



Environmental and Social Requirement 8

Cultural heritage



Cultural heritage

Introduction

1. This Environmental and Social Requirement (ESR) recognises the importance of cultural heritage to present and future generations. The aim is to protect cultural heritage and to encourage clients to avoid or mitigate adverse impacts on cultural heritage in the course of their business operations. The clients are required to be precautionary in their approach to the management and sustainable use of cultural heritage.
2. Both tangible and intangible cultural heritage are important assets for economic and social development and are an integral part of the continuity of cultural identity and practices (including traditional skills, knowledge, beliefs and/or minor dialects and languages).
3. In pursuing these aims of protection and conservation, this ESR is guided by applicable international conventions and other instruments. It also recognises the need for all parties to respect the laws and regulations that pertain to cultural heritage that could be affected by a project and the obligations under relevant international treaties and agreements ratified by host countries. These laws may be on cultural heritage or antiquities, planning or building permits, conservation areas, protected areas, or other laws and regulations governing the built heritage, or laws relating to the protection of cultures of Indigenous Peoples. Detailed requirements for protecting Indigenous Peoples can be found in ESR 7.

Objectives

4. The objectives of this ESR are to:
 - support the protection and conservation of cultural heritage
 - adopt the mitigation hierarchy approach to preserve cultural heritage and protect it from adverse impacts arising from the project
 - promote the equitable sharing of benefits from the use of cultural heritage in business activities
 - where significant elements of cultural heritage are identified, promote awareness, appreciation and enhancement of cultural heritage, as well as potential socioeconomic benefits for local communities.

Scope of application

5. This ESR applies to all projects directly financed by the EBRD, as established in the Environmental and Social Policy. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this ESR and how they will be addressed as an integral part of the client's overall environmental and social management system (ESMS), outlined in ESR 1, and/or the project's cultural heritage management plan (CHMP). In addition, the client will apply this ESR during project implementation if the project affects or has the potential to affect cultural heritage (tangible and intangible) that had not been previously identified.
6. For the purposes of this ESR, the term "cultural heritage" is defined as a group of resources inherited from the past, which people identify, independently of ownership, as a reflection and expression of their evolving values, beliefs, knowledge and traditions. It encompasses tangible and intangible cultural heritage, which is valued¹⁰⁵ at the local, regional or national level, or within the international community:

¹⁰⁵ Criteria for defining the value attached to the cultural heritage and establishing its significance are described under paragraph 23, but also paragraphs 10–17.

- Tangible cultural heritage refers to movable or immovable objects, sites and groups of structures, as well as cultural or sacred spaces associated therewith, and natural features and landscapes that have archaeological, ethnological, paleontological, historical, architectural, religious, aesthetic or other cultural significance.
 - Intangible cultural heritage refers to practices, representations, expressions, knowledge and skills that communities, groups and, in some cases, individuals recognise as part of their cultural heritage and which are transmitted from generation to generation.
7. Recognising that sites, objects or cultural traditions representing cultural heritage value or significance could be directly or indirectly affected during project development, a project is subject to the provisions of this ESR if it:
- involves excavations, demolitions, movements of earth, drainage, flooding or other changes in the physical environment
 - is located in, or in the vicinity of, a cultural heritage site identified in the country of operation
 - may have a material impact on the intangible forms of cultural heritage of people including Indigenous Peoples
 - involves the dewatering of peat soils, marine dredging, seabed disturbance or anchoring corridors.
8. The requirements of this ESR are applicable to cultural heritage irrespective of whether or not it has been legally registered or previously disturbed. With regard to intangible cultural heritage, the requirements of this ESR apply only if the physical component of the project will have a material impact on such cultural heritage, or if the project intends to use such cultural heritage for commercial purposes.

Requirements

9. The client will seek to avoid adverse impacts on cultural heritage during the project lifecycle. Where impacts on cultural heritage cannot be avoided, the client will identify and implement mitigation measures to address the impacts in line with the mitigation hierarchy, which may involve the rerouting or changing the physical footprint of the project, in situ conservation and rehabilitation, the relocation of cultural heritage, documentation and cataloguing, and the transmission of cultural heritage-related knowledge. Mitigation measures should take into consideration the specific requirements pertinent to each type of cultural heritage in accordance with paragraphs 10-17 of this ESR.

Requirements for specific types of cultural heritage

Archaeological sites

10. Archaeological sites comprise patterned physical remains of past human activity and may involve any combination of structural remains, artefacts and human or ecological elements that may be located entirely beneath, partially above or entirely above the land or water surface. The client will carry out desk-based research, including by consulting national and international registries and lists, consider the high probability of past human activity and conduct field surveys to document, map and investigate archaeological remains. The client will document the location and characteristics of archaeological sites and material – including burial sites, human remains and funerary items – identified during the project lifecycle and provide such documentation to the national regulator or relevant cultural heritage authorities.
11. The client will consult with the national regulator and heritage expert(s) to determine the appropriate mitigation measures for archaeological sites and associated materials (excavation and documentation, or in situ conservation) identified during the project lifecycle and will manage the archaeological material accordingly. The client will also consult with the cultural heritage authorities to determine ownership responsibility over archaeological sites and materials and ensure the transfer of custody to the relevant state agencies.

Built heritage

12. Built heritage refers to heritage places and features that survive as buildings, earthworks or structures above or below the ground. It includes buildings, structures, artefacts and urban or rural spaces, representing past or current human settlements that are of historical, architectural, aesthetic or cultural heritage significance.
13. The client will identify and implement appropriate measures to address project impacts on built heritage, which can include documentation, in situ conservation or rehabilitation, relocation and other forms of ex situ conservation. If the rehabilitation of the built heritage is identified as the appropriate mitigation measure, the client will retain the authenticity of the form, materials and techniques used and seek to preserve the physical and spatial context for the built heritage concerned.

Cultural landscape with natural features

14. Cultural landscape can be an area where traditional patterns of natural resource use have shaped the landscape features that reflect a particular culture, lifestyle or historical period. Examples include sacred hills or mountains, waterfalls, caves and rocks, carvings and paintings on rocks or in caves, and fossilised remains.
15. If the cultural landscape has been identified through impact assessment or in consultation meetings, the client will identify natural features associated with cultural heritage significance, the people that value such features, and the users and custodians who will represent them in any discussions on the location, protection and use of the heritage place(s).

Movable cultural heritage

16. Movable cultural heritage includes manuscripts, rare books, documents and publications of special interest (historical, artistic, scientific and literary), sculptures, paintings, statuettes, carvings, religious items, fragments of monuments or historic buildings, archaeological material, archives and collections of historical records.
17. The client will consult with the relevant cultural heritage authorities and key stakeholders, including users and custodians of the cultural heritage, to identify movable cultural heritage that may be affected by the project and adopt measures for their protection throughout the project lifecycle. The client will inform the regulator and/or relevant custodians and transfer custody of the identified movable cultural heritage to the relevant authorities.

Underwater cultural heritage

18. Underwater cultural heritage refers to traces of human existence with cultural, historical and/or archaeological value that have been partially or fully under the water. Underwater cultural heritage includes prehistoric settlements, remains of towns, shipwrecks or downed planes that may contain human remains.
19. The client will consult with the national regulator and heritage expert(s) to determine the appropriate mitigation measures for the identified underwater cultural heritage and associated materials, with priority consideration to be given to avoidance in project design. When the impact assessment process suggests the presence of underwater cultural heritage, the client will engage a qualified expert to examine and document the features of the cultural heritage identified.

Consultation with cultural heritage users, custodians, affected communities, and other stakeholders

20. The client will carry out meaningful consultation with and provide information in respect of the project to all key stakeholders with a view to: (a) identifying cultural heritage likely to be affected; (b) understanding the significance of the cultural heritage to users, custodians and other key stakeholders, including local communities; (c) assessing the impacts and risks; (d) applying the mitigation hierarchy; and (e) identifying opportunities for potential community benefit. The identification of key stakeholders and the conduct of

meaningful consultation will follow the requirements of ESR 10 and will include custodians and key users of the identified cultural heritage. This will include women and vulnerable people.

21. The client, through consultations with key project-affected communities, including users and custodians of the cultural heritage and other stakeholders, will determine whether disclosure of information related to cultural heritage may compromise the safety or integrity of the cultural heritage. In such situations, the client will keep the information related to the cultural heritage confidential and may omit the sensitive information from public disclosure.

Assessment of risks and impacts

22. At an early stage of the environmental and social assessment, the client will identify whether any cultural heritage is likely to be adversely affected by the project and assess the likelihood of any chance finds. In doing so, the client will consult with the relevant authorities, experts, local communities and other key stakeholders, including users and custodians of the cultural heritage, as appropriate.
23. The assessment process will characterise the baseline and the potential risks and impacts of the project on cultural heritage. The extent of the assessment will need to be sufficient to characterise the potential significance, likelihood and severity of the impact and take into account the views of the regulator, users and custodians of the cultural heritage, heritage expert(s) and other key stakeholders. To address the identified impacts on cultural heritage, the client will develop and implement a CHMP that should include mitigation measures developed in accordance with the mitigation hierarchy and use good international practice (GIP).
24. The client will engage cultural heritage expert(s) to support the baseline survey, data and documentation collection, the definition of the significance of the cultural heritage, and preparation of the CHMP. It will also ensure the application of requirements to contractors and other third parties.

Chance finds procedure

25. The client will ensure that provisions for managing chance finds – defined as tangible cultural heritage encountered unexpectedly during project implementation – are in place and included in contracts, as appropriate. Such provisions will include notifying relevant competent bodies of found objects or sites; delivering training to project personnel, including contractor and sub-contractor employees, on the procedures to follow in the case of chance finds; and securing the area of finds to avoid any further disturbance or destruction. The client will not disturb any chance finds until an assessment is made by a cultural heritage expert(s) and actions are identified consistent with national law and this ESR.

Legally protected and internationally recognised areas

26. Where the project has the potential to have adverse impacts on the cultural heritage of an area that is protected through legal or other effective means, and/or is internationally recognised, or proposed for such status by national governments, the client will seek to avoid such impacts. In situations where impacts cannot be avoided and no alternatives are feasible, the client will proceed with development only when the project:
 - meets local, national and international requirements pertaining to the cultural heritage concerned
 - demonstrates that any proposed development is legally permitted, which may require an assessment of project-related impacts on the protected area
 - complies with the provisions of government management plans for such areas through the preparation and implementation of a cultural heritage impact assessment and associated management plan, as required under national law, relevant international conventions and ESR 8
 - consults protected area regulators, relevant authorities, local communities and other stakeholders on the proposed project in accordance with ESR 10
 - explores opportunities and implements programmes to promote the conservation mandate of the protected area and contributes to the socioeconomic development of local communities, in accordance with the management plan of the protected area.

Sustained and safe access to cultural heritage

27. If the project area contains cultural heritage or affects access to previously accessible cultural heritage sites enjoyed by users, custodians and other community members, the client will ensure sustained and safe access to the cultural site or will provide an alternative access route of equal characteristics, taking into account health, safety and security considerations.

Project's use of cultural heritage

28. Where a project entails the use of cultural resources, knowledge, innovations or practices of local communities embodying traditional lifestyles for commercial purposes, the client will inform these communities on a timely basis of: (i) their rights under national law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The client will proceed with such commercialisation only when it: (i) enters into a good-faith negotiation with the affected local communities embodying traditional lifestyles; (ii) documents their informed participation and the successful outcome of the negotiation; and (iii) provides affected local communities with a fair and equitable share of benefits from the commercialisation of such knowledge, innovation or practice, consistent with their customs and traditions. Where a project proposes to use the cultural resources, knowledge, innovations or practices of Indigenous Peoples, the requirements of ESR 7 will apply.
29. If the project is likely to expose the cultural heritage, especially movable heritage items, to theft, looting or trafficking, the client will take measures to guard against such risks and will notify the relevant authorities of any such activity.

Monitoring and evaluation

30. The client will establish procedures to monitor and evaluate the implementation of the CHMP and update it as necessary during the project lifecycle to achieve the objectives of this ESR. The client will ensure that implementation of the CHMP is verified by the EBRD by preparing and submitting to the Bank a completion report upon implementation of all mitigations envisaged under the CHMP.