

PR 8: Cultural Heritage

Introduction

1. The EBRD recognises the importance of cultural heritage for present and future generations. Consistent with the Convention Concerning the Protection of the World Cultural and Natural Heritage and the Convention for the Safeguarding of Intangible Heritage, this Performance Requirement aims to protect irreplaceable cultural heritage and to guide clients to avoid or mitigate adverse impacts on cultural heritage in the course of their business operations. In addition, the requirements of this Performance Requirement related to a project's use of cultural heritage are based in part on standards set by the Convention on Biological Diversity. The Bank supports a precautionary approach to the management and sustainable use of cultural heritage in line with the Rio Declaration.

2. Cultural heritage is important as a source of valuable historical and scientific information, as an asset for economic and social development, and as an integral part of a people's cultural identity, practices, and continuity.

3. In pursuing these aims of protection and conservation, the Bank is guided by and supports the implementation of applicable international conventions and other instruments.¹ The EBRD also recognises the need for all parties to respect the laws and regulations that pertain to cultural heritage in a project's area of influence and the country of operation's obligations under relevant international treaties and agreements. These laws may be cultural heritage or antiquities laws, planning or building consent laws, conservation area or protected area regulations, other laws

and regulations governing the built historic environment, or laws relating to the protection of Indigenous Peoples.

Objectives

4. The objectives of this Performance Requirement ("PR") are:

- to support the conservation of cultural heritage in the context of EBRD-financed projects
- to protect cultural heritage from adverse impacts of project activities
- to promote the equitable sharing of benefits from the use of cultural heritage in business activities
- to promote the awareness of and appreciation of cultural heritage where possible.

5. This PR sets a framework for clients to protect cultural heritage through the avoidance, and where avoidance is not feasible, the reduction and mitigation of any potential adverse impacts by EBRD-financed activities, in an appropriate and proportionate manner.

Scope of application

6. This Policy will apply when a project is likely to affect irreplaceable cultural heritage. The provisions of this PR apply whether or not the cultural heritage has been legally protected or previously disturbed.

7. For the purposes of this PR, 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 constantly evolving values, beliefs, knowledge and traditions.

¹ Such as the following:

- Convention concerning the Protection of the World Cultural and Natural Heritage, 1972 (UNESCO World Heritage Convention).
- Convention for the Safeguarding of the Intangible Cultural Heritage, 2003 (UNESCO Intangible Heritage Convention).
- Convention on the Protection of the Underwater Heritage, 2001 (UNESCO Underwater Heritage Convention).
- Council of Europe Framework Convention on the Value of Cultural Heritage for Society, 2005.
- The Australia ICOMOS Charter for the Conservation of Places of Cultural Significance (*The Burra Charter*) (Australia ICOMOS).

It encompasses tangible (physical) and intangible heritage, the boundaries of which are a subject of considerable debate among heritage experts. The cultural heritage may be valued at the local, regional, or national level, or within the international community:²

- Physical cultural heritage concerns movable or immovable objects, sites, groups of structures, and natural features and landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic or other cultural significance.
- Intangible cultural heritage means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage and which are transmitted from generation to generation.³

8. The EBRD recognises that sites or objects representing cultural heritage value or significance could be uncovered in unexpected locations, during the actual implementation of an approved project. Therefore, a project is subject to the provisions of this PR if it:

- involves significant excavations, demolitions, movement of earth, flooding or other changes in the physical environment
- is located in, or in the vicinity of, a cultural heritage site recognised by the country of operation, or
- may have an adverse impact on the culture, knowledge and practices of Indigenous Peoples.

9. The applicability of this PR in other cases will be determined by the Bank during the environmental and social appraisal process (see paragraph 10 below). Projects specifically designed to support the conservation or management of cultural heritage are individually reviewed by the Bank. If applicable, the Bank will agree with the client how the requirements of this PR will be addressed and managed as part of the client's overall Environmental and Social Action Plan (ESAP) and/or Management System. The environmental and social appraisal and management requirements are outlined in PR 1 and PR 10.

Requirements

Appraisal

Screening for risks or impacts on cultural heritage

10. At an early stage of the environmental and social appraisal (see PR 1), the client will identify if any cultural heritage is likely to be adversely affected by the project, and assess the likelihood of any chance finds (see paragraph 16). In doing so, the client will consult with relevant ministries, experts and local communities as appropriate.⁴ The intensity of study of cultural resources should be sufficient to fully characterise the risks and impacts, consistent with a precautionary approach and reflecting the concerns of relevant stakeholders.

² This definition is consistent with the Council of Europe Framework Convention on the Value of Cultural Heritage for Society. Cultural heritage is also known as cultural patrimony, cultural assets, cultural resources, or cultural property.

³ As set out in the Convention for the Safeguarding of the Intangible Cultural Heritage.

⁴ See PR 1 and 10. In the case of Category A projects, this should be discussed during the scoping meeting. See section 10 of PR 10.

Impacts on intangible heritage

11. Although potential impacts on intangible cultural heritage might be less obvious than impacts on tangible cultural heritage, they may be of equal significance. If the environment is crucial for maintaining traditional skills, knowledge and beliefs, any relocation or detachment could trigger the loss of traditional knowledge, beliefs and/or loss of minor dialects and languages and ultimately result in the disintegration of a community.

Avoiding impacts

12. The client is responsible for locating and designing a project so as to avoid significant damage to cultural heritage. If potential impacts are identified at the early stages of project development, preference should be given to avoiding adverse impacts during the design and site selection phases.

Assessing impacts that cannot be avoided

13. Where impacts cannot be avoided, the client will, based on the results of the preliminary screening undertake studies required to assess potential impacts and, if necessary, the required changes in design. The scope of these studies will be agreed with the EBRD on a case-by-case basis. The studies will be conducted by qualified and experienced cultural heritage specialists, either as part of the overall environmental and social assessment in accordance with PR 1, or separately. The EBRD may require the involvement of external experts.

14. The assessment and mitigation of impacts on cultural heritage will be conducted in accordance with relevant provisions of national and/or local laws, regulations and protected area management plans, national obligations under international laws and internationally accepted good practice. In the majority of the EBRD countries of operations, laws prohibit the removal of objects and demolition of sites of physical cultural heritage. Internationally accepted good practice includes, but is not limited to: archaeological or paleontological field survey, laboratory examination of found objects, exhibitions featuring new finds, and documentation.

Managing impacts on cultural heritage

15. Based on the results of the field surveys, expert assessment of the significance of cultural heritage, requirements of national legislation and relevant international conventions, as well as on the results of consultations with affected communities (see paragraph 17), the client will be required to develop appropriate mitigation measures in order to reduce and mitigate any adverse impacts on the cultural heritage, along with the implementation schedule and required budget for such measures. Such mitigation measures might be included in the Environmental and Social Action Plan for the project or in a specific Cultural Heritage Management Plan. The client will also ensure that trained and qualified personnel are available to oversee the implementation of mitigation measures, and that any contractors working on the project have the necessary skills and expertise and are managed and monitored in accordance with paragraph 19 of PR 1.

Chance find procedures

16. The client will ensure that provisions for managing chance finds, defined as physical cultural heritage encountered unexpectedly during project implementation, are in place. Such provisions shall include notification of relevant competent bodies of found objects or sites; alerting project personnel to the possibility of chance finds being discovered; and fencing-off the area of finds to avoid any further disturbance or destruction. The client will not disturb any chance finds until an assessment by a designated and qualified specialist is made and actions consistent with national legislation and this PR are identified.

Consultation with affected communities

17. Where a project may affect cultural heritage, the client will consult with affected communities within the host country who use or have used the cultural heritage within living memory for longstanding cultural purposes to identify cultural heritage of importance, and to incorporate into the client's decision-making process the views of the affected communities on such cultural heritage. The client will provide information to affected communities, in a transparent and appropriate language, on the scope, location, duration of a project, and any activities that might involve impacts on cultural heritage. Such consultation must follow the requirements of PR 10 and could be a part of a wider consultation process on the projects' environmental and social impacts in accordance with PR 10. Consultation will also involve the relevant national or local regulatory authorities entrusted with protection of cultural heritage. Impacts on cultural heritage will be appropriately mitigated with the informed participation of the affected communities.

18. Where a project may significantly damage cultural heritage, and its damage or loss may endanger the cultural or economic survival of communities within the country of operation, who use the cultural heritage for longstanding cultural purposes, the client will apply the requirements of paragraph 17 and will not proceed unless it: (i) enters into a good faith negotiation with the affected communities; and (ii) documents their informed participation and the successful outcome of the negotiation.

Project's use of cultural heritage

19. Where a project proposes to use the cultural resources, knowledge, innovations, or practices of local communities embodying traditional lifestyles for commercial purposes, the client will inform these communities 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 commercialization 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 for fair and equitable sharing of benefits from 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 paragraph 37 of PR 7 apply.