performances) are exempt from VAT and corporate tax altogether.

An Act on the Taxation of Foundations is in force since January 2000: it provides for tax incentives for the establishment of and donations to foundations. In recent years, additional tax deductions have been incorporated into the law regulating the donations, and the tax- exempt ceiling for income from voluntary activity (the so-called standard exemption for course instructors) has been raised and extended to apply to other groups.

The reform of the Law on Non-profit Character and Donations in July 2007 lightens taxation of civic commitment. Amongst others, donations remain free from income tax to a limit of 20% and the tax-free allowance for the establishment of foundations was raised from 300 000 EUR to 1 million EUR.

Spain

In Spain, There are numerous forms of funding⁵⁴ and incentives granted by the State for cultural heritage, including: the destination of one percent of the budget of every public work supported economically by the State to finance conservation work or enrichment of the historical heritage; deductions from income tax for individuals and companies; exemption from the payment of the wealth tax (the goods that are part of the Spanish historical heritage registered in the General Register of cultural assets or in the General Inventory of movable property, or qualified assets of cultural interest directly from the Ministry of Culture are exempted inscribed in a special register, the objects of art and antiques, i.e. paintings, sculptures, drawings, prints, lithographs, sold free in continuative storage to museums or cultural institutions, the works of a living artist forming part of its heritage) in order to promote the production of works of art and as a "counterpart to the tax payer in the face of the sacrifices imposed to guarantee the protection and conservation of assets".

Tax incentives (Law 49/02 provides an exhaustive list of institutions that can benefit from tax relief) in favour of patronage, having as foundations, foundations, non-profit associations, non-governmental organizations, sports federations, state or regional institutions for social utility; deductions on the income of natural persons in the case of investments or costs relating to the purchase of assets belonging to the Spanish historic assets located outside the national territory; deductions for the costs of conservation, restoration, renovation, reconstruction of facades and roofs, dissemination and exhibition of private property declared to be of cultural interest or national or regional legislation, if the limits imposed on the obligations of public and exhibition visits; exemption of assets declared monument or historical garden having cultural interest from local tax on real estate.

⁵⁴ A. E. LA SCALA, *Il trattamento tributario dei beni in Spagna*, in "Aedon", 3/2006, pagg. 2, 3.



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Government Decision no. 676 of 21.07.2000 for the unique procedure of keeping evidence of the green spaces in urban and rural localities;

Government Decision no. 1676 of 2000 concerning the measures to ensure efficient State control on urban and territorial planning

Government Decision of the Republic of Moldova no. 1300 of 27.11.2001, approving the Regulation on the drawing up and maintenance of the urban functional cadaster;

Government Decision of the Republic of Moldova no. 633 of 8.6.2004 on the approval of the Action Plan to ensure compliance with the provisions of Law n. 835-XIII of May 17, 1996 on the principles of urbanism and spatial planning and other related legislative and normative acts;

Government Decision of the Republic of Moldova no. 936, August 16, 2006 on technical expertise in construction;

Government Decision of the Republic of Moldova no. 678 of 06.06.2008 on the Conduct of the National Contest "The Most Modern, Healthier and More Settlement Town";

Ministry of Construction and Territorial Development of the Republic of Moldova, Order no. 4 of 10.04.2008 on Calculation of Building Structures;

Government Decision of the Republic of Moldova no. 158 of 4 March 2010 on the approval of the National Regional Development Strategy;

Government Decision of the Republic of Moldova no. 493 of 4.7.2013 on the Medium-Term Program for the elaboration of town-planning plans at the level of localities for the years 2013-2016;

Government Decision of the Republic of Moldova no. 364 of 27.5.2014 regarding the approval of the Methodology of state control planning on the entrepreneurial activity in the field of urbanism and constructions on the basis of analysis of the risk criteria;

Ministry of Regional Development and Construction, Ordinance no. 120 regarding the approval of the Amendment no. 2MD to snapshot normative document 2.07.01-89;

Ministry of Regional Development and Construction, Order no. 5 regarding the approval of the Regulation of the National Architectural and Urban Council and the Order of examination and coordination of the architectural-urban documentation.

Decision of the Chisinau municipal council no. 978, September 02, 2004 regarding the establishment of the moratorium on the modification of the street tram and the location of the constructions in the historical center and in the green spaces of the Chisinau municipality,.

Decision of the Chisinau municipal council no. 54 of 14, August 03, 2006 on regulations and organizational chart for the General Directorate of Architecture, Urban Planning and Land Authorizations;

Decision of the Chisinau municipal council no. 10 of 09, December 04, 2014 regarding the approval of the historical register of local historical monuments in Chisinau municipality and regulations regarding the criteria for evaluation, use and protection of the local built cultural patrimony;

Guidelines of the Architectural-Urbanistic Council of Chisinau municipality, internal protocol no. 1545, December 11, 2006.

Construction sector:



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Law no. 721 of 02.02.1996 on the quality in constructions of the Republic of Moldova;

Law no. 163 of 09.07.2010 on authorization of execution of construction works;

Law no. 160 of 22.7.2011 for regulating the authorization of entrepreneurial activity;

Government Decision no. 285 of 23.05.1996 approving the Regulation for the reception of construction and related installations;

Government Decision no. 360 of 25.06.1996 concerning the State control over the quality in construction;

Government Decision no. 361 of 25.06.1996 on ensuring the quality in constructions;

Government Decision no. 1570 of 09.12.2002 on the urgent measures for the transition to the new normative base for estimations in constructions;

Government Decision no. 936 of 16.08.2006 approving the Regulation for the technical expertise in constructions;

Government Decision no. 91 of 18.12.2017 on the issuance of authorization for works of public utility.

NCM L.01.01-2012 Construction Economics. Rules for determining the value of NCM construction objectives
L.02.05-2012 Construction economics. Building rules and building regulations for special temporary constructions

NCM L.02.06-2012 Construction Economics. Drafting rules for the execution of cold-construction construction work

CP L 01.01.2012 Construction Economics. Instructions for drawing up estimates for construction-assembly works by the resource method

CP L.01.02-2012 Construction Economics. Instructions for the determination of the cost of conversion to pay in construction

CP L.01.03-2012 Construction Economics. Instructions on calculating overhead costs when determining the value of goals

CP L.01.04-2012 Construction Economics. Instructions for determining the foreign exchange costs for the operation of construction equipment

CP L.01.05-2012 Construction Economics. Instructions for the determination of the value of the gain on the price formation in the construction output

Protection of natural areas and environment:

Land Code, no. 828-XII of 25.12.1991;

Law no.1515-XII of 16.06.1993 concerning environmental protection;

Water Code, no. 1532-XII of 22.06.1993;

Law no. 851 of 29.05.1996 concerning the Ecological Examination and Evaluation of Impact on Environment;

Forest Code, no. 887 of 21.06.1996;

Law no. 1102-XIII Of 06.02.1997 concerning natural resources;

Law no. 1538-XII of 25.02.1998 concerning the natural areas protected by the state;

Law no. 1540-XIII of 25.02.1998 concerning Payment for Environmental Pollution;

Law no. 239 of 08.11.2007 on flora;



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Law no. 251 of 04.12.2008 on Formation of Cultural and Natural Reservations "Orheiul Vechi";

Government decision of the Republic of Moldova no. 782 of 03.08.2000 concerning the approval of the Framework Regulations on National Parks, Natural Monuments, Reserves of Resources and Biosphere Reserves;

Government decision of the Republic of Moldova no. 1009 of 05.10.2000 concerning the approval of the Regulation on natural and built protected areas;

Government decision of the Republic of Moldova no. 1009 of 05.10.2000 on the approval of the Regulation on natural and built protected areas;

Government decision of the Republic of Moldova no. 471 of 28.06.2011 concerning the approval of the National Action Plan for Implementation in The Republic of Moldova Convention on Access to Information, Justice and public participation in environmental decision-making.

Government decision of the Republic of Moldova no. 605 of 02.11.2001 concerning the approval of the Concept of the Environmental Policy of the Republic of Moldova;

Government decision of the Republic of Moldova no. 803 of 19.06.2002 concerning the approval of the Regulation on the procedure for establishing the protected natural area regime;

Government decision of the Republic of Moldova no. 150 of 02.03.2010 concerning the approval of the Regulation on the organization and functioning of the "Moldsilva" Agency, the structure and staffing of its central body;

Architecture legal framework:

Law no. 1350 of 02.11.2000 regarding the architectural activity;

Government Decision of the Republic of Moldova no. 869 of 20.08.2001 on the development of national architecture.

Art sector:

Law no. 1421 - XV of 31.10.2002 on Theatres, Circus and Performing Art Organisations;

Law no. 386 of 25.11.2004 on Cinematography;

Law no. 286 - XIII of 06.11.1994 on Libraries; amended on July 29, 2005;

Law on Artists and Artists' Unions No. 21 of March 1, 2013 (no. 1263-VII, July 28, 2014);

Law on Cinematography no. 116 of July 3, 2014;

Publishing sector:

Law no. 880 - XII of 22.01.1992 on Archives;

Law no. 603 - XIII of 03.10. 1995 on the Audio-visual Sector;

Law no. 939 - IV of 20.04.2000 on Publishing; modified on August 17, 2001;

Law no. 139 of 02.06.2010 on Copyright and Related Rights;



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Laws from EU Countries:

France:

Loi du 30 mars 1887 sur la conservation des monuments historiques et des objets d'art;

Loi Cornudet of 14.03. 1919;

Plan de sauvegarde et de mise en valeur (PSMV), 1962;

Malraux law on the safeguarding and valorization of historic centers of 04.08.1962;

The act on Architectural, Urban and Landscape Heritage Protection Zones of 07.01.1983;

Code du Patrimoine of 20.02.2004;

Law on National Commitment for the Environment of 12.07.2010;

The plan de sauvegarde et de mise en valeur of 13.02.1967;

Fonds national pour l'archéologie préventive – Fnap, details can be found at
<http://www.culture.gouv.fr/Thematiques/Archeologie/Sur-le-terrain/Archeologie-preventive>

Italy

Code of Cultural Heritage and Landscape, D.Lgs. 42 of 01.05.2004;

D.P.R. 76 of 1998 "Regulation containing criteria and procedures for the use of the IRPEF's eight per thousand share devolved to direct state management";

Public Procurement Code, 1D.lgs. n. 50 8.04.2016;

Ministerial decree n. 154/2017 Regulation on public procurement of works concerning protected cultural assets pursuant to Legislative Decree no. 42 of 2004, referred to in Legislative Decree n. 50 of 2016.

Germany

German Fundamental Law of 23.05.1949;

Bavarian Law for the Protection and Preservation of Monuments of 25.06.1973, last revised 27.07.2009;

Act on the Protection of Cultural Monuments (Monument Protection Act) of the Land of Hesse of 05.09.1974;

Act on the protection and care of monuments in the Federal State of Rhineland-Palatinate (Monument Protection Act, DSchG) of 23.03.1978;

Tax Reform of 01.01.2000;

Law on Non-profit Character and Donations, July 2007.

Spain

Law no.16 of 25.06.1985 on Historic Heritage of Spain;

Law 49/2002, of 23 December, Tax Regime of Non-Profit Entities and Tax Incentives to Sponsorship;



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