



Twinning Project AZ/15/ENP/OT/35

Support to the Ministry of Culture and Tourism of the Republic
of Azerbaijan for the modernization of its policy and
management system in the culture sector

Component 1 - Cultural Sector Policy and Governance Reform

Activity 2.1: Review of Azerbaijan's present legislation

Activity 2.2: Recommendations on legislative acts and amendments

Assessment report
List of needed revisions of the legal and
normative framework
Recommended texts of revised laws,
decrees and bylaws



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ASSESSMENT REPORT - LIST OF NEEDED REVISIONS OF THE LEGAL AND NORMATIVE FRAMEWORK

1.1 Application of modern methods in culture management - development of cooperation with the local self-government bodies in culture management, including art management

Assessment report

Modern methods in cultural management tend to strengthen participatory governance. In its own, management and protection of heritage constitutes a twofold field: (i) One devoted to the enforcement of the legal and administrative framework finalized to implement public action of protection and management; (ii) The second attaining the professions implied in the actual intervention of tangible and intangible heritage.

Beside the traditional figures of officers responsible for the implementation of public rules, an increasing importance is taken by new professions, those devoted to new fields like: (i) Innovative management of cultural assets; (ii) Qualified guiding; (iii) Expert in presentation of the assets (iv) Experts in public-private partnership. These are made of traditional professions dealing with intervention on ancient buildings of archeological heritage as well as professional dealing with valuable surfaces of monuments and movable valuable artifacts. At international level both education of professionals and access to labor market are subject to a growing regulation, to the aim of standardizing the qualification and so to setting up a homogeneous international market accessible to professionals themselves regardless to the nationality.

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, the participation of private entities, cooperation between state bodies and municipalities, organization of the effective use of cultural objects, adherence to the principles of state culture policy, application of innovative management tools and prevention of monopolies.

The objectives of the reform in culture management are as follows:

- improvement of the state culture system, development of cooperation with the local self-government bodies in culture management, including art management;
- creation of art management systems and production management in culture including arts as well as fostering modern management tools;
- cooperation with private entities, protection and preservation of unique national cultural identity and diversity as well as multicultural diversity, consequent liberalization in the field of culture with the purpose of fostering private initiatives and projects.

In order to successfully implement such participatory governance, the EU project RICHES has underlined that the following can drive both sustainability of heritage and citizens' participation and access to culture: (i) Trust Building. This could take place via public encounters, online communication and social networks. The communication should be bi-directional, allowing citizens to converse with both the public and the private parties, and to express their opinions; (ii) Participation. Citizens' participation and engagement should be encouraged¹. The overarching principle is that the public sector is comprised of two parts: the

¹ Access to culture and information is considered a fundamental right of all citizens by the European Union. In its European Agenda for Culture, the Commission emphasizes the broad perception of culture, which is linked to the value of cultural diversity, as well as to a shared European cultural memory. This approach is confirmed in the Conclusions of the Council and of the Representatives of the Governments of the Member

public administration and the citizens, who are the ultimate stakeholders in the public goods; (iii) Training. The pace of work in a public administration is often less dynamic than in private companies. It is therefore helpful to support and motivate civil servants regarding the need for defining objectives, achieving targets, monitoring outcomes and using problem-solving approaches. Also, moving from being a guardian of tangible cultural heritage to becoming a promoter of digital cultural heritage is a key factor; (iv) Simplification. Simplifying administrative procedures is a constant challenge when dealing with the public sector. A balance is needed between serious monitoring and seamless implementation of procedures. Offering tutorials and helpdesk services can help the participants to orientate through regulations.

With regard to this project, the European Council of Ministers have issued, in 2014, Council conclusions on participatory governance of cultural heritage. These conclusions include a general definition of the concept of participatory governance in cultural heritage and defines the steps to be taken to implement such a policy. According to the council, the participatory approach:

- (i) Actively involves all relevant stakeholders in the framework of public action such as public authorities and bodies, private actors etc. in decision-making, planning, implementation, monitoring and evaluation of cultural heritage policies and programmes to increase accountability and transparency of public resource investments as well as to build public trust in policy decisions;
- (ii) Is a multilevel and multi-stakeholder governance framework which recognize cultural heritage as a shared resource by strengthening the links between the local, regional, national and European levels of governance of cultural heritage, with due respect to the principle of subsidiarity, so that benefits for people are envisaged at all levels;
- (iii) Involves relevant stakeholders by ensuring that their participation is possible at all stages of the decision-making process;
- (iv) Values interaction between tangible, intangible and digital cultural heritage and address, respect and enhance its social, cultural, symbolic, economic and environmental values;
- (v) Facilitate the implementation of cross-cutting policies, enabling cultural heritage to contribute to objectives in different policy areas, including the smart, sustainable and inclusive growth;
- (vi) Allows the development of synergies between sustainable tourism strategies and the local cultural and creative sectors, actively involving citizens to foster sustainable quality cultural tourism offer and contribute to the revitalization of urban and rural areas, whilst safeguarding the integrity and maintaining the cultural value of heritage and balancing economic opportunities and the well-being of citizens.

The EU Council expects that the adoption of such a governance model will:

- (i) Contribute to increase awareness about the values of cultural heritage as a shared resource, thus reducing the risk of misuse and increasing social and economic benefits;
- (ii) Support contemporary cultural, artistic and creative works which are tightly related to identity and values and often based on traditional know-how and intangible heritage of people, and may therefore represent the cultural heritage of generations to come;
- (iii) Help triggering new opportunities brought by globalization, digitization and new technologies which are changing the way cultural heritage is created, accessed and used.

States, meeting within the Council, on a Work Plan for Culture (2015-2018), which states that one of the priority to be pursued is “Accessible and inclusive culture”.

Following the adoption by the council of this policy, the European Commission has launched a Structured Dialogue with the cultural sector, a process that provides a framework for discussions between EU stakeholders and the European Commission with regard to culture, with the aim of identifying concrete steps to be taken to foster the participatory approach.

The dialogue with European Stakeholders has led to the identification of the following pre-conditions for a participatory governance: (i) Organized private actors ; (ii) Legal framework and long-term policy mechanisms which allow and encourage participatory governance in cultural heritage ; (iii) Transparency and information -more available information ex post and ex ante ; (iv) Structures and formats that support participation ; (v) Education and training for politicians, managers, and communities ; (vi) Building capacity for advocacy work on these issues ; (vii) Common understanding of the participatory process ; (viii) Common understanding of participatory governance ; (ix) Build and re-build (where broken) engagement leading to active participation.

List of needed revisions of the legal and normative framework

In the following paragraphs, the implications of such pre-conditions and normative improvements are further analyzed and appropriate reforms will be suggested on cooperation between public authorities and the world of business (PPP); digitalization processes etc.

Howbeit, for realizing appropriate reforms, there should be a shift from procurement to management. In other words, it is important to apply modern methods in culture management, that implies the development of cooperation with the local self-government bodies in culture management, including art management. Management of cultural heritage, development in the regions and creating dynamic synergies between the state, regional, local, civil, volunteer, independent, entrepreneurial, private and commercial components of the wider cultural sector in Azerbaijan are factors that foster participatory governance models². In brief, key factors for the success and competitiveness of the Azerbaijan culture/tourism sector are:

- (i) cultural assets;
- (ii) quality of service and high-level professional skills;
- (iii) the existence of well-trained specialists in the field;
- (iv) online presence;
- (v) research, innovation and new technologies, especially in telecommunications, which are also essential for bringing the cultural heritage closer to the people. In those sectors, the Azerbaijan legal framework should be improved.

In particular, the following legal instruments should be amended and/or envisaged:

²With regard to this, participatory governance models are considered by the European Charter on local self-government as adopted under the auspices of the Congress of the Council of Europe and opened for signature by the Council of Europe's Member States on 15 October 1985. According to this Charter, public responsibilities should be exercised preferably by the authorities closest to the citizens, the higher level being considered only when the co-ordination or discharge of duties is impossible or less efficient at the level immediately below. Cooperation with the local self-government bodies is also upheld by the Council of Europe, which has made several recommendations as highlighted in the European Neighborhood Policy (ENP). Further, according to Article 76, Title IX (Cultural Cooperation) of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the One Part, and the Republic of Azerbaijan, of the Other Part (1999), it is envisaged a direct "cultural exchange between institutions, artists and other people working in the area of art". Azerbaijan-wide dialogue between policymakers across all levels of governance, together with cultural and creative industries, networks of tourism operators, partnerships between private and public actors should be improved.

(i) New laws on a participatory process are needed. In particular, in Article 3.2.11 of the Law on Culture of the Republic of Azerbaijan there should be provisions for the establishment and development of new participatory processes addressed to:

- Trust Building, allowing citizens to converse with both the public and the private parties, and to express their opinions;
- Participation of all the stakeholders;
- Training, moving from being a guardian of tangible cultural heritage to becoming a promoter of digital cultural heritage; and
- Simplification, offering tutorials and helpdesk services. These targets should, then, be developed through secondary legislation.

In this legal framework, of utmost importance is a new legislation on the training in management of cultural officers. Therefore, in Article 3.2.3 of the Law on Culture of the Republic of Azerbaijan there should be provisions requiring periodical training in management of qualified personnel in culture sector and the enhancement of their professionalism level; provisions to be developed through a Statue. At the same time, in order to trust building and guarantee simplification, a new legislation on transparency and information (online communication, tutorials and helpdesk services that can help the participants to orientate) is needed. Full transparency and information are principles to be inserted by now in Articles 3.2.13, 14.2.9, 14.2.13 and 17 of the Law on Culture of the Republic of Azerbaijan.

1.1.1 Role of municipalities and of districts/Regional Culture and Tourism Offices in protection of heritage, in urban planning, in tourism management, museums

Assessment report

The task of the districts/Regional Culture and Tourism Offices and municipalities and their institutions should be not only to support the culture itself but to connect it with other realms of life in a society, particularly to make its values accessible -the cultural heritage as well as the freedom and creativity important for cultural production- so people can make use of it in their various activities. As it is well known, cooperation stimulates an exchange of experience, donating exhibits and offering a possibility of exposure of mainly young artists to the outside world.

Without making a useless inheritance of the city/districts competences, strong points should be the cooperation of Baku City Culture and Tourism Department and the new 15 Regional Culture and Tourism Offices with other cultural and social organizations, municipalities, village communities, non-governmental non-profit organizations and business subjects at a regional, national and international level³. In addition, the following policy priorities remain important:

- assigning a new role to large cities and municipalities as arenas for culture;
- supporting volunteer activities;

³*The development of international cooperation in the field of culture represents a unique opportunity to create mutual relationships with other countries, to nurture dialogue, as well as to promote cultural diversity, to promote the country abroad and to enhance the role of cultural tourism. It is also a key element for the development of intercultural dialogue as a key factor in building fair and peaceful societies.*

- greater transparency in cultural life, and lifelong learning.

Obviously, a major problem still will remain, that is the overlapping or not clear division of competences that at times affects actors of the same level (such as between Ministries) and, at others, actors with different jurisdictions (i.e. between Ministries and Municipalities). Especially, when considering that districts will not have any direct competences in the cultural field, apart from supporting cultural institutions and activities within their area.

The process of revising and updating the legislation to design the changes as above-mentioned is still in progress, and the competences to be shared are affecting the laws on museums, on protection of historical and cultural monuments, on urban planning and on tourism management.

- Considering the Law on Museums (Article 8), state owned, municipality owned and private museums exist in Azerbaijan⁴. Municipalities and private entities/persons can found their own museums and should register it as a legal person at relevant body. Article 24 says that state museums are financed through state budget and other legal sources different from state budget. As there is no reference on funding of municipal museums we may assume that they are financed by municipalities. There are not any other references to competences of municipalities in legislation. However, according to Article 4 of Law on Status of Municipalities, municipalities may approve local social protection and social development programs covering different areas including maintenance and use of cultural buildings, improvement of cultural entities.
- Considering the Law on Protection of Historical and Cultural Monument, municipalities can lease and privatize the property they own. According to the Law, it is prohibited to lease immovable monuments or their separate parts which are of world significance and in the property of state or municipality. Immovable architectural monuments of country and local importance in the state or municipality property, including privately owned immovable monuments or their separate parts (except for archeological monuments) might be leased (after getting permission from MCT -State Service- on the program of utilization and reconstruction) for scientific, religious, service and tourism purposes based on the contract (to sign contracts in order to rent state property is among the competences of State Committee on Property Issues -3.0.14 of its Statue) upon approval of utilization program, coordination and rehabilitation designs by MCT/Icherisheher. Repair and restorations of leased monuments are facilitated with leaseholder's finance under the control of MCT and specialists. Monuments of local importance can be privatized (except for engineering and defense constructions, religious monuments and memorials, hydraulic installations. See, Article 4).
- Article 4 of Law on Status of Municipalities defines that municipalities may also approve local social protection and social development programs covering different areas including maintenance of cultural and historical monuments. Construction and renovation work conducted on the monuments which are in the property of state or municipality shall be conducted on the account of state or local budget funds based on the decision of MCT/Icherisheher. Conservation, repair, rehabilitation, reconstruction and regeneration work on the monuments will be carried out after being confirmed by MCT/Icherisheher considering the opinion of National Academy of Science.
- Considering the Article 37 of the Law on Status of Municipalities, municipalities may utilize their material and financial assets to repair the territory of the municipality and to construct and repair social infrastructure buildings. The Code of Town-planning and Construction defines, however, the competences of the municipalities in the fields of territorial planning and construction. In this regard, municipalities can be the customers of territorial planning and papers of territorial planning will be prepared upon the decision of the municipalities in the lands owned by them. These detailed plans are agreed with relevant state bodies and then sent to State Committee for Town-Planning and Architecture for getting its opinion. Municipalities may define prohibitions while detailed plans are

⁴In this regard, it is a negative reality the fact that, as of records, there is no municipality owned museum.

being prepared or amended. Practice of detailed plans ordered by municipalities, however, does not exist). Municipalities organize also measures on the accomplishment in the areas owned by them and decision on the accomplishment is agreed with State Committee for Town Planning and Architecture. Further, municipalities organize the implementation of construction projects which are ordered and financed by them.

- Considering the tourism's sector, municipalities define rules for use of water facilities owned by them for medical treatment, tourism, recreation, sports and other purposes. These rules are agreed with districts. There are no other references to the competences of the municipalities in tourism management.

As far as the Districts and the use of the available personnel, the Presidential Order created Baku City Culture and Tourism Department and 15 Regional Culture and Tourism Offices (each covering few cities and districts) and these offices are included in the structure of MCT and will be funded through MCT beginning from 1st of January 2017. As a result, districts will not have any direct competences in the field, apart from supporting cultural institutions and activities within their area.

The process of revising and updating the legislation to cope with these changes is still in progress.

According to the amended legislation, City/district executive powers had no direct competences over museums. However they supported cultural activities by (referred to the Statue of Districts): (i) Implementing cultural policy of the state/state programs on the development of culture and art in the territory; (ii) Providing social-cultural services to the residents of the territory; (iii) Analyzing and forecasting development of culture in the territory and making proposals to relevant executive bodies; (iv) Creating opportunities for leisure time activities and services rendered by cultural organizations; (v) Supporting activities of cultural entities in the territory; (vi) Creating entities for social-cultural, sports purposes and organizing their work.

Other competences of Districts (referred to the Statue of Districts) were the following: (i) It was required to get permission of MCT and districts (considering opinion of NAoS) for implementing construction work in the areas where historical and cultural monuments are located (4.11.16); (ii) They organized protection of monuments in cooperation with MCT (3.12.7.); (iii) Monuments of local importance could be relocated with permission of MCT/districts (4.11.16); (iv) They informed MCT State Service in case of discovery of features of cultural objects during construction (3.11.5-1); (v) About 3,000 libraries were located throughout the 64 districts of Azerbaijan; in each district there is a central library connected with minor libraries. Among the 64 central libraries, 33 are connected with the library cataloguing system ALISA, governed by the National Library: this is a web-based system built on standard formats and protocols MARC 21, ISO2709, UNICODE, Z3950; (vi) Both MCT and city/district executive powers had tourism offices. Since these offices and cultural institutions used to be funded by districts' budget, districts had huge influence/competences in the field. Districts created opportunities for development of tourism and entertainment centers located in the territory (Statue – 4.13.16).

As said, these competences are changed or abolished due to Presidential Order signed in March. Districts, however, implement state policy in the field of town-planning and construction. In particular, detailed plans are prepared upon request of districts or municipalities based on a contract signed with a designer. Districts may define prohibitions while detailed plans is being prepared or amended (35.1). Districts also organize measures on the accomplishment of settlements (Statue- 3.9.10) and decision on the accomplishment is agreed with State Committee for Town Planning and Architecture (Code 44.1).

Further, advertisement will be installed in the areas or protected zones of historical and cultural monuments (on the monuments), over the roof of architectural monuments (buildings) with the consent of MCT/Icherisheher by the city/district executive powers (districts give permission for installing outdoor/street advertising). Design and construction of water supply and sewerage systems are also agreed with Districts, and they deal with repair and maintenance of the roads which are in common use and in their balance.

However, the enhancement of coordination between the local authorities and MCT should be considered a key factor to improve the protection of tangible and intangible heritage. A particular attention should also be paid to monitoring the way financial resources are used by local authorities in order to avoid dispersal of resources.

It should be intended, according to the "Culture Concept of the Republic of Azerbaijan", the "Law on Culture" and the draft of the legislation for safeguarding Azerbaijan's Intangible Cultural Heritage, to "infrastructuralise" intangible cultural heritage and people's creativity by turning the wide network of city (district) houses of culture and clubs, into a network of city (town) centers of culture and their local-lore, folklore and craftsmanship branches. In total, state cultural policy in the field of cultural infrastructure prescribes modernization of the material and technical bases with construction of specialized buildings and rehabilitation of cultural institutions; equipping cultural enterprises with modern engineering and information communication technologies; providing cultural institutions with stage costumes, musical instruments, etc.

The Ministry of Culture and Tourism is the main responsible central executive body for the functioning of the clubs, taking into consideration that the district club system is funded by local authorities. In particular, the use of the available personnel at city (district) culture clubs should be enhanced, using their assistance for the development of subsidiaries for country studies, folklore and crafts as well as the foundation of culture parks utilizing modern technologies, creation of crafts workshops and their integration into the existing touristic routes. This should also be made according to AZ 2014 doc concerning the use of the available personnel at city (district) culture clubs. It will be in line with EU normative system endorsing a new participatory governance models for the field of cultural heritage, by promoting the 'shared resource' aspect and strengthening links between local, regional, national and European plans.

All of the country's districts are equipped with local cultural infrastructure and spaces. A white paper should mention which infrastructures constitute a priority, for example multi-functional spaces, cultural centers linked to other equipment such as sporting or educational centers, museums, libraries, music libraries, mobile units etc. On the basis of the mapping undertaken during the scoping study, any need to prioritize certain geographical areas should also be identified. It is necessary to develop mobile infrastructure to include previously excluded localities: These mobile units could be dedicated, for example, to the training of cultural actors, talent scouting, and the recording of music and oral tradition, shows, exhibitions or the sale of cultural goods, etc.

Traditional forms of access and participation should be preserved, promoted and diversified, while new forms should be developed to make cultural goods and services accessible to all social groups, including the poorest. In particular, there should be the encouragement and the development of all forms of street art. Further, encouragement of all forms of actions that target the public at large; exhibitions, presentations or shows in public spaces or markets, initiatives that promote rural culture, etc. are strongly needed.

Therefore, the process of reorganisation of the cultural houses and community cultural clubs system, aiming at broadening the platform of social participation in cultural life in the current economic circumstances are a task that could be devolved to the existing districts.

In brief, there are emerging ideas to reconfigure the Azerbaijan broad system, to set aside non-working functions and develop new forms, serving as infrastructural units of Azerbaijani cultural heritage, by exploiting the existing network of city (town) centers of culture and districts.

For instance, the Districts -being territorial points of reference of the created Baku City Culture and Tourism Department and of the 15 Regional Culture and Tourism Offices- could: (i) Support the development of existing schools, academies and training centers; (ii) Pay close attention to traditional arts training centers; (iii) Support the creation of new schools; (iv) Support the development of ongoing training projects/programs continuously adapted to needs; (v) Multiply the possibilities for actors to take part in national and foreign internships; (vi) Inventory all spaces for broadcasting, identify and implement systems to ensure their dynamism; (vii) Rehabilitate showrooms and ensure the construction of new halls; (viii) Support the networking of broadcast locations ; (ix) Facilitate the access of artists and producers (or targeted categories therein) to the infrastructure and equipment necessary for distribution and broadcasting ; (x)

Encourage all forms of harmonization in interactions between the performing arts and other domains, notably film, the written arts and the visual arts ; (xi) Take measures to better exploit the touristic potential of performing arts ; (xii) Regularly audit training centers, adapting their training programs and improving their performances in order to ensure that they train artists and actors properly, to the extent that they are able to exercise their roles properly.

List of needed revisions of the legal and normative framework

To improve the Azerbaijan legal framework and thus accomplishing the targets as above-mentioned, there should be a close cooperation between the central authority and districts/ Regional Culture and Tourism Offices, municipalities and the local self-government bodies⁵.

Without any doubt, the Azerbaijan legal framework is called to start a radical reform, firstly implementing through primary, secondary and appropriate legislation: (i) Articles 142 and 144 of the Constitution of the Republic of Azerbaijan, providing a better organization of local self-government that should be carried out by municipalities and other local self-government bodies, taking also into account the European Charter on local self-government as adopted under the auspices of the Congress of the Council of Europe and opened for signature by the Council of Europe's Member States on 15 October 1985; (ii) Article 3 of the Law on Culture of the Republic of Azerbaijan, which is stating that the central authorities are “providing the establishment and development of the cooperation among individuals, state bodies, municipalities and international organizations; preventing the monopoly in the culture field”; (iii) Article 5.1.7 of the Law on Culture of the Republic of Azerbaijan, which is stating that the central authorities are “supporting the participation of international organizations, municipalities, natural and legal persons and also non-commercial bodies”; (iv) Article 29.2 of the Law on Culture of the Republic of Azerbaijan, which is stating that the electronic database system is serving: “to build mutual connections in cultural area among governmental bodies, municipalities, natural and legal persons including non-governmental organizations” ; (v) Articles 6 and following of the Law of the Azerbaijani Republic, June 29, 2012, n.392-IVQ, Town-Planning and Construction Code, which define powers of municipalities in the field of town-planning and construction activity; (vi) Articles 6 (organization of library system) and 25 of Law of Azerbaijan Republic about Library, which guarantee that “non-governmental authorities, public associations in library field, legal and physical persons participate for enrichment of library funds, improvement of services to readers, work up librarianship programs and events”; (vii) Articles 8 and the following of the Law of Azerbaijan Republic on Museums; (viii) Articles 4 and 18 of the Law of Azerbaijan Republic on Theatre and Theatrical Activity; (ix) Article 11 of Law of Azerbaijan Republic on Tourism, which should in detail specify the tourism resources of Azerbaijan Republic, indicating the municipality and other local self-government bodies competences in this sector.

Within this legal framework, a new secondary legislation should rule on municipalities and districts competences and equip them with local cultural infrastructure and spaces. There should also be detailed guidelines on maintenance and use of cultural buildings, on improvement of local cultural entities, lease and privatization of the property they own, on conservation, repair, rehabilitation, reconstruction and regeneration work on the monuments of local importance, on installation of outdoor/street advertising, on detailed plans.

⁵ All this is upheld by the Council of Europe: See, the several recommendations as highlighted in the European Neighborhood Policy (ENP).

Considering the tourism's sector, municipalities and the local self-government bodies should be actively involved in the planning phase as well in its management, turning the wide network of city (district) houses of culture and clubs, into a network of city (town) centers of culture and their local-lore, folklore and craftsmanship branches to be shown to tourism and associated activities.

A new directive should also indicate which infrastructures constitute a priority, for example multi-functional spaces, cultural centers linked to other equipment such as sporting or educational centers, museums, libraries, music libraries, mobile units etc. It is also necessary to develop mobile infrastructure to include previously excluded localities: These mobile units could be dedicated, for example, to the training of cultural actors, talent scouting, and the recording of music and oral tradition, shows, exhibitions or the sale of cultural goods, etc. In particular, there should be the encouragement and the development of all forms of street art.

Therefore, the process of reorganisation of the cultural houses and community cultural clubs system, aiming at broadening the platform of social participation in cultural life in the current economic circumstances are a task that could be devolved to the existing districts. In particular, through secondary legislation the cooperation of Baku City Culture and Tourism Department and the new 15 Regional Culture and Tourism Offices with other cultural and social organizations, municipalities, village communities should be enhanced and in detail promoted, assigning a new role to large cities and municipalities as arenas for culture; supporting volunteer activities; greater transparency in cultural life, and lifelong learning.

Increasing efforts to coordinate local authorities and MCT should be considered a key factor to improve the protection of tangible and intangible heritage. At the same time, a new accounting system should monitor the way financial resources are used by local authorities in order to avoid dispersal of resources.

1.2 Diversification of funding sources and improvement and expansion of culture services

1.2.1 Improvement and expansion of culture services

Assessment report

Improvement and expansion of culture services should lead up to: (i) Sustainable cultural tourism; (ii) Measures in favor of making culture more accessible; (iii) Urban rehabilitation of historic cities and adaptive re-use of buildings; (iv) Territorial development around cultural and natural sites; (v) Revitalization of intangible cultural heritage; (vi) Development of arts and crafts and of enterprises. The required investments have to take place in: (i) Institutional reforms and modernization of agencies responsible for cultural heritage management, modernization of regulatory environments and legislative tools; (ii) Education and capacity building; (iii) Awareness/communication /information/new technologies for information and communication.

The returns expected from these investments are sustainable economic growth, employment opportunities, an equitable distribution of benefits among local communities involved in the projects, as well as positive impacts on local cultural identities and cultural diversity.

To accomplish all these targets, civil society organizations need to be involved at different scales in the consultation and planning of investments, and diversification of funding sources is of utmost importance⁶. With regard to this, funding source for cultural heritage should be promoted through the following initiatives:

- (i) Set up a single Azerbaijan portal dedicated to tangible and intangible cultural heritage, bringing together information from all the programs funding cultural heritage;
- (ii) Support, with dedicated funding, studies, research and pilot measures specifically designed to analyze the impacts of cultural heritage promotion processes;
- (iii) Develop specific indicators and benchmarks in relation to the direct and indirect contribution of that heritage to economic and social development processes;
- (iv) Directly support cultural and social innovation integrated into local settings in which cultural heritage can drive development and help improve people's quality of life;
- (v) Consider the principle of multi-funding, which allows the complementary use of different funds within the same large-scale project;
- (vi) Consider also the principle of integrated funding that can, in specific cases, be put into practice by supporting large-scale projects;
- (vii) Promote and support at the same time small-scale cultural initiatives, which are of particular importance for local development and can help conserve the cultural heritage and promote socio-economic growth in general;
- (viii) Encourage public-private partnership;
- (ix) Adapt project management timing requirements in order to better accommodate the specific requirements of conservation, restoration and preservation projects;
- (x) Review the benchmark in relation to cultural heritage projects so far submitted;
- (xi) Include in the guidelines governing the next generation of structural funds for cultural heritage a compulsory quality control system, to apply throughout a project's life-cycle;
- (xii) Ensure that innovative heritage conservation measures and low-impact energy efficiency solutions for historic buildings are treated as eligible in delegated acts;
- (xiii) Look into possible fiscal incentives in relation to restoration, preservation and conservation work, such as reductions in VAT or other taxes, given that Azerbaijan cultural heritage is also managed by private bodies;
- (xiv) Take stock of best practices in fiscal policies and exchange best practices in order to ensure maximum encouragement of private support for tangible and intangible cultural heritage projects and maximize economic development and social cohesion impacts in the relevant local environment.

Obviously, most of these initiatives take into account the private sector that should be fully involved in the value-chain related to the cultural heritage investments, contributing to local economic development, and the creation of income-generating activities and employment generation of foreign exchange. In this view, the diversification of funding in the field of culture in the Republic of Azerbaijan shall in particular focus on: (i) The optimal definition of funding limits through inventory control, analysis, evaluation and better efficiency in using funds from the state budget for the needs of the culture sector as well as a wider use of public contracts and enhancement of control over the allotted public funds; (ii) The use of alternative funding sources (non-budgetary funds, grants, donations and other legal funding sources) with the purpose of extending possibilities for the financing of culture⁷; (iii) The improvement and expansion of culture services rendered against fee by culture institutions through the development of management and marketing.

⁶ On this theme, see the European Union legislation towards an integrated approach in supporting, enhancing and promoting cultural heritage.

⁷As it is evident, relevant forms of support of the private sector are obtainable through the funding system in the cultural heritage sector that may also consist of public indirect support, that is tax incentives, vouchers or matching grants, lottery funds etc. (see the following sections).

List of needed revisions of the legal and normative framework

In order to accomplish the above-mentioned targets (generally speaking: Improvement and expansion of culture services), it is felt necessary a more comprehensive approach to what should be considered as cultural services and how to detect them.

The amendments to propose do not necessarily imply changes to existing laws. They, however, require a proactive and timely action from the Ministry of Culture in order to ensure that the matter is properly addressed in the secondary legislation (decrees and orders), as well as in regulations, thus meeting the requirements of the European legislation⁸.

In particular, via secondary legislation, it should be envisaged that: (i) A single Azerbaijan portal dedicated to tangible and intangible cultural heritage, bringing together information from all the programs funding cultural heritage, is set up and properly advertised; (ii) Studies, research and pilot measures specifically designed to analyze the impacts of cultural heritage promotion processes are fully supported; (iii) Specific indicators and benchmarks in relation to the direct and indirect contribution of cultural heritage with reference to economic and social development processes are properly arranged, analyzed and addressed; (iv) cultural and social innovation integrated into local settings receives direct support; (v) Small-scale cultural initiatives are fully promoted; (vi) Benchmark in relation to cultural heritage projects so far submitted is completely reviewed.

The overall objective of the improvement process will be to create a robust and interconnected cultural system that can provide the necessary competences for an effective system, bringing to an adequate expansion of culture services.

1.2.2 Possible Public/Private/Partnership figures

Assessment report

Intelligent cultural investments will boost economy and tourism; their main risk is to maintain cultural values within the cultural sphere, and to protect them from exclusive economical exploitation. This is especially important regarding the development of new technologies and communication technologies and partnerships with private companies.

As it is well known, investments in the cultural heritage sector can resort to three interconnected sources: (i) public support; (ii) private support; and (iii) earned income. This mixed funding system may be exemplified as follows:

- 1) Public support: (i) Public direct support; (ii) Public indirect support: Tax incentives vouchers or matching grants. Lottery funds;
- 2) Private support, divided into: (i) business support; (ii) individual giving; and (iii) support from foundations and trusts, as grant giving organizations;

⁸ See, *inter alia*, the EU Resolution of 8 September 2015 Towards an integrated approach to cultural heritage for Europe.

- 3) Earned income: all individual spending for cultural purposes, (e.g. the buying of cultural objects, entry fees to cultural institutions, etc). Earned income therefore denotes all direct private investment in the cultural sector.

Even if heritage preservation is seen as primarily or exclusively a public task, this attitude should not conceal the possibility for wider private funding, which could complement and in some cases, replace public funding. In principle, five types of mainly private funding sources⁹ can be distinguished (though they will in practice overlap to some degree), and they are:

1) Funding by private owner's resources: If the site or monument is owned privately then its preservation costs should also be (largely) borne by the owner. This is in particular the case if the monument is to be used privately, as is the case e.g. for certain historic town or farm houses, castles, etc. However, it may well be that the owners cannot support all the cost for a monument whose preservation is also considered in the public cultural interest. Such may in particular be the case for the exterior of historic buildings (e.g. facades), or for the corresponding gardens and parks, but it can also apply to interiors. In such case the complementary support by public or third-party private funding sources can be justified. However, it should be accompanied and normally conditional upon making the supported site or monument accessible to the public, at least to a degree which reasonably balances the private owners' privacy with the public interest in acceding to subsidized heritage. For instance, parts of castles or palaces may be opened to the public, and so can be parks at certain times, etc. A similar approach should be used e.g. for worship places of heritage value.

2) Funding by third-party private sources: In a number of countries private or semi-private institutions or foundations exist which support heritage-related expenditure. Some major private companies also have their own foundation or support programme, which often includes heritage/cultural or artistic activities, notably if there is some geographical or thematic link to the company's activities. Admittedly, the current economic and financial situation may weight on the generosity of some of these schemes. Other support can be mobilized at the specific local level, e.g. through donations by local business or through a call for donations or sponsorships to the local population or to local charities. The new technique of "cloud financing" may further open new perspectives, on the condition that the promoters are technically sophisticated and transparent to make their case well known. In some countries, the emigrant population living in diaspora and possibly with higher incomes than in their country of origin can be mobilized to support heritage related investment. This could also be tried with tourist visitors or with cities maintaining twinning arrangement ties. Some tourism destinations also levy specific tourism taxes which may support heritage activities.

3) In-kind contributions from third-party sources: It can be easier for some companies to support a project not by a financial grant, but instead by directly providing relevant goods or services needed in the preservation effort. For instance, a local architect office may help in planning the restoration, a local building company may provide for part of the works, or a printing company may contribute to the catalogues for an exhibition. While the potential of such in-kind support should not be underestimated, it needs to be accompanied by a good quality control of the works and by keeping product placement ambitions within reasonable limits.

4) Private funding sources for operational costs: Ideally, all operational costs should be paid by the users of the sites or monuments, like the owners and visitors of museums, castles etc. However, this is not always feasible if the number of visitors is insufficient over the year, or if cost-covering entrance fees would become prohibitive for less well-to-do visitors. Accordingly, an approach similar to the one used for most public transport schemes needs to be undertaken, i.e. that a sizeable part of the operational costs is provided from

⁹*Defining what could be the "optimal mix" between them and with public sources will depend a lot on the specificities of the site or monument.*

sources other than conventional user fees. In particular, for heritage-related monuments, this may first of all consist in finding new uses for the heritage sites, which permit to levy non-conventional user fees from new customer groups. Museums e.g. can develop their book/souvenir shops or catering facilities (including through outsourcing them via rental contracts), historic buildings can rent out part of the facilities for parties, marriage ceremonies or other appropriate social events. Various concepts mentioned in b) and c) above (sponsorships, in-kind contributions) can also be used in this context. While there may exist an inherent danger of “over commercialization” of heritage sites, it is probably also fair to say that the potential for developing a reasonable degree of revenue-generating activities remains more often underexploited.

5) Use of heritage sites and monuments for new private use: In appropriate cases the investment and/or the operational costs of a heritage site can be largely or fully covered by new owners or users of the site, if it can be dedicated to a new use. Indeed, not all heritage buildings need to serve as museums or quasi-museums. In appropriate cases, they can be transformed e.g. into hotels, office buildings or apartments.

Private support consisting of a form of cooperation between public authorities and the world of business has developed through the diffusion of Public/Private/Partnership figures and practices. They are ascribed to different trends, spreading over western¹⁰ and eastern countries: the scarcity of public resources for culture and the perceived need of private competencies required to boost culture as an economic driver of development.

Public/Private/Partnership (PPP) are forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service. Public-private partnership projects are most suitable when cost innovation is more important.

PPP widens from being a financing tool for infrastructure projects, to include all those actions, initiatives and projects, which are focused on the sharing of three core “Rs”: Resources, Responsibilities, and Risks¹¹. A PPP project serves as an ideal funding instrument: Whereas a private partner enters a common project while expecting profit, a partner from the public sector pursues objectives such as cost savings, utilisation of

¹⁰In Italy, for instance, the Italian Code of Cultural Landscape and Heritage - legislative decree no. 42 of 22 January 2004 (Art.115) establishes that valorization activities can be implemented directly or indirectly. Direct management is executed through means and persons of the Public Administration, even if with some degree of autonomy (scientific, organizational, financial, economic). Indirect management is executed through: (i) Entrusting to foundations, institutions, associations, consortiums, company or other entities, established or in which the public authorities to whom cultural heritage belongs to have a majority holding; (ii) concession to third parties, on the base of specific criteria. The choose between direct and indirect management should come from a specific evaluation, in terms of efficiency and effectiveness, of objectives, and means available. Thus, many services that, at the beginning, were considered solely ancillary to the core mission of cultural heritage have nowadays gained political attention and legal acknowledgment, so to become crucial in the discourse about management of heritage, and deserving a specific article in the Italian Code (Art. 117). Services to public include: (i) Publishing and sales services related to catalogues and to catalogue, audio-visual and computer aids, to all other informational material, and to the reproduction of cultural property; (ii) Services related to book and archival properties for the provision of reproductions and library lending delivery; (iii) The management of record, slide and museum library collections; (iv) The management of sales outlets and the commercial utilization of the reproduction of cultural properties; (v) Public relations services, including assistance and entertainment for children, information and educational guidance and assistance services, meeting places; (vi) Cafeteria, restaurant, cloakroom and ticketing services; (vii) The organization of cultural exhibits and events, as well as promotional initiatives.

¹¹With reference to project financing (PF) operation, an issue has been particularly debated: Whether expenditure related to the concerning investment has to be considered public (on balance) or private (off-balance). Eurostat decision (11 February 2004) stated that, in a PF, the majority of risks and rewards have been transferred to the private partner. Hence, private partner must bear the majority of the risk.

private resources such as know-how, transfer of knowledge and fulfilment of its public-beneficial duty, which involves broadening of the cultural offer.

PPPs can be categorized into two types: a PPP of an institutional nature -the Institutional PPPs-; and a PPP of a purely contractual nature -the Contractual PPPs-¹². This categorization is adopted by the European Union and by many other countries.

In a PPP of an institutional nature, there is cooperation between the public and the private sectors within a distinct entity, whereas in a PPP of contractual nature, the partnership between the public and the private sector is based solely on contractual links. Both arrangements involve delegated management of the traditional public sector activities to the private sector. In the first type of PPP, the rights and obligations are guaranteed by the company's statutes and by the shareholder agreement between public and private parties. In the second type, they are regulated by an administrative contract or series of contracts.

As far as the Azerbaijan legal system, there should be the possibility for its authorities to stipulate agreements with other public administrations or with private parties in order to valorize public cultural heritage¹³.

These agreements should take into consideration two different types of PPPs, that is:

- A) The Institutional PPPs (mixed companies), which imply the establishment of a new entity held jointly by the public partner and the private partner. The joint entity thus has the responsibility of ensuring the delivery of a work or service for the benefit of the public. Usually the public partner controls the company either as shareholder or through special rights it may hold and the private partner operates the service.

Institutional PPPs are regulated by the company statutes and the shareholder agreement, that must fully comply with the relevant National legal provisions. The statutes of the company establish common rules for the organization, governance and operation of the company. The shareholder agreement regulates relationships between partners (public and private). This last document is central to the performance of the entity. It establishes the minimum financial participation required by the private partner, risk sharing arrangement, the procedures to be used in a deadlock situation.

Three Institutional PPP figures are proposed for Azerbaijani Culture sector:

1) Foundation for participation

Nonprofit corporation or a charitable trust¹⁴. Endowments can take the form of “movable” property, such as cash, shares, bonds, works of art, authors' rights, research licenses, or “immovable” property,

¹²*In order to attract alternative forms of cultural funding, including various forms of sponsorship, there should be a National Center of Competence for PPP's, Public Private Partnerships, a platform where public and private promoters of culture exchange ideas and develop common projects. It is important to find a non-public structure for this Institute.*

¹³*There are not any references to PPP in the current legislation of the Republic of Azerbaijan. However some examples of public-private companies (institutional PPPs) exist and the government invest money in those projects via private companies owned by the state. State owned companies are founded by the President and their statutes are approved by the Cabin of Ministers (as of practice). When it comes to contractual PPPs, there is only a reference to philanthropy and sponsorship in the Law on Culture, article 46: philanthropy and sponsorship activities will be implemented in accordance with Laws on “NGOs”, “Grant”, “TV and radio broadcasting”, “Advertisement”. According to Article 48, however, legal and physical persons can create funds to finance culture in order to raise extra money for culture sector.*

¹⁴*It is remarkable that usually States split foundations into charitable and nonprofit organizations, in order to qualify their public-orientation. Banking foundations are non-profit organizations, and in Italy there are*

such as real estate. Some foundations also act as brokers for other donors and collect and pool funds. The scheme of foundation for participation is simple: it mixes the ‘endowment component’ of a typical foundation -private legal entity established through a strict tie between the endowment and the institutional objectives- with the ‘open-to-new-members’ mechanism of associations. As a result, founders can be added, over time, and it is possible to identify different categories of members: founders, adherent, participant. Each category has its duties and power. When public administrations join a foundation -as founder, or adherent, or participant- different implications arise: (i) Albeit private entities, foundations joint by public administration have to behave as public organizations, in terms of procurement, employment and administrative processes, are then subject to external control of Authorities and national rules affecting public entities; (ii) When the aim of the foundation is to manage a specific cultural site, property of the cultural site remains above public owner, and only the right of using it is transferred to the foundation, and accounted as endowment (this, in order to prevent the risk of privatization of cultural heritage); (iii) The open structure of foundation requires the identification of specific rules for coopting members, which have to be selected under procurement rules (i.e. tender).

2) Consortium for cultural valorization¹⁵

A consortium is an agreement, a combination, or group (as of companies or governmental bodies) formed to undertake an enterprise beyond the resources of any one member, with the objective of participating in a common activity or pooling their resources for achieving a common goal. Funds of consortium members converge in a specific fund, which is specifically established and ruled. When adopted between public administration and devoted to cultural heritage management, consortium assumes the name of Consortium for Cultural Valorization. It can be joined by private parties, thus becoming a PPP figure. Consortium for Cultural Valorization cannot distribute profits. Each consortium typically has an assembly, composed by the representatives of associated administrations, with responsibilities directly proportioned to the share established in the statute and in the convention, the agreement that rules the administration of the organization. Assembly appoints a board, with administrative tasks, such as budget planning and balance sheet approval.

3) Public-Private Company.

A Public-Private Company is a Limited Company joint both by public and private parties (PP-LC), with public majority capital. Through a PP-LC, the public institution tends to optimize synergies with private parties in order to maximize value for money, adopting a market-oriented strategy. Such a PPP model is frequently used for managing local public services of economic importance, and related instrumental activities. Bodies of limited companies depend on the model adopted, which can span from a monocratic body, to a multilevel governance structure, with a board of directors, an audit commission, an assembly. Or it is possible to have a management committee, and the surveillance committee. In order to adhere public administration standards, private members of a PP-LC must be selected through tender, thus becoming a real “operational” or “industrial” partner instead than being a mere “financial” partner.

currently 88 of them that play an important role in the development of the country, through their socially-oriented activities and the exploitation of their great assets. Banking foundations are mainly involved in financing areas such as arts and culture, assistance to the underprivileged, education, support to voluntary organizations, healthcare and scientific research. They typically operate in their own community and rarely carry out activities outside their local territory or at the international level. They have no shareholders, but regional and local authorities typically appoint the members of the Steering board. The Italian Ministry of Economy and Finance (MEF), as Supervision Authority, prescribes investment guidelines and special tax status.

¹⁵ In Italy, it is a new legal entity that has appeared on the cultural scene pursuant to articles 112 and 115 of the Italian Cultural Heritage Code.

- B) The Contractual public-private partnerships between the public and the private sector that is based solely on contractual links, regulating rights and obligations. Two different Contractual PPP figures are proposed for Azerbaijani Culture sector:

1) Service Concession

Service Concession is a form of PPP in which public administrations, which owes goods and is responsible for services to public entrusts the management of these services to a private concessionaire entity. In this situation, there is a direct link between the private partner and the final user: The private partner provides a service to the public in place of, though and under the control of a public authority. The private party assumes all the responsibility relative to the establishment and exploitation of the service, charging users for that service. Usually the concession model is associated with long contractual periods, matching the long asset life of infrastructure¹⁶. Service Concession is one of the most important form of public services management. It allows public administrations delivering public services without having any additional costs. In the field of cultural heritage concession has gradually gained relevance for the management of additional services. A specific form of concession is referred to as “project financing” (PF). It is a method of financing an economic unit through a transaction in which the lender considers the cash flows and project profits sufficient to cover the operating costs of the project, guarantee the repayment of debt and ensure a return on investment¹⁷.

2) Sponsorship¹⁸

Through Sponsorships¹⁹ a public administration can offer to a private entity the possibility of publicizing its name, logo, brand or products, upon payment²⁰ in goods, services or other benefits.

¹⁶In Italy, concessions usually last 4-8 years, and are focused on specific activities and services (as defined in the Code, Art. 117). A particular form is called “concession of valorization”, and it shows differences with the traditional one: more activities involved (typically restoration, facility management and management of cultural activities and services), more complex financial and organizational structure, longer period (20-30 years).

¹⁷The ability to repay debt through cash flows is related to income forecasting initiative that is funded and is not linked to the reliability economic-management of the promoters. Risk management therefore plays a crucial role in the whole operation, in particular in the process of managing and transferring data. The risk analysis plays a key role in the organization and structuring of successful operations, especially for the achievement of value for money, intended as a margin of convenience of an operation in project finance and PPP than in a contract traditional. Hence, in the PF procedure, costs for Public Administration are supposed to be lower than in public expenditure model (and even in the traditional concession model). Risks lay on private parties and procedure could be triggered by private (non-profit and for-profit) organizations. In cultural heritage sector, due to insufficient capacity to cover the costs with income from cultural activities, it should be allowed to reduce risks for private parties through partial public funding.

¹⁸Article 13 of the Law on Advertising gives definition to “sponsor”, that is the person who finances voluntarily sports, cultural and other events, broadcast of programs on e-sources, use of other results of intellectual activities. Further, Article 46 of the Law on Culture states that “philanthropy and sponsorship activities in culture field are carried out on the basis of laws of the Republic of Azerbaijan on Non-governmental organizations (public union and foundations), Grants, Television and radio broadcasting and Advertisement. Article 24 of the Law on Publishing, then, establishes that publishing work can be financed by sponsors. These are the only available links to sponsorship in legislation. There are no fiscal incentives for sponsoring culture and the money received from sponsors will be subject to tax as an exemption is not defined in Tax Code.

¹⁹Sponsorship is certainly one of the most used by public administrations instruments to: (i) Finance the restoration/preservation of historic buildings and archaeological sites; and (ii) Support the activities that take place in them. Sponsorship is distinguished in pure sponsorship (i.e. cash) or in-kind sponsorship,

In the culture sector, sponsorship is related to the delivering of goods and services. It can also include the design and implementation of restoration works, thus representing a win-win situation since the sponsee saves money on its restoration work, while the sponsor reinforces its public image and promotes its brand²¹.

Generally, the administration responsible for the protection of cultural heritage takes the initiative to search for sponsors, including the publication on its website of a list of goods and services to sponsor. Private initiative can be also possible through the presentation of proposals to the PA by the individuals concerned. The PA, however, imparts appropriate requirements as to the design, execution of works and/or supplies and the construction management and inspection of the same.

List of needed revisions of the legal and normative framework

The aim to structure and manage PPPs can be achieved by following two distinct paths: Adapting existing laws or enacting PPP-specific law. Adapting the existing legal framework means to clarify the legal rights that apply to PPPs within the relevant laws and regulations, as well as to introduce PPP-specific processes and responsibilities. Enacting a PPP-specific law may be particularly useful when the existing legal framework is not clear or comprehensive or constraints the government's ability to structure and manage PPP well. In both cases, it will be necessary to clearly establish guiding principles, processes, and institutional responsibilities for a PPP program along with policies such as public financial management rules for PPPs.

The Azerbaijani legal framework has been attentively scrutinised, and no constraint has been individuated hindering the adaptation of the existing laws to PPP process. Therefore, both above mentioned legal processes, aimed at ruling PPP figures, are potentially valid.

If the choice will be the adapting of existing laws, the main laws affected by PPP introduction are, the Law on Culture, the Civil Code and the Law on Municipalities.

where the latter consists in a form of PPP that covers the provision of goods and services, and can be extended to the design and realization, in whole or in part, of a restoration.

²⁰ Sponsorship could also include assumption of a debt.

²¹In Italy, the new Code provides a strong procedural simplification for sponsorships (see, Articles 151 and 19). Furthermore, the Italian Ministry has issued specific guidelines for sponsorships in the cultural heritage field, in December 2012. In brief, the so-called pure sponsorship is accomplished by delivering cash, assumption of debt or other mode of payment of recruitment fees due. The awarding of sponsorship contracts for works, services or supplies for amounts exceeding 40,000 EUR, by means of money giving or assumption of debt, or other means of taking the payment of fees due, is only subject to prior publication on the website of contracting authority, for at least thirty days, the appropriate notice, by which it is known the search for sponsors for specific interventions, or communicates the receipt of a sponsorship proposal, stating the details of the proposed contract. After the publication of the notice period, the contract may be freely negotiated, subject to compliance with the principles of impartiality and equal treatment of operators who have expressed interest. The so-called technical sponsorship is, on the other hand, accomplished in cases where the sponsor intends to carry out works, services or supplies at its own expense. In the event that the sponsor intends to carry out the works, provide the services or supplies directly to its expense, remains firm the need to verify that they meet the requirements of the executors, in respect of the European principles and limits, but the national and regional provisions on public works contracts, services and supplies are not applied, except those on the qualification of designers and executors.

- 1) Law on culture: It is necessary to introduce the concept of “valorisation” of cultural heritage and to foresee the possibility that private sector figures are engaged in the valorisation process. Proposed amendments:
 - (i) To add a new Article stating that: “Valorisation of cultural heritage is one of the priority directions of the State Policy. Valorisation activities can be implemented also through the collaboration between public and private entities”. This Article will be numbered as 5.2.1, and will follow the existing Article 5.2 stating that: State determines “the priority directions of the state policy in culture sector and based on these directions adoption and control on implementation of expedient projects, state programs, strategies and actions plans are realized by an appropriate executive body. Elaboration and execution duty of cultural events are conducted under cooperative conditions with the culture personnel”. As it can be noticed the two articles are logically connected: The new Article 5.2.1 resumes the concept of State Priority expressed in the previous article 5.2 linking to it the notion of valorisation;
 - (ii) To modify the existing Article 18 as follows: “In the Republic of Azerbaijan, the subjects of cultural activities are considered governmental bodies, physical persons, including creative persons, legal persons, as well as cultural institutions, non-governmental organizations and legal entities established in partnership by public entities and private sector figures (Institutional-type Public-Private Partnerships)”;
 - (iii) Add a new Article²² stating that: “Public entities may engage private sector figures, by means of specific contractual agreements (Contractual-type Public-Private Partnerships), in order to pursue the valorisation of cultural heritage”. This Article will be numbered as 19 bis and it is meant to specifically introduce the Contractual PPP-type, just after Article 18 and 19 where the subjects of the cultural activities has been introduced;
 - (iv) To extend to all the tasks that imply valorisation the privatization of cultural objects that, according to Article 47.4 is only “permitted through observing one of the following conditions: 1. When main activity is restoration, protection and promotion of cultural resources; 2. When main activity is production of cultural products and or delivering cultural services; 3. When main activity is presenting cultural products and services to the population with discounts identified by the relevant executive body”. The choose between direct and indirect management should only come from a specific evaluation, in terms of efficiency and effectiveness, of objectives, and means available. Thus, many services, considered solely ancillary to the core mission of cultural heritage valorization, could become crucial in the discourse about management of heritage.
- 2) Civil code: Article 19.2. of the Law on culture is stating that Cultural institutions can be found in any organizational-legal form stipulated by the Civil Code of the Republic of Azerbaijan. It is, therefore, necessary to introduce in the civil code PPP Institutional legal figures, that is to recognize that a legal entity may be established in partnership by public and private legal entities (Public-Private-Partnership legal entities), with the specific aim to pursue the valorisation of Cultural Heritage, as provided by the Art. 5.2.1 new formula of the Law on Culture. In concrete, it will be necessary to enact a special PPP section in which each figure -Foundation for participation; Consortium for valorisation; and Public-Private Company- will be described and regulated, as it is done for all the other legal entities listed in the Code under Section 2. “Persons”²³. The newly introduced section

²² This new article would be in line with Article 14.2.2. of the Law on Culture of the Republic of Azerbaijan, according to which the State “carries out investment projects aimed at the development of cultural industry, or creates convenient conditions to invest with the purpose of enhancing the investment environment”.

²³Provisions for specific sectors’ legal entities are not usually included in the Civil Code. However this amendment is considered necessary due to the circumstance that no other Azerbaijani law can regulate the

could be numbered as Paragraph 4 and named “Public-Private legal entities for the Culture Sector”. It could replace the former Paragraph 4 “Bill, annual balance and audit of legal entities”, which was deleted.

- 3) Law on Municipalities: It is necessary to allow the collaboration between Municipalities and private sector figures, and to this end the existing Article 34 should be modified as follows: “According to the law, municipalities may create and join legal person, by means of specific contractual agreements (Contractual-type Public-Private Partnerships), in order to pursue economic and other activity not prohibited by the law, and may resolve the issues related to their re-organization or termination”. In the present version of the Article 34 no mention is made to the PPP.
- 2) Law on Public Procurement: It is necessary to have a dedicated PPP section in which each figure - Sponsorship and Service Concession- will be duly described, together with the tender procedures and related specific provisions, as it is done for all the other procurement methods. The newly introduced section (possibly named: Contractual Public-Private Partnerships) could be inserted in Chapter IX, the last chapter of the Law, and named “Special Provision for the Culture Sector”. It would be also opportune foreseeing ad hoc Rules issued by the Cabinet of Ministers. Further, it will be necessary to introduce Public-Private tenders among the Procurement methods. This will entail amendments to the existing Article 16.1 that should be modified as follows: “Public procurements of goods (works) and services in the Republic of Azerbaijan depending on conditions of application indicated in articles 17-21 of present Law shall be conducted by methods of open tender, two-stage tender, tender with limited participation and closed tender, public-private tender, request for proposals, request for quotations and procurement from one source”.

On the other hand, if the choice will be the enacting PPP specific law, this could help raise the profile and demonstrate a particular political commitment to the PPP program. Such a law would incorporate all the aspects related both to Institutional and Contractual PPPs specific functioning, and would overcome the necessity to enact any ad hoc Rules for PPPs. It must be underlined that a well-designed PPP law typically sets out principles that nevertheless may be supported by more detailed regulations, with the intention of avoiding rigidity so as to enable the PPP program to adapt over time.

With regard to this, the amendments to the existing legislation or the enactment of a specific law, should be - in both the cases- accompanied by the developing of a secondary legislation (decree, orders, guidelines, etc.). In order to work, the institutional and contractual PPP in all their forms and capacities require, in fact, the flexibility of internal regulations and guidelines defining the steps, standards, criteria and timeframe for all procedures envisaged by the law. What should be created is a comprehensive set of regulations and standards for each and every procedure, as well as standards/criteria that can assist to enhance the employment of the PPP, in all categories described in the law.

Via secondary legislation, it could be also created a National Center of Competence for PPP’s, a platform where public and private promoters of culture exchange ideas and develop common projects. This could be a way to attract alternative forms of cultural funding, including various forms of sponsorship. Such a National Center could also involve the bank system -for instance, through bank foundations- in financing areas such as arts and culture, assistance to the underprivileged, education, support to voluntary organizations and scientific research.

1.2.3 Tax deductions and incentives for Culture

Assessment report

In the present section, a series of possible incentives aimed at fostering the support to arts and culture is presented. They have been successfully experimented in Italian system, and the proposal is to foresee similar mechanisms also for Azerbaijani culture sector.

In particular, attention should be paid to the following:

- 1) Tax incentives on the consumption of culture: These are those measures in which a subject of taxation is any form of cultural consumption (e.g. buying music, paintings, sculpture). Most general forms of such measures are VAT reductions for buying cultural goods, tax deductions for buying cultural objects, and other measures, such as transfer of art in lieu of payment of tax. The VAT reductions for buying cultural goods and services present one of the main implicit subsidies for cultural industries;
- 2) Percentage legislation: The central idea of percentage legislation is that taxpayers may designate a certain percentage of their income tax paid to a specific non-profit, non-governmental organization, and in some cases to other organizations. This measure is characterized by: (i) Taxpayers themselves that individually decide on how a portion of their tax paid will be allocated; and (ii) The use of the designated funds that is restricted to supporting certain beneficiaries;
- 3) Vouchers: New forms of stimulating private investment in culture are grants such as “vouchers”. Such a grant is particularly innovative in that it does not cover costs for general activities but rather the costs of specific activities that can improve the cultural sector company’s professionalization. In the culture sector, vouchers are used as a manner of stimulating demand for cultural products.
- 4) Tax relief for sponsorship: Sponsorship is another way of financing cultural entrepreneurs through external private capital. It can be encouraged through attractive tax incentive schemes. However, whereas sponsorship (or “patronage”) is part of a commercial strategy, which includes quantifiable returns, no financial return is expected when making donations (or “mécénat”) except in terms of promoting the donor’s corporate image. Sponsorships still represent a small portion of the budgetary incomes of cultural organizations. The advantages of sponsorship (in comparison to the classic means of advertisement) are: (i) addressing the target group(s) in non-commercial situations; (ii) associating with a noble mission; (iii) using mass media as a multiplier for sponsoring messages; (iv) supporting public relations policy, event marketing and corporate image; and (v) increasing of the awareness of the social position of the company.

- 5) Tax relief for individual donations²⁴: Donations can be made in cash or in kind.
- 6) Tax relief for corporate donations: These donations can be made in cash or in kind. illegal maneuvers could be, however, adopted for obtaining tax relief.
- 7) Lottery-based private funding. Lottery funds for culture are an important source of private investment in culture. These funds are often connected to earmarked taxes, and are thus earmarked for specific cultural purposes. Decision making about the distribution of lottery funds to culture is either the responsibility of existing government agencies, newly established public agencies, non-profit organizations, the government itself, or the lottery company itself.
- 8) Earmarked taxes: An earmarked tax is a tax collected whose revenues (by law) are used for a specific purpose.
- 9) Banking schemes: Banking plans can include loan schemes that give a preferable interest rate to cultural activities.
- 10) Arts and business forums: The establishment of specialized agencies, which encourage engagement between business companies and cultural organizations.
- 11) Digital approach (Crowd funding): From the point of view of the cultural sector, the internet can be used for a variety of purposes as a platform for developing new artistic projects. E-commerce, fundraising, advertising, sponsoring, and branding are explored as potential revenue models. Business model innovations benefit from integrating the digital space into the organizations' overall business strategies, thus allowing online and offline activities to cross-promote each other.
- 12) Venture Philanthropy: Cultural sector businesses still make very limited use of equity finance. An emerging form of private investment in the culture sector is venture philanthropy. The Venture Philanthropy is a form of venture capital, and is in fact also known as social venture capital, which involves investments of venture capital and the provision of managerial skills in business initiatives that require innovative solutions to social and environmental problems.

Peculiar characteristics of VP are: (i) active partnership, or the involvement of donors, volunteers and professionals in the philanthropic activities of the investment; (ii) the use of a wide variety of financial instruments in addition to donations, such as multi-year funding, loans or other; (iii) the ability and opportunity to provide professionalism and expertise; the desire to put in condition donors to make the most profit from investment in terms of money as well as time or expertise. In measuring their results, VP organizations are focused on outcomes rather than outputs. Investors are more actively engaged in the operation and financing of the projects of grantees and demand stricter monitoring of grantees' operations.

²⁴Today in Italy there is a new favorable tax regime for those who support culture with charitable donations. It's called Art bonus, and it is a tax credit equal to 65 % of charitable contributions that individuals or companies make in favor of public cultural heritage. The tax credit "Art bonus" is granted to individuals, to non-profit organizations and businesses for charitable contributions destined to the following: (i) Maintenance, protection and restoration of public cultural works (eg. monuments, historic buildings, works of art); (ii) Support of public cultural institutions (eg. museums, libraries, archives, archaeological areas and parks), opera/symphonic foundations and traditional theater; (iii) Realization, restoration and upgrading of facilities of public institutions dedicated to performances. It works through a simple mechanism: beneficiaries register on a website and donors use different way of money transfer (through a bank, post office, debit or credit and debit cards, bank checks), and save the receipt of the "Art bonus" transaction to take advantage of the tax benefits.

List of needed revisions of the legal and normative framework

In Azerbaijan, according to Tax Code exemptions and privileges are defined for income tax of physical persons (article 102), profit tax of legal persons (article 106), property tax (article 199) and tax on land (article 207). Provisions in connection with the granting of tax exemptions and privileges are set only by the Code²⁵ and taxpayers should notify the Ministry of Taxes that they are eligible for benefiting tax deductions when they register as taxpayer and submit tax declaration. Other legal acts cannot stipulate provisions in relation to the tax exemptions and privileges (2.4-1). In this respect, Article 44.3 of the Law on Culture defines that tax deductions will be applied in accordance with Tax Code to the activities in the field of culture in order to improve culture.

There are not any relevant tax exemptions and privileges, apart from the following articles: (i) Article 102.1.12, income of physical persons from craft production of copper, tin and pottery products, house appliances, gardening instruments, national music instruments, toys, souvenirs, house appliances made of reeds and cane, involved in embroidery and production of house appliances from wood shall not be subject to income tax; (ii) Article 199.2, buildings of art workshops or parts of buildings where such workshops are located that belong to natural persons involved in entrepreneurial activity without establishing legal entity on craft production of copper, tin and pottery products, house appliances, gardening instruments, national music instruments, toys, souvenirs, house appliances made of reeds and cane, involved in embroidery and production of house appliances from wood shall not be subject to property tax.

In order to improve the Azerbaijan legal system 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, and to adequate the regime of possible use of public properties for private purposes, cession of use in current system, the Azerbaijan Tax Code should be amended as it follows:

- (i) Add a new Article to foresee VAT reductions for buying cultural goods, within that amount to X%, for journals and daily newspapers, books, periodicals, printed musical editions, geographical maps, and the like. It could be placed under Article 164 which is devoted to “exemption from tax”;
- (ii) Add a new Article to foresee the so-called tax reliefs on the buying of ancient art objects, which is a scheme for VAT transactions on the purchase of works of ancient art. The VAT system is applicable to persons who trade/used goods and works of ancient art with the aim of avoiding repeated taxation on goods that are supplied to a taxable person for subsequent resale after they

²⁵Beginning from early 2016, the Ministry of Economy started to issue investment promotion certificate for the persons investing in certain areas (the list of those investment fields is confirmed by the Presidential Decree N878, 20 April 2016). Those holding this certificate benefit several tax deductions defined in Tax Code: (i) Article 102.1.23 - 50 percent of income earned after receiving investment promotion certificate by individual entrepreneur - within 7 years (income tax); (ii) Article 106.1.17. 50 percent of profit earned after receiving investment promotion certificate by legal person - within 7 years (profit tax of legal persons); (iii) Article 164.1.26, import of technology, technical equipment and facilities by legal persons and individual entrepreneurs on basis of approval document given by relevant executive authority - within 7 years by the receipt date of investment promotion certificate (VAT);(iv) Article 199.11, the relevant property of the legal persons and individual entrepreneurs who have received investment promotion certificate are exempt from property tax within 7 years by the receipt date of that document (property tax);(v) Article 207.5, the relevant land owned or used by the legal persons and individual entrepreneurs who have received investment promotion certificate are exempt from land tax within 7 years by the receipt date of that document (tax on land).

have been purchased. It could be placed under Article 164 or 165, respectively dedicated to “exemption from tax” and to “taxation at zero rate”;

- (iii) Add a new Article to introduce the “transfer of art in lieu of tax payment”. This scheme foresees the possibility to cede cultural goods as well as works of living authors to the state instead of paying taxes. Since Chapter 7th of the Code defines general rules for paying taxes, the new Article could be added to this Chapter;
- (iv) Add a new Article to allow special tax deductions for sponsorship. In this way, advertisement expenses and representation costs can be totally deducted from company income. Sponsorship is thus considered as a fully deductible expense for tax purposes. As for individuals, the law allows only the deduction of a specified percentage from personal income taxes for financial aid given to private and public institutions that are active in the cultural sector. The new Article could be added to chapter 10th of the Tax Code since several deductions from income are defined there both for legal and physical persons;
- (v) Introduce two Articles in order to foresee tax credits available for artists to reduce payable taxes. Through this instrument exemptions are permitted in the form of tax credits and tax shelters in the field of cinema as follows: a) tax credit for production companies for national films; b) tax credits for executive and post-production companies for “cultural films” commissioned by foreign productions; c) tax shelter for re-investment of profit for the production or distribution of national films. Since tax credit is a new concept in Azerbaijan, it is suggested to introduce a definition of the instrument within Article 13 of the Tax Code, and then to add the specific incentive to article 106;
- (vi) Introduce a new Article to allow tax deduction for donations in cash or in kind for cultural purposes. If donations for culture are deducted from income, the new article could be added to chapter 10th, while if the concept is intended as a tax deduction for companies/persons that donate to culture sector, it should be added to article 106/102;
- (vii) Introduce a new Article stating that gifts are not taxable if transferred to the state, regions, provinces or municipalities, public organizations, foundations or associations in the field of education, research or private entities that execute cultural/social activities. It could be inserted within Article 106 of the Tax Code, stating that incomes of state bodies, municipalities donations (except income from entrepreneurial activities) and donations/grants received by non-commercial organization are not subject to tax;
- (viii) Introduce a new Article stating that cultural goods as testamentary gifts are not subject to tax payment or tax reductions. It could be added to the existing Article 102.1.3;
- (ix) Introduce a new Article to foresee that revenues generated through the national lottery are allocated to the Ministry of Cultural Activities for the restoration and preservation of cultural, archaeological, artistic and archival and library (the allocated sum can have a fixed ceiling amount or not). In Azerbaijan, lotteries are organized by state owned company "Azerlottery" OJSC, and revenue goes to State. Since the company is a legal entity, the percentage to be devoted to support interventions in the field of culture could be deducted from the income tax paid by the company. Therefore, the new Article could be housed in chapter X of the code (which specifies different deductions) or in Article 106 (which describes tax exemptions of legal entities);
- (x) Introduce two new articles dedicated to percentage legislation in favour of the arts. This instrument -introduced as a new form of public financing for the third sector- is useful to stimulate intervention in favour of culture while offering the possibility to choose the organisation to support. People should be free to choose a cultural institution (art organisation, social organisation, university, etc.) to which they intend to route a percentage of their due tax

amount. In case the taxpayer fails to indicate how to direct the amount, this remains to the state. This concept is something new for Azerbaijani legislation: Actually, one of the main features of taxes in the Country (see tax legal definition in article 11 of the Code) is that they are paid to state/local budget. In this case, a percentage of tax would go to other organizations. Therefore, the introduction of a “percentage legislation” in favour of the arts implies, firstly, the necessity of making an exception to the abovementioned Article 11, by introducing a new article 11-1 to briefly define this new percentage concept, and the necessity of inserting a separate article to illustrate the specific procedures, that could be added at the end of chapter X;

- (xi) Introduce a new article dedicated to the so called “Art Bonus”, establishing the tax credit percentage that individuals or companies obtain making contributions destined to the following:
 - a. Maintenance, protection and restoration of public cultural works (eg. monuments, historic buildings, works of art);
 - b. Support of public cultural institutions (eg. museums, libraries, archives, archaeological areas and parks), opera/symphonic foundations and traditional theater;
 - c. Realization, restoration and upgrading of facilities of public institutions dedicated to performances.

Other legislation to consider and amend could be the Presidential Decree on Rules to issue investment promotion certificate (n.745, 18 January 2016), and the Presidential Decree on confirming investment fields, minimum amount of investment and investment regions (n.878, 20 April 2016). However, all the amendments should be accompanied by the developing of a secondary legislation (decree, orders, guidelines, etc.). In order to work, the incentives for culture require, in fact, the flexibility of internal regulations and guidelines defining standards/criteria that can assist to monitor and enhance the added value of such benefits.

1.3 Improvement of the educational and re-training systems in the field of culture

Assessment report

At international level both education of professionals and access to labor market are subject to a growing regulation, to the aim of standardizing the qualification and so to setting up a homogeneous international market accessible to professionals themselves regardless to the nationality.

Directive 2005/36/EC on the recognition of professional qualifications, through the identification and sharing among Member States of minimum skills levels (ability and knowledge) set the main EU principles in this field. Moreover, within the Resolution of 8 September 2015 Towards an integrated approach to cultural heritage for Europe, EU points out the urgent need to address youth unemployment, and stresses that cultural heritage is an area with potential for more and better employment, where the bridge between education and working life can be strengthened, for example through the development of quality apprenticeships, traineeships and start-ups in SMEs²⁶ and the social economy. The document also reiterates the importance of promoting in school curricula the inclusion of art, music, theatre and film education as a key to developing knowledge of cultural heritage, artistic practice and expression, and soft skills geared to creativity and innovation, as well as the inclusion of transdisciplinary themes relating to cultural heritage at various levels of education.

²⁶*Small and medium-sized enterprises (SMEs) represent 99% of all businesses in the EU. The definition of an SME is important for access to finance and EU support programmes targeted specifically at these enterprises.*

In Azerbaijan, skilled specialists -especially archaeologists, restoration specialists, engineers- teaching in the universities, where the transfer of practical know-how, seem to be lacking. More generally, a lack of awareness about the cultural and historical value and traditions of Azerbaijani country is spread not only among the civil society, but also at the management/professional level. Such a kind of disregard towards culture brings about a series of related questions, mainly linked to weaknesses in education and training systems. Actually, it is felt necessary a more comprehensive approach to specialist education, and the necessity for an improved training system for the professionals of the various culture sectors. Responsibility for cultural education and training institutions is divided between the Ministry of Culture and Tourism (children's music, art and painting schools and the Baku School of Choreography) and the Ministry of Education, which supervises the special secondary and the higher arts education in Azerbaijan. Also the Ministry of Youth and Sport is involved in culture-related activities, but with only regard to the spare-time initiatives.

In Azerbaijan, attention should be paid to the EU acquis related to the education standards. In particular, to the Council Recommendation 98/561/EC/EC of 24/09/1998 on European cooperation in quality assurance in higher education and Recommendation N. 2006/143/EC of European Parliament and of the Council on further European cooperation on quality assurance in higher education. When speaking about education standards reference should also be made to the principles of European Higher Education Area (EHEA), and the outcomes of the Bologna Process.

It should be noted that, likewise the sphere of culture, the EU education policy does not foresee the harmonization of national legislations related to the field of education. Instead, it puts the emphasis on cooperation and enhancement of the educational system, through support activities and incentives.

The Treaty on European Union (Article 2 TEU) foresees the free movement of persons and services and abolition of respective obstacles between the member states. This means that the nationals of the Member States have the right to pursue a profession in a Member State other than the one in which they have obtained their professional qualifications. However, within the limits of the internal market rules, each Member State is free to make particular profession legally conditional, requiring the possession of a specific professional qualification which is traditionally the professional qualification issued on its national territory. The European institutions have, however, established rules to facilitate the mutual recognition of professional qualifications between the Member States, by introducing Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications²⁷ that sets out three systems for the recognition of qualifications: (i) Automatic recognition for professions for which the minimum training conditions have been harmonized (health professionals, architects, veterinary surgeons); (ii) The general system for other regulated professions; (iii) Recognition on the basis of professional experience for certain professional activities. The directive also includes provisions on knowledge of languages and professional and academic titles.

Professionals who hold the qualification named by the Member State concerned in Annex V to Directive 2005/36/CE (i.e. the formal qualification and any accompanying certificate thereof) can benefit from automatic recognition of diplomas. Annex V of the directive refers to the recognition on the basis of

²⁷ *This Directive applies only to regulated professions in the host Member State, that is professions to which access or practice in the host Member State is conditional upon the possession of certain fixed professional qualifications. There are about 740 categories of regulated professions across the 28 Member States, and the Directive establishes rules according to which a host member state should recognize professional qualifications obtained in one or more other Member States (the home Member State) and which allow the holder of the said qualifications to pursue the same profession in the host Member State. It is important to note that the rules of the Directive differ depending on the profession in question. Professions are divided into three main categories: (i) Sectorial Professions- professions for which the minimum training conditions were harmonized at European level: doctor, nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, pharmacist and architect; (ii) Professions in the fields of trade, industry or business referred to in Annex IV to Directive 2005/36/EC; (iii) All the other professions, which are referred to as the 'general system professions'.*

coordination of the minimum training conditions, and it provides tables for all the sectorial professions. The tables provide the list of the Member States with evidence of formal qualifications (diplomas, certificates and other evidence issued by an authority in a Member State), bodies awarding the qualification (universities, educational institutions, other relevant structures), certificate accompanying the qualifications (if any) and the reference date given per each Member State. The same applies to professionals in the craft, commerce and industry sectors who can demonstrate relevant work experience either as a self-employed professional or as the manager of a company.

Majority of professions fall under the so-called “general system”. In principle, access to regulated professions is granted to any individual who can demonstrate that he is fully qualified in his home country. In order to define the mechanism of recognition under the general system, various national education and training schemes are grouped into five levels, ranging from a training course not forming part of a certificate or diploma, to a diploma certifying that the holder has successfully completed a post-secondary course of at least four years' duration. Only in cases where an individual qualification differs substantially from those of the host country or in cases where the length of time spent in the profession falls short of the host country's requirements, compensatory measures may be imposed. In such a case the Directive allows citizens to choose between a period of supervised practice (adaptation period) and an aptitude test (a test limited to the professional knowledge of the applicant, made by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State).

For overcoming substantial differences among countries on training requirements, various professional associations and organizations or Member States are able to propose common platforms at European level, which must be designed in such a way to allow migrants meeting the criteria to have their qualifications recognized without compensation measures.

The general system for recognition does not prevent a Member State from making any person pursuing a profession on its territory subject to specific requirements due to the application of professional rules justified by the general public interest. Rules of this kind relate, for example, to organization of the profession, professional standards, including those concerning ethics, and supervision and liability. The Directive also allows the free provision of services in case the service provider moves to the territory of the host Member State to pursue, on a temporary and occasional basis, the regulated profession. In this case, the host Member State should exempt service providers established in another Member State from the requirements which it places on professionals established in its territory relating to authorization by registration with or membership of a professional organization or body. However, the exercise of a regulated profession is subject to the professional and disciplinary rules of the host Member State relating to professional qualifications.

Referring to the issue of academic recognition for education and training purposes, there are no binding rules on the community level, as there are for mutual recognition of qualification. Accent is made on supportive measures, and cooperation and coherence are facilitated through different platforms like Council of Europe, UNESCO, Bologna Process / European Higher Education Area.

Council of Europe and UNESCO have adopted number of conventions and recommendations on mutual recognition. The most important convention is the "Convention on the Recognition of Qualifications concerning Higher Education in the European Region", i.e. the Lisbon Recognition Convention²⁸.

Considering the Bologna process²⁹, it does not harmonize educational systems of members, rather it represents a mechanism to connect them. Member states remain fully in charge of the educational system and content of teaching in the nation states, and the Bologna Declaration is a voluntary undertaking by each signatory country to reform its own education system. This reform is not imposed on the national governments or universities. Nevertheless, Bologna process introduces a system of academic degrees that are easily recognizable and comparable (three cycle degree system for undergraduates (Bachelor degrees) and

²⁸*This convention has been ratified by Azerbaijan in 1999.*

²⁹*Azerbaijan is also full member of Bologna process since 2005.*

graduates (Master and PhD degrees)), promotes the mobility of students, teachers and researchers, ensure high quality teaching and incorporate the European dimension³⁰ into higher education.

In order to ensure that cultural heritage is handled only by well-prepared personnel, most EU states envisage accreditation and/or certification for professionals, i.e. cultural heritage related activities are regulated professions for which the EU has set a specific system of recognition.

Directive 2005/36/EC is completed with the European Qualification Framework. EQF derives from the Bologna agreement of 1999, when ministers of education of the EU set up a European Higher Education Area. What is now referred to as the Bologna process unifies the European higher education structure and demands that each education program is described in terms of the qualification it provides and its organization. The aim is to calibrate and make transparent the different levels and types of qualifications available in all third level educational institutions throughout Europe.

The EQF sets 8 levels of qualifications. For cultural heritage professions, the most relevant are level 6 (roughly equivalent to a Bachelor's degree), level 7 (Master degree), level 8 (PhD). Each of the reference levels in an EQF requires a description of what is distinctive about qualifications that are classified at that level.

Accordingly, Azerbaijan should set up distinctive professional qualifications for Archaeologists, restorers, architects, compliant with level set by the EQF. Most relevant qualification should be equivalent to an EQF level 7 (master).

Several EU professional bodies set up policy recommendations for devising professional training curricula in the field of cultural heritage. These bodies include: (i) European Network for Conservation-Restoration Education (ENCORE); (ii) European Confederation of Conservator-Restorers' Organizations (ECCO); (iii) The European Heritage Heads Forum (EHHF). These organizations, albeit being entirely private entities, are crucial stakeholder for EU policies related to cultural heritage.

In general, training remains a major problem in Azerbaijan. Formal establishments are rare and often weak. There are very few support services and technical assistance does not always lead to the desired transfer of skills. It is of utmost importance to: (i) Ensure the continuity and promotion of traditional forms of learning while enhancing the capacity building of trainers, modernization of pedagogical methods and the introduction of new adapted technologies; (ii) Develop programs to detect young talent; (iii) Ensure decentralization of training opportunities and frameworks; (iv) Allocate training grants to cultural actors.

In particular, the university courses in Azerbaijan at bachelor level are regulated by the "State Standard of level of Higher Education on Bachelor degree qualification Education Program" (Order of the Ministry of Education n.913 dated August 22, 2014). According to this order, bachelor degree of architecture consists of a 4-year full time course for 240 credits³¹. The following subjects are thought: Azerbaijan history, mathematics, science of defining industry materials, engineering geodesy, informatics, descriptive (graphic) geometry, applied mechanics, foreign language, Azerbaijan language and speech culture, engineering

³⁰Article 165 of the European Union Treaty states that the Union "shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action". Accordingly respective actions on Community level are aimed at: (i) Developing the European dimension in education, particularly through the teaching and dissemination of the languages of Member States; (ii) Encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study; (iii) Promoting cooperation between educational establishments; (iv) Exchanges of information and experience on issues common to the education systems of Member States.

³¹Duration of preparation and defence of school leaving examination: 6 week; the principal requirement of State attestation is the Defence school leaving examination.

physics, descriptive arts, art history, history of architecture, contemporary architecture history, fundamentals of designing (projection), constructions of design, construction of architecture, design of architecture, environment of urban condition, restoring and conservation, reconstruction, modern technologies of architecture and management, typology of building installations and civil defence.

The university courses in Azerbaijan at master level are regulated by “State Standard of the level of Higher Education on Master degree qualification Education Program” (Order of the Ministry of Education n.258 dated February 22, 2012). According to this norm master degree in architecture consists of additional 2 years’ full time course for 120 credits³². Following subjects are thought: Foreign language, higher education pedagogy, psychology, scientific research experience, contemporary problems of architecture, history and methodology of architecture, plus other subjects defined by Higher Education Institution for specialization and scientific-pedagogy experience.

Master degree in architectural restoration is based on the following subjects³³: Foreign language, high education, psychology, ethics and esthetics, contemporary problems of architecture, history and methodology of architecture, computer modeling, architecture and town building theory, design theory of architectural environment, contemporary restoration theory and practice, design of landscape systems and typology of monuments.

Professionals holding bachelor or master degree in architecture, released by an Azerbaijani university, are entitled to sign projects and supervise construction and restoration interventions. Present legal framework does not foresee any special requirements for drafting and supervising restoration works³⁴. When a bid is

³² *Duration of Exam session time: 15 week. Duration of Preparation and defense of Master thesis: 12 week. The principal requirement of State attestation is the Defense of Master thesis.*

³³ *In Italy, the professional roster foresees four sectors: 1) architecture, for which master degree in Architecture and civil engineering (compliant with the EU Directive 85/384) is necessary ; 2) territory planning, for which master degree in Architecture and civil engineering or Urban and Environmental territory planning are necessary ; 3) landscape, for which master degree in Architecture and civil engineering or Landscape architecture or Science and technologies for the environment and territory are necessary ; 4) conservation of immovable heritage, for which master degree in Architecture and civil engineering or Conservation of immovable and environmental heritage are necessary.*

³⁴ *In Italy, the matter of the implementation of interventions on heritage is not regulated in the 2004 Code of the Cultural and Landscape Heritage but in the Code of the public contracts of supplies, services and works and related regulations, firstly adopted in 2006 following EU Directives 17 and 18/2004 and subsequently amended and specified by its regulation (DPR 207/2010) and currently replaced by D.lgs. 50/2016, in order to comply with new EU directives 2014/23/UE, 2014/24/UE e 2014/25/UE. The procedure for selection of companies and restorers is based on the principle of possession of preventive qualification in general technical sectors and specialized categories. The law identifies 13 general technical sectors and 35 specialized categories. The general technical sectors span from road works, dams, etc. One of those is (OG2) Restoration and maintenance of listed immovable buildings. The specialized categories span from electrical plants, anti-thefts devices, building finishing, etc. Three of those are: (i) Decorated surfaces of immovable listed monuments and movable art historian, archaeologist, ethno anthropological artifacts (OS 2-A) ; (ii) Archival and librarian artifacts (OS 2-B) ; and (iii) Archaeological excavations (OS 25). The Code of Contracts foresees the obligatory enrollment of the companies to the relevant rosters as a compulsory requirement for the admission to competitions above 150.000 Euros. A second qualification criterion is the amount of the works to be implemented. A group of 8 thresholds is foreseen, spanning from 258.000 up to beyond 15,5 million Euros. The system tightly regulates the principles and procedure for the release of qualification. These are released by private companies (SOA SocietàOrganismi di Attestazione) authorized by the Authority for the surveillance of public contracts of works, services and supplies, which is an office belonging to the Presidency of Council of Ministers. The qualification lasts five years. These companies must verify that the incumbents owe: (i) Internal quality certification based on EU rules UNI EN*

launched by a public body, requirements on special experiences in the field are included in the bid, normally referring to previous works successfully accomplished for interventions similar to those in competition, but without any juridical framework. That is that neither qualification of professionals and companies nor certification of quality standards and financial turnover are considered in current legal framework.

Articles 52 and 53 of the Law on Town-Planning and Construction Code of the Azerbaijani Republic (see, Law n.392/2012) actually regulate professional certification in field of construction works both for companies and for professionals. Professional Registers are as well foreseen. State Architecture and Town-Building Committee is the public body expected to be the holder of this register, but the regulations for the establishment and guidelines of inclusion have not yet been approved by the Cabinet of Ministers, and the process has stopped from 2013.

Rights and obligations of professionals engaged in architectural activities are regulated by the Law of Azerbaijani Republic about Architectural Activities (see, Law n.497-IG/1998). This law does not regulate tuition or working requirements for architects and companies.

Moreover, based on the Law of the Azerbaijan Republic on making changes and additions to some normative acts of the Azerbaijan Republic dated 09 October, 2007, the activity of "Architecture" was made free from special permission needing special state control on the basis of the amendments made to the Law on Activity of Architecture dated 15 May, 1998.

According to the Charter of the Union of Architects of Azerbaijan, architects with bachelor diploma and with at least 3-year work experience, who are residents of the country, gained reputation for personal creative works in any area of architectural profession, accept the Charter of the Union, are involved in public life of the Union of Architects may be admitted to membership in the Union.

Selected subjects for Profession: Restoration³⁵ of Architectural monuments³⁶: I Part: 1) Restoration design of architectural monuments, and 2) Construction materials and designs (in restoration); II

ISO 9000 ; (ii) The necessary general, and special organizational, financial and technical requirements. Moreover, the authorized private companies verify that the incumbents do not meet the following exclusion conditions, that are the so-called general requirements (art 38 Code contracts): (i) Be in condition of failure ; (ii) Be subject to police prevention measures ; (iii) Be condemned for criminal association, fraud, corruption ; (iv) Have violated obligations on works safety ; (v) Have behaved with negligence ; (vi) Have neglected tax obligations; (vii) Have made false declarations; (viii) Meet the necessary special requirements, that are economic and financial capacity (bank references, annual workflow - to be demonstrated with invoices, taxes); patrimony, organizational and technical capacity (availability of adequate technical leadership, previous certified execution of works in the same category as the one requested for an amount adequate); adequate technical tooling; and adequate annual staff.

³⁵ *In Italy, the conservation of the cultural heritage is ensured by means of a consistent, co-ordinated and programmed activity of study, prevention, maintenance and restoration. Prevention is defined as the set of activities capable of limiting situations of risk connected to the cultural property within its context. Maintenance is defined as all the activities and work carried out for the purpose of controlling the conditions of the cultural property and maintaining the integrity, functional efficiency and identity of the property and its parts. Restoration is defined as direct intervention on a property by means of a set of operations aimed at the material integrity and the recovery of the aforesaid property, the protection and the transmission of its cultural values. In the case of immovable property situated in areas declared to be at risk of earthquake on the basis of the laws and regulations in effect, restoration shall include work for structural upgrading. The Ministry shall define guidelines, technical regulations, criteria and models for the conservation of cultural properties, and in doing so may avail itself of the participation of the Regions and the collaboration of universities and competent research institutes (see, the d.lgs. 42/2004). So far the basic text that acted as an orientation guidelines for the technical ministerial staff when developing and carrying out interventions on cultural heritage properties has been a circular letter issued in 1972 and named "Carta Italiana del Restauro". This is rooted in the Venice Charter and include detailed specifications for different cultural*

heritage categories. It contains a preamble, 12 articles and four annexes with specifications for the conservation/ restoration of antiquities, architectural properties, paintings and sculptures and historic centres. The respect of its principles and norms is compulsory for the ministerial staff, and it has become a widely shared legacy of the Italian conservation community, although in many consider that it needs some updating. The experience developed by the technical staff of the central and peripheral offices of the Ministry of the Cultural Heritage, Activities and Tourism in designing and implementing conservation works allowed for an active participation of the Ministry in the introduction of specific special norms in the relevant legislation concerning the design and the implementation of works on cultural heritage. The D.lgs. 42/2004 incorporates previously issued norms concerning the qualifications of professionals and enterprises that can work on specific categories of cultural properties. As a matter of fact, the Italian law foresees a distinction between restorations of: (i) Immovable artifacts, including archaeological remains; and (ii) Movable artifacts and valuable decoration of immovable listed monuments. In a nutshell, the work of maintenance and restoration of movable cultural properties and the decorated surfaces of architectonic properties shall be carried out exclusively by those who are qualified restorers of cultural property in accordance with the regulations in this regard. The job descriptions of restorers and other workers who carry out activities which are complementary to restoration or to other activities of conservation of movable cultural property and of decorated surfaces of architectonic properties are defined by the Minister's decree adopted under article 17, paragraph 3, of law no. 400 of 23 August 1988, in agreement with the State-Regions Conference. The criteria and quality control levels to be met by the teaching of restoration are defined by the Minister's decree pursuant to article 17, paragraph 3, of law no. 400 of 1988 in accord with the Minister of Education, Universities and Research, and with prior consultation of the State-Regions Conference. Instruction in restoration is provided by schools of higher education and training established under article 9 of legislative decree no. 368 of 20 October 1998, as well as by the centres referred to in paragraph 11 and other public and private bodies accredited by the State. The Minister's decree, adopted in accordance with article 17, paragraph 3 of law no. 400 of 1988 in accord with the Ministry of Education, Universities and Research, and with prior consultation of the State-Regions Conference, identifies the procedures for accreditation, the minimum requirements for the organisation and functioning of the educational bodies, the procedures for the supervision of teaching activities and of the final examination, which must include the participation of at least one Ministry representative, as well as the characteristics of the teaching staff. The training of professional figures who carry out activities which are complementary to restoration or other activities of conservation is ensured by public and private entities in accordance with Regional regulations. The relative courses shall meet the criteria and quality control levels defined by agreement in the State-Regions Conference, pursuant to article 4 of legislative decree no. 281 of 28 August 1997. By means of special arrangements or agreements, the Ministry and the Regions, with the participation of universities and other public and private entities as well, may together establish centres, which may also be of an inter-regional nature, and which are endowed with corporate personality and entrusted with activities in research, experimentation, study, documentation and execution of conservation and restoration work on cultural property, of particular complexity. Schools of superior training for the teaching of restoration may likewise be established within these centres.

³⁶ In Italy, Article 29 (Conservation) of the 2004 Code of the Cultural and Landscape Heritage states that restoration on valuable decorated surfaces of monuments and movable artefacts are reserved to qualified restorers. The same article regulated the related secondary legislation, that is: 1) The job description of restorers (point 7 of art. 29), adopted with Ministry Decree n.86/2009. The decree distinguishes three levels: restorer, technician of restoration, technician of restoration on particular sector. Restorer's duties are defined as follows: "Professional who defines the state of conservation and puts in place a set of direct and indirect actions to limit the degradation processes of the constituent materials of the goods and safeguarding the cultural value. For this purpose, in the context of a coherent and coordinated planning conservation, the restorer analyzes data related to constituent materials, the technique of execution and the state of heritage and interprets them; designs and manages, for the part of competence, the interventions; runs directly conservative treatment and restoration; directs and coordinates other operators carrying out activities complementary to the restoration. Performs activities of research, testing and teaching in the field of conservation". In particular, the restorer is responsible for: A) A preliminary exam : Collection of historical sources and documents, historical-critical analysis and data related to the welfare and the environment (also in collaboration with the professionalism of the art historian, archaeologist, architect, archivist, the librarian, paleontologist, and those referred to in Article 4); detection and study of realization techniques

Part: 1) Regional peculiarities of restoration of architectural monuments, and 2) Scientific restoration methodology of architectural monuments; III Part: 1) Engineering problems of restoration of architectural monuments, and 2) Contemporary restoration techniques.

The subjects for the 1st course of bachelor degree in archeology are the following: Azerbaijani archeology, first agriculture/farming/cropping culture in Azerbaijani archeology, Azerbaijani ethnography and its origins, pre-Islamic religious beliefs in Azerbaijan (on the basis of archeological and ethnographic evidences), Azerbaijani numismatics, Azerbaijani ethnography and family life in ethnography.

The development of archaeology as a discipline, both in terms of its theoretical and philosophical foundations, and its methodological and practical frameworks, should be considered. Archaeology in the Western world has become professionalized. Archaeology, in fact, is a global profession that shares many underlying tenets and ideals, although its application and deployment often have more regional aims and local characteristics.

One key issue, inextricably bound up with professionalization in archaeology, is the matter of role specialization. In this field, Discovering the Archeologist of Europe, which is collecting data on archaeological employment in ten European countries, with funding from the Leonardo da Vinci II fund, is a transnational project, examining archaeological employment and barriers to transnational mobility within archaeology across twenty-one European countries. It is undertaken also with the support of the Lifelong Learning Programme of the European Union. Between 2012 and 2014 representatives from 23 organizations

and constituent materials of the work checking whether it is original or due is due to previous interventions; and evaluation of the conditions of the property and the interactions between the work and its context, also in relation to the environmental characteristics of the area, possibly through sampling and early diagnostic tests (also in collaboration with professionals the art historian, archaeologist, architect, archivist, librarian, paleontologist, and those referred to in Article 4); B) Design: Preparation of the technical data sheet foreseen by the regulations; drawing up of the diagnostic program and data acquisition (also in collaboration with the skills set out in Article 4); drawing up of the preliminary and final design of the intervention on good and context (also in cooperation with the professionalism of the art historian, archaeologist, architect, archivist, librarian, paleontologist); drafting -and its updating in the course of work- of the working design and maintenance programme; planning of packing, transport and storage of the goods or its fixing in case of on-site intervention; and drafting of the relevant part of conservation planning of the assets; C) Intervention: Identification of contents for contracts with customers (public or private); planning of intervention of internal operating structures (identification of resources and constraints, responsibilities, schedules, techniques); improvement in the course of work of the working planning, definition of materials, methods and types of operators; assistance to the execution of comprehensive diagnostic tests (in collaboration with the professionals indicated in Article 4) and sampling (also in collaboration with the professionals set out in Article 4); preparation of laboratory/site; technical management of interventions; implementation of conservation interventions; works lead; administrative operational management; support the activities of the head of the procedure; implementation of technical tests; monitoring of the actions taken, even in the context of conservation plans; participation in inspections and/or tests provided for in those plans; and requirements and supervision over all handling operations of cultural heritage, also in emergency situations; D) Documentation and dissemination of results: Documentation of all phases of intervention including graphics, video, files, etc.; drawing up the final report, preparation of the final technical and scientific; drafting conservative forms; teaching both theoretical and practical; communication activities related to content and tools; and publications; E) Research and experimentation: Participation in programs of research and experimentation on methods of intervention, technologies, scientific instruments and new materials for storage (in collaboration with the professionalism of the art historian, archaeologist, architect, archivist, librarian, paleontologist, and with those set out in Article 4). Technician of restoration and technician on of restoration on particular sector are figures ancillary to that of restorer. A system of qualifications is also in place for heritage conservation enterprises. For instance, restorers must be employed by those enterprises that intend to qualify for works on valuable decorated surfaces and artistic works.

in 21 European countries worked together in the Discovering the Archaeologists of Europe 2014 project to gain insight into the profile of the archaeological profession³⁷ and labor market in those countries.

List of needed revisions of the legal and normative framework

As above said, the strengthening of the educational and training sector in the cultural heritage field needs to respond to the challenges that the sector has to face today. These include increased pressures from development, the risks of trivialization and commodification induced by tourism, which however remain an important dimension that need to be properly harnessed, the insufficient availability of public resources both in terms of finances and qualified human resources, the need to provide staff of public heritage organizations with additional competences and capacities on economics and strategic planning applied to cultural heritage conservation and promotion, impact assessments, tourism industry, as well as capacities³⁸.

Notwithstanding the huge changes in the last couple of decades in the cultural heritage realm, a solid technical background in the “classical” fields related to cultural heritage conservation remains crucial, in order to keep high the standards of interventions on cultural heritage both immovable and movable. This is necessary in order to avoid the risks that ill-conceived conservation interventions can add further damages to the heritage instead of amending problems and improving conditions: Only appropriately maintained and conserved cultural heritage is capable to attract the attention of larger sectors of visitors and engage their interest in the long term, creating favorable conditions for a development which is locally based, sustainable and compatible with the values of cultural heritage.

The overall objective of improvement process will be to create a robust and interconnected educational system that can provide necessary competences for an effective system for the documentation, protection, conservation and promotion of cultural heritage³⁹.

³⁷ According to data collected in the Discovering the Archaeologists of Europe 2014 project, it is calculated that a total of over €1 billion is spent on professional archaeology every year, with the majority of that expenditure being on the salary costs of the estimated 24,740 people who work as archaeologists in these countries. This group of professionals represents 0.006% of the combined total workforces of those states. In many states, the absolute numbers employed in archaeology has fallen significantly over the previous six years. It is estimated that approximately 33,000 archaeologists now work across Europe as a whole. Archaeological practice in the participating states is organized on different models, with varying levels of commercial activity balanced against state agency engagement. This is often linked to the funding basis of archaeological practice (variation both on the basis of funding from the state or from private sector industries, and on whether delivery is achieved by the state or by the private sector). Different States define who can be considered to be an archaeologist in different ways. Vocational education and training (VET) in the sector is almost universally delivered by universities through academic degree programs. Issues relating to specific training needs were assessed in each participating country and it resulted that archaeologists are more highly qualified, but are less well-paid in comparison with other sectors.

³⁸ It would be useful to expand the competences of professionals of conservation to include also notions of economics, management and business administration, in order to make them capable to deal with a changing world and to establish a fruitful dialogue with other disciplines, experts and administrations as well as with the private sector.

³⁹ A twinning programme was launched in 2008 on the topic of vocational training in Azerbaijan. It would be useful to consider the results of that project. Moreover, Azerbaijan has joined the Torino process for Vocational educational training. This represents an opportunity to align the topics and curricula of VET courses. In 2016, the EU has also launched a project for Modernizing Vocational Education and Training (VET) Centres in Azerbaijan EuropeAid/153147/DD/ACT/Multi that has begun in February this year (among the leading partner there is the Ars Progetti - Rome).

This requires that attention should be firstly paid to the UNESCO conventions and recommendations and to the EU acquis related to the education standards. In particular, focus should be on the European Union Treaty (Article 165), on the "Convention on the Recognition of Qualifications concerning Higher Education in the European Region", i.e. the Lisbon Recognition Convention (ratified by Azerbaijan in 1999), on the Council Recommendation 98/561/EC/EC of 24/09/1998 on European cooperation in quality assurance in higher education, on the Recommendation n. 2006/143/EC of European Parliament and of the Council on further European cooperation on quality assurance in higher education, and on the Directive 2005/36/EC on the recognition of professional qualifications that is completed with the European Qualification Framework (EQF). When speaking about education standards, the principles of European Higher Education Area (EHEA), and the outcomes of the Bologna Process (of which the Azerbaijan is full member since 2005) should also be fully considered.

Accordingly, the Azerbaijan legal system should set up distinctive professional qualifications for archaeologists, restorers, architects, compliant with level set by the EQF that indicates 8 levels of qualifications. For cultural heritage professions, the most relevant are level 6 (roughly equivalent to a Bachelor's degree), level 7 (Master degree), and level 8 (PhD). Each of the reference levels in an EQF requires a description of what is distinctive about qualifications that are classified at that level. In addition, the Azerbaijan legal system should implement via secondary legislation the EU professional bodies policy recommendations for devising professional training curricula in the field of cultural heritage. These bodies include: (i) European Network for Conservation-Restoration Education (ENCORE); (ii) European Confederation of Conservator-Restorers' Organizations (ECCO); (iii) The European Heritage Heads Forum (EHHF). These organizations, albeit being entirely private entities, are crucial stakeholder for EU policies related to cultural heritage.

For instance, the present legal Azerbaijan framework does not foresee any special requirements for drafting and supervising restoration works. Articles 52 and 53 of the Law on Town-Planning and Construction Code of the Azerbaijani Republic (see, Law n.392/2012) actually regulate professional certification in the field of construction works both for companies and for professionals. Professional Registers are as well foreseen. State Architecture and Town-Building Committee is the public body expected to be the holder of this register, but the regulations for the establishment and guidelines of inclusion have not yet been approved by the Cabinet of Ministers, and the process has stopped from 2013. Rights and obligations of professionals engaged in architectural activities are regulated by the Law of Azerbaijani Republic about Architectural Activities (see, Law n.497-IG/1998). This law does not regulate tuition or working requirements for architects and companies. Moreover, based on the Law of the Azerbaijan Republic on making changes and additions to some normative acts of the Azerbaijan Republic dated 09 October, 2007, the activity of Architecture was made free from special permission needing state control on the basis of the amendments made to the Law on Activity of Architecture dated 15 May, 1998.

In a nutshell, the above simplified criticalities require that the Azerbaijan legal system should strengthen its educational and training system at three different levels:

- (i) Higher education in cultural heritage (with specific technical curricula for architects, engineers and archaeologists dedicated to the conservation of immovable heritage as well as with curricula for professionals in cultural heritage interpretation and promotion, cultural heritage economics and valorization, cultural tourism, IT applied to cultural heritage). The following can be suggested to reinforce the higher Azerbaijan education system towards an improvement of the competences that are useful in conservation⁴⁰: a. Strengthen the education on urban and territorial/ landscape studies and planning both at the bachelor and master levels, especially for

⁴⁰ Any step to implement the following improvements needs to be coordinated with the results of the Twinning project "Support to the Ministry of Education for further adherence of the higher education system to the European Higher Education Area" that started in September 2015 and which is expected to end in August 2017.

what it concerns the historic urban fabric by providing specific knowledge in the analysis of historic urban and territorial structures and in methodologies for planning within an historic territory ; b. Expand the teaching of principles and methods of architectural survey applied to existing buildings, including photogrammetry, laser scanning techniques, GIS-based documentation and project management, rapid visual survey of conservation conditions; c. Develop a more project-based approach to architectural education, to strengthen a competence-based educational environment; d. Develop ad-hoc post-graduate curricula for professionals in cultural heritage interpretation and cultural heritage management, on cultural tourism management. The norms to be considered are: 1. The Education Program on Bachelor degree qualification” (Order of the Ministry of Education n. 913 dated August 22, 2014); 2. The Regulations for Master's degree preparation at the multi-tier higher education system of the Republic of Azerbaijan. These reforms refer to Article 8.3 of State Standards of Higher Education (confirmed by Cabinet of Ministers), which gives a right to Ministry of Education to define subjects per bachelor/master program. Based on these provisions, it seems that there is no need to amend them to allow to strengthen the curriculum for the bachelor or the master on conservation, as they provide for a general framework and allow for universities to define in detail the curricula of each degree course. On the other hand, to set new master courses, it is worth noting that the provisions of the order n.95 dated 14th June 2011 by the Cabinet of Ministers of the Azerbaijan Republic outlines the topics for Masters. These include a number of disciplinary spheres that already exist, and where expertise can be drawn to set up new interdisciplinary master courses. Further, these topics combine competences from different sectors, which are all needed to create new figures dealing with conservation and promotion of cultural heritage;

- (ii) Professional and Vocational Education (to provide workers with specific skills in masonry, carpentry, ironworks, etc. in order to have available qualified workers with knowledge about traditional craftsmanship and works, as well as operational professional in the field of diagnostics for cultural heritage). Availability of skilled workers with a good knowledge of traditional building materials, built components and techniques is necessary for carrying out proper interventions on the built heritage, including repair and maintenance works. Any conservation building site of an historic building needs good masons, stonecutters, carpenters and wood workers, as well as metalworkers, plumbers and tinsmiths capable to deal with historic fabric and the different building elements, their functioning and their conservation problems. For artistic works, such mural paintings, carvings, sculptures and other decorated surfaces, restorers with specific specialization on different materials and artwork are necessary. Strengthening this sector of vocational training appear crucial in order to prepare generations of skilled workers. Wherever possible, traditional craftsmen that still exist need to be involved in the educational system through practical stages. The schools existing in Azerbaijan that may be relevant in this regard, although they might also be not sufficiently practice-oriented, include 25 different courses, out of which the ones that may be relevant for the built heritage conservation sector include: Carpenter, furniture fitter, electrician and turner. However, the vocational training of mason, plaster-maker, decorator and stonecutter does not seem to be envisaged in Azerbaijan. It would be important to introduce vocational training also for these crafts because skilled execution of mason, plasterworks, and paintings based on the knowledge of traditional materials like lime-mortar and lime-wash represent a crucial and substantial part of the repair and maintenance works of masonry built heritage. In order to make possible the creation of ad- hoc vocational educational courses for masons, plasterers or painters, it is necessary to amend the Decision of the Cabinet of Ministers, 11 October 2016, establishing the subjects that can be object of vocational training;
- (iii) Permanent education and training of technical staff of the Ministry of Culture and related Agencies as well as of professionals (engineers, architects, surveyors). An adequate quality of design and execution of intervention in the built cultural heritage conservation requires qualified professionals both at the design and execution level. The higher educational system includes Master in conservation/restoration which prepares architects specifically for intervening on monuments and built heritage. The Azerbaijani Law on Licenses and Permits of Azerbaijan,

which was endorsed by the presidential decree dated 15 March 2016, requires the possession of a license to carry out the profession of architect. This license is issued by the Ministry of Economy of the Republic of Azerbaijan and each license defines the scope of allowed activities. The law defines the activity of design of buildings and structures as one requiring license. It is of utmost importance to require specific educational and professional qualifications for issuing professional licenses that include the design of conservation/restoration of monuments or protected built heritage, based on educational curricula and certified experience in the practice. This sets conditions favorable for the improvement of the quality of conservation projects and interventions. The use of ASAN Services to submit the request of professional licenses should be allowed; but, at the same time, a competent commission⁴¹ should evaluate the requests and provide advice on the issuing of the license. This includes the pertinent professional organizations, the ministry of Culture - State Service for architects allowed to design projects on protected historic and cultural monuments, as indicated in the law. It should also be stressed that currently there is no requirement for permanent education of architects or engineers within the legal framework of Azerbaijan on this subject. However, the complexity of the profession and the ongoing changes in the legislation and technical requirements suggests that life-long learning is necessary for maintaining updated professional expertise in order for architects and engineers to respond adequately to their obligations toward their client and society at large and in compliance with legislation and standards. Therefore, setting up a system for compulsory permanent training and professional adjournment for architect and engineers is also very important. It needs the development of ad-hoc regulations that set out the areas that are to be considered in the permanent educational programme. A credit and a monitoring systems need to be set up in order to encourage compliance with the requirement. The aim is to ensure that professionals are equipped with up-to-date knowledge and skills that reflect the ongoing changes in the professions in term of new technical and normative requirements, new perspectives in the profession, new technologies and systems. This life-long learning system needs to be adopted by the relevant legislative body (Ministry of Economy) on the basis of consultations with relevant professional organizations (e.g. Union of Architects) to define the topics which should be the object of permanent training and learning programmes. In this regard, a crucial role could be played by professional organizations such as the Union of Architects, which could take the lead in developing training programmes for their associates, in conjunction with public administrations, universities, as well as producers of materials and technologies, in fulfilment of their code of ethics. Further, it is suggested that the issuing of licenses for architects or engineers who are allowed to make interventions on protected cultural heritage items needs be done by the Ministry of Economy jointly with the Ministry of Culture - State Service. The certified experience need to be based on projects designed for cultural heritage immovable properties that have been authorized by the Ministry of Culture - State Service and the implementation of which has been satisfactorily carried out and certified by the State Service.

To reach these goals the legal framework to be amended is: a. The Law on Licenses and Permits of Azerbaijan and introduce a sub category for “Design of Buildings and Structures”, which covers the interventions of any type on protected monuments, structures and heritage buildings as individual objects, within buffer zones or protected areas or reserves; b. The Law of the Azerbaijani Republic about Architectural Activities (15 May 1998, as amended); c. The Decree of the President of the Republic of Azerbaijan on establishment of State Service of Cultural Heritage Conservation, Development and Rehabilitation under the Ministry of Culture and Tourism of the Republic of Azerbaijan; d. The Regulation of the Department for Development and Rehabilitation of the cultural heritage; e. The Order n.9/14-05 dated October 4th, 2013 by the State Agency on Public Services and Social Innovations on approving the regulations of ASAN Service Centers.

⁴¹*With regard to the integration of issuing licenses into the ASAN service system, there is a need to clarify the role of an integrated evaluation commission for these requests within the system of ASAN service.*

1.4 Restoration and protection of historical and cultural monuments

Assessment report

In Azerbaijan, there are many criticalities, such as: (i) Lack of information⁴² and education about the cultural and historical heritage objects and rich cultural wealth of Azerbaijan; (ii) General ignorance about Azerbaijani culture richness and traditions, mainly spread among the young generation and the children; (iii) Lack of interest by the officials at the relevant ministries towards culture issues, especially about problems linked to the cultural heritage; (iv) No skilled specialists and no proper education and training at the universities of the skilled archeologists, restoration specialists, engineers etc. Universities provide mostly theoretical knowledge, and practical knowledge and know-how is seriously lacking; (v) No enough support for implementation of the projects on cultural heritage abroad, especially those needing global media attention in competition of archeological and cultural findings; (vi) Delay in application and implementation of advanced technological innovations in culture heritage area.

There is no timely approach to the technological innovations. On the contrary, creation, protection and use of cultural values presumes the enhancement of the existing material and technical basis and modernization of the infrastructure⁴³. In the globalizing world, social and cultural progress are inextricably connected to information and communication technologies. With regard to this, there is a general lack of material infrastructure, especially in the case of some cultural objects that are located in the countryside. Cultural objects are not always easily reachable from the main roads and there is no road sign to duly indicate their position. Yet, the buildings are not always completely accessible and sometimes there is a lack of basic facilities. Moreover, the protection, conservation and transmission to the future generations of the values of historic and cultural monuments implies also that any work carried out on them does not negatively impact on their qualities and features that allow for the understanding of the significance of a specific heritage item. Taking this into account, the state policy should be focused on: (i) Repairing works for respective culture objects; (ii) Building original high-class facilities for culture institutions; (iii) Developing modern equipment and systems for culture objects; (iv) Ensuring modern IT-technologies for culture objects. In this paragraph, normative reforms related to restoration and protection of historical and cultural items will be examined.

List of needed revisions of the legal and normative framework

⁴² *There should be also support of cultural and artistic expressions and minority communities to encourage their contribution to the development of local cultural industries. Encourage cultural development stakeholders to pay closer attention to the promotion of women and women's rights, integrate the gender approach into their actions, implementation of positive discrimination and supporting specifically female artistic practices and female cultural entrepreneurship.*

⁴³ *In Azerbaijan, the need of supporting digital innovation in the arts and heritage sector is very high, and the use of e-infrastructures should be addressed at engaging new audiences and ensuring better access to and exploitation of the digital cultural heritage.*

The main measures for the protection of the cultural heritage are set out in the current laws, whilst the key structures to perform the above-mentioned key functions have been established through ministerial and cabinet of ministries' orders as well as internal regulations⁴⁴.

The key organizational framework has therefore been established and tasks identified. A more stringent coordination among different laws, e.g. the law for urban planning and the law for heritage protection should be envisaged as well as with the law for architectural activity. In fact, notwithstanding the considerable work developed by Azerbaijan in strengthening its legal framework, there is still some work to be done on the primary legislation. That is:

- (i) There is necessity of providing for a coherent and comprehensive organization of the Ministry of Culture in its central and peripheral branches and related supporting Agencies; therefore, a comprehensive review of all functions and recent adopted or ongoing reforms since 2006 would be useful;
- (ii) It is then necessary to reinforce the current regulatory framework. The Azerbaijan legal system appears adequate as primary level of legislation but needs to be supported by secondary legislation and ancillary regulations. It seems, in fact, necessary to define joint procedures at the regulatory level that establish a joint commission, the timing to issue the joint advice, and related guidance and standards concerning the technical documents to be submitted for any intervention to be carried out on protected cultural heritage. For instance, it is important to simplify procedures to obtain permits to intervene on protected historic cultural monuments, by favoring joint assessment of the projects by the National Academy of Science (NAOS) and the State Service so as to shorten the time necessary and reduce the administrative steps. If NAOS examines also requests for leases (bearing world or national values, limited to the purposes enounced in the law for the protection of cultural monuments) or sales of protected cultural properties (bearing local value), the revised procedure needs to be applied also to these situations. Equally, guidelines and standards need to be established for lease and sale, to ensure a common basis of assessment, transparency in judgement and guidance for applicants and assessors. There should be also a revision of current definition of works that can be carried out on monuments, in order to keep it wide enough that potential new category of interventions can be considered included. It would be useful to use ASAN service system⁴⁵ to apply for permit for conservation or any type of intervention on historic cultural monuments as long as this does not prevent the State Service and NAOS to issue a separate authorization which needs to remain preliminary to any other authorization to ensure that values of the cultural heritage are not overlooked. However, Article 14 of the Law on Protection of Historical and Cultural Monuments could specify that costs of preliminary research for potential presence of archaeology need to be covered by the developer;
- (iii) It is also important to rule on the qualifications of enterprises intervening on historic and cultural monuments. To this end, specialized and skilled workers in the field of conservation and historic construction sectors are indispensable and specific

⁴⁴ E.g., *Decree of the President of the Republic of Azerbaijan on establishment of State Service of Cultural Heritage Conservation, Development and Rehabilitation under the Ministry of Culture and Tourism of the Republic of Azerbaijan; Regulation of the Department for Development and Rehabilitation of the cultural heritage.*

⁴⁵ Apparently, there is no need to amend the presidential decree n.706/5 Sept 2012 establishing the Regulations of the State Agency on Public Services and Social Innovations, however, it might be necessary to modify the Order N: 9/14-05 dated October 4th, 2013 by the State Agency on Public Services and Social Innovations regarding the approval of the regulations of ASAN Service Centers. Additionally, it is necessary as well to define coordinating procedures that allow for the autonomous assessment of the projects by the NAoS and State Service. In summary, this type of reform should be applicable only through revisions of secondary legislation or even internal regulations.

qualifications need to be requested to any enterprises operating on historic and cultural monuments. The main objective will be setting out specific requirements and qualifications to enterprises operating on cultural properties, with a view to improving the quality of interventions on historic and cultural monuments. This goal is a complex one and requires actions at different levels:

- a. Introduction of a chapter on specifications of public procurement for historic and cultural monuments and properties within the relevant legislation;
- b. Definition of categories of work related to cultural heritage (distinction may be needed among architectural heritage, decorations and movable artefacts, archaeological excavations and conservation of archaeological remains, technical installations in historic monuments);
- c. Definitions of standards for qualifications of enterprises/ company, based on the qualification of their staff and the accumulated experience of the company in conducting specialized works on protected monuments;
- d. Setting up a system for the recognition of enterprises' qualifications based on the professional assessment of the activities carried out on protected monuments.

The following norms should be amended or introduced: 1. Law on public procurement. A chapter on cultural heritage, in which principles and key provisions are set out, need to be developed. In the main law, it is necessary to introduce the principle that cultural heritage is a special realm deserving specific provisions concerning: qualifications of professionals involved at the design level, qualification of workers and enterprises involved at the implementation level, content of documents for tender (project), bid offer (preferentially the most economically advantageous instead of the lowest bid); 2. Law on construction and town planning. Introduction of clause indicating that all categories of works on protected cultural heritage needs to be designed by specialized professionals (cross reference in: the law on licenses and permit issuing, law on public procurement) and carried out by specialized enterprises (cross reference in the law of public procurement)⁴⁶; 3. Law on licenses and permits. Introduction of reference to the need to establish an evaluation commission for issuing licenses for professionals and enterprises that include Ministry of Culture - State Service and relevant professional organizations. Specific regulations need, then, to be developed to regulate the matter, such as classification of work types, issuing qualification certificates to enterprises based on successful completion of other works. Again, the ASAN service can be considered for this type of activities provided that coordination is ensured with the offices of the Ministry of Culture - State Service that will be made responsible for issuing certificate of successful completion of works. Issuing of licenses for enterprises apparently is already a task for ASAN service - a system should be therefore set up to ensure that licenses are issued based on real competences.

⁴⁶ See the following paragraph 1.4.2.

1.4.2 Procedure for planning and implementing restoration works

Assessment report

In Azerbaijan, there are several criticalities in the procedure for planning and implementing restoration works of cultural objects. There is, in fact, lack of/in: (i) A general discipline applicable to contracts in the sector of cultural heritage; (ii) Qualifications of designers, operational directors and executors of the works; (iii) The levels and details of the project schemes for widened cultural heritage categories, now including, beyond movable cultural properties, decorated surfaces, historic materials of immovable cultural properties, archaeological properties and excavations, also works on villas, parks and gardens; (iv) Simplification and greater amplitude in variants; (v) Award criteria; (vi) Verification in the realization phase and testing; (vii) The simplification of procedures for sponsorship.

In order to solve many of the above-mentioned issues, the European legal frame work should be fully considered, and in particular 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 (Directive 2004/18/EC), as replaced by the Directive 2014/24/EU, entered into force on 18.4.2016. In particular, This legal instrument seeks to ensure an open market for public procurement as well as the fair application of the rules for the award of public works, supplies and services contracts.

The directive covers most public contracts, and it establishes the following types of procedure:

- (i) In an open procedure, any business may submit a tender. The minimum time limit for submission of tenders is 52 days from the publication date of the contract notice. If a prior information notice was published, this time limit can be reduced to 36 days;
- (ii) In a restricted procedure, any business may ask to participate but only those who are pre-selected will be invited to submit a tender. The time limit to request participation is 37 days from the publication of the contract notice. The public authority then selects at least 5 candidates possessing the capabilities required, who then have 40 days to submit a tender from the date when the invitation was sent. This time limit can be reduced to 36 days, if a prior information notice has been published. In urgent cases, the public authority may set a time limit of 15 days to receive participation requests (if the notice is sent electronically, this can be reduced to 10 days) and 10 days for the submission of the tenders;
- (iii) In a negotiated procedure, the public authority invites at least 3 businesses with whom it will negotiate the terms of the contract. Most contracting authorities can use this procedure only in a limited number of cases, for example for supplies intended exclusively for research or testing purposes. The contracting authorities in sectors such as water, energy, transport or postal services may use it as a standard procedure. The time limit to receive requests to participate is 37 days from the publication of the contract notice. In extremely urgent cases, this can be reduced to 15 days (or 10 days if the notice is sent electronically). Under certain conditions, this procedure can be chosen even without publication of a contract notice, for example in case no tenders were submitted in an open or restricted procedure, in extremely urgent cases or in cases where, for technical reasons, the contract can be carried out only by a single business;
- (iv) Competitive dialogue: This procedure is often used for complex contracts such as large infrastructure projects where the public authority cannot define the technical specifications at the outset. After the publication of the contract notice, interested businesses have 37 days to request participation. The public authority must invite at least 3 candidates to a dialogue in which the

final technical, legal and economic aspects are defined. After the dialogue the candidates submit their final tenders.

Public authorities can also award contracts by electronic auction. Before starting the auction, the authority must make a full initial evaluation of the tenders and allow only the admissible ones to take part. The invitation to participate in the auction must state the date and time of the auction and the number of bidding rounds. It should also set out the mathematical formula that will determine the automatic rankings. In each bidding round, you must be able to see your ranking compared to your competitors, without knowing their identity. Electronic auctions cannot be used for certain types of contract, such as the design of works (for example architectural plans for a building).

An important characteristic of the EU procurement rules is the variety criteria for evaluating tenders, which are by no means limited to the selection based on the lowest price offered. The applicant should be informed of the different weighting given to the different criteria. In the EU legislation, quite a significant impetus is made on quality-price ratio ("value for money") and on the concept of the "most economically advantageous tender" (MEAT), which together with the price takes into account qualitative, technical and sustainable aspects.

As stated in Article 58 of the Directive 2014/24, selection criteria may relate to: (i) Suitability to pursue the professional activity; (ii) Economic and financial standing; (iii) Technical and professional ability.

The Directive provides indications for quality assurance standards and environmental management standards. Besides, it also lists possible mechanisms for identification of authorized contractors. One of these mechanisms is the establishment of official lists of approved contractors, suppliers or service providers by the member states. An alternative could be certification by certification bodies complying with European certification standards (Articles 62 - 64 of the Directive 2014/24).

Article 58 of the directive reads that: "...With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled in one of the professional or trade registers kept in their Member State of establishment, as described in Annex XI, or to comply with any other request set out in that Annex". (Article 58 of the Directive 2014/24) Furthermore, the EU directive also mentions possible requirements for professional and technical capacity stating: "With regard to technical and professional ability, contracting authorities may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard ... Contracting authorities may require, in particular, that economic operators have a sufficient level of experience demonstrated by suitable references from contracts performed in the past". (Article of the 58 Directive 2014/24).

The above discussed provisions do not impose mandatory obligations on the States; nevertheless, they provide a good legislative background for reflecting the quality assurance standards in the national law in case such a need is acknowledged by the State.

This legal framework also requires transparency⁴⁷. This is ensured by the publication of notices on public contracts, that contain information such as deadlines for bids, language(s) of bid, award criteria and their relative weighting, certificates/documents to accompany bids to allow the evaluation of candidate's suitability to perform a contract.

⁴⁷ *Public authorities may only begin evaluating tenders after the deadline for submission has expired. The one who has submitted a tender, has the right to be informed as soon as possible whether or not he has won the contract. If the applicant has not been selected, he is entitled to a detailed explanation of why his tender was rejected. The public authority must observe strict confidentiality regarding the exchange and storage of the data.*

All public contracts with a value over a given threshold are covered by this Directive. Thresholds are calculated every 2 years⁴⁸. Only in specific cases public authorities may award contracts without publishing a call for tenders, that is in: (i) Emergencies due to unforeseeable events; (ii) Contracts that -for technical reasons or because of exclusive rights- can be carried out by one particular company only; (iii) Contracts that by law are excluded from public procurement (acquisition/rental of existing buildings, employment contracts, program material for broadcasting, etc.).

In Italy, taking into consideration the above-mentioned EU framework, specific provisions for cultural heritage restoration works are enacted in the newly promulgated Code of Contracts⁴⁹. Again, the Azerbaijan legal system could take advantage from the Italian experience.

In brief, public procurement in the cultural heritage sector is considered a specific matter in need of special provisions to ensure the respect of heritage values, character and features. The prevalence of the conservation and protection needs and the peculiarity of the object of the interventions are reflected on the following procedural stages of preparation and implementation of the interventions:

- 1) Definition of the object and contract configuration or granting (in terms of defining the scope of the object of performance expectations, in order to avoid the absorption of categories of specialist work of cultural heritage within general categories that do not consider the specific qualifications needed for this sector);
- 2) Special verification of such a qualification and limitations to forms of pooling and loan of the requirements;
- 2) Award criteria (preference for qualitative and disfavor criteria for the maximum discount);
- 3) Greater amplitude in the use of variants;
- 4) Undergoing rigorous testing realization;
- 3) Levels and specification of design and project schemes;
- 4) Special qualification of the operators.

All this is due to the importance of cultural values to be protected that affects the delimitation of the scope of the works, the requirements and levels of performance. With this in mind, the law prohibits⁵⁰ entrusting the work of movable cultural property and assimilating it together to work of different category. This limitation

⁴⁸ As consequence of this EU legal framework, the following core principles should be guaranteed by tenders and public authorities: (i) May not discriminate against a business because it is registered in another EU country; (ii) May not refer to specific brands, trademarks or patents when describing the characteristics of products & services they wish to purchase; (iii) May not refuse to accept supporting documents (certificates, diplomas, etc.) issued by another EU country, as long as they provide the same level of guarantee; (iv) Must make all information regarding tenders available to all interested companies, regardless of what EU country they are registered in. However, a public authority has the right to exclude a business from a call for tenders if it: (i) Is bankrupt or being wound up; (ii) Has suspended its activities or its activities are administered by a court; (iii) Has been found guilty of grave misconduct; (iv) Has not paid taxes or social security contributions; and (v) Has made false declarations to a public authority.

⁴⁹ See, Articles 146 - 151 and 216. Article 25 is also relevant; it deals with preventive archeology: whose provisions are focused on protection and stewardship of potential archaeological findings.

⁵⁰ See, Article 148 of the Code of Contracts.

was meant to prevent that specialized conservation works, although limited in financial terms, could be absorbed into more generic categories and then carried out by enterprises lacking the necessary expertise and qualifications.

The preference for the most advantageous qualitative offer in disfavor for the maximum discount criteria, although in principle very important, can, however, cause several application problems. Therefore, it is better to open to the use of maximum discount also for tenders concerning cultural heritage.

On the subject of the award criteria, the condition of “utmost urgency” is relevant. Compared to the ordinary procedure, the one for cultural property increases the threshold to 300.000 euros, instead of 200.000 for other sectors. To normal requirements established to declare the need to proceed under the utmost urgency condition, in the case of cultural heritage it is added the explicit reference to the protection of the property, and the threats to its value in case of the delay in performance due to the normal tender procedures. The Code of Contracts continues to apply the general provision allowing the use of the negotiated procedure without prior publication of a contract notice to carry the works strictly necessary to overcome the situation of extreme urgency. This urgency must not in any event be attributable to the administration.

Article 149 of the Code of Contracts establishes that those interventions necessary for a risk of damage or deterioration of the protected goods are not to be considered "variants", provided that they do not qualitatively alter the work and do not exceed a percentage change total of 10% of the contract (and by 20% for each category of processing). The simplification of the rules for variants to the projects on cultural heritage takes into account the difficulties of envisaging in advance all the possible issues that may emerge during the works.

Article 150 of the Code of Contracts (on the subject of testing) in the field of cultural heritage provides that for the works related to the cultural property testing during construction is mandatory, and without it there are no conditions for issuing the certificate of regular execution. With regard to this, it is established the compulsory inclusion of qualified professional figures in the composition of the commission for the intermediate and final tests, namely restorers for the works on architectural properties and decorated surfaces and of an archaeologist for works conducted on archaeological properties, in order to ensure that the quality of the works is properly assessed by competent professionals.

In Azerbaijan, public procurement is regulated by the Law of the Republic of Azerbaijan on Public Procurements, issued on 2001. Relevant procedures are enforced by the State Procurement Agency of Azerbaijan Republic, a governmental agency within the Cabinet of Azerbaijan in charge of regulation of activities related to procurement of goods (works and services) purchased by state funds in Azerbaijan Republic. The State Procurement Agency:

- (i) Participates in creation and improvement of the legal base governing public procurement in the Republic of Azerbaijan, develop rules, instructions, other documents on public procurement and submit them to respective executive authorities for approval;
- (ii) Supervises legality of procurement of goods, works and services on competitive basis as well as performance of contracts;
- (iii) Suspend procurement procedures for up to 7 banking days in case of discovery of breach of law and if necessary raise the matter of cancellation of tender results to the procuring agency;
- (iv) Considers disputes in public procurement procedure and in case of breach of law take measures in accordance with legislation requirements.

Procurement methods (Articles 16-21) are the following:

- (i) Article 17 establishes an open tendering procedure, when estimated price for goods (works and services) is higher than minimal price set by respective executive authority (the minimum

threshold for carrying out an open tender is 50.000 manat⁵¹). Procurement agency cannot divide procurement of goods (works and services) into separate contracts for the purpose of removal of limitation of amount for application of this article;

- (ii) Article 18 establishes a two-stage tender or request for proposals⁵² -perhaps, similar to the competitive dialogue-, when procurement agency cannot determine in details features of goods (works and services) in order to take the most suitable decision to provide its demand for procurements. In these cases, the agency shall: a. Propose different possible methods of provision of its demand; b. Hold discussions with consignors (contractors) in connection with technical nature of goods (works) or features of services. The same method can be used when procurement agency wishes to enter into agreement for the purpose of conducting studies, experiments, researches or development; or when an urgent and unforeseen demand for acquisition of goods (works and services) is arisen in conditions or at practical inexpediency of application of open tender procedure or other procurement methods;
- (iii) Article 19 establishes a tender with limited participation or closed tender⁵³, when respective goods (works and services) because of its extraordinary difficulty or possessing specific nature are available to potential consignors (contractors) in limited amount; if time and costs required to review and assess numerous tender proposals is not proportional with value of procured goods (works and services); if goods (works and services) are provided for defence and national security needs. In all these cases, the procurement agency shall use closed tender;
- (iv) Article 20 establishes a method of request for quotations⁵⁴ for procurement of goods (works and services) with current market, estimated price of which is less than minimal amount set by respective executive authority;
- (v) Article 21 establishes a single-source procurement⁵⁵: a. When procured goods are only available to any specific consignor (contractor) or specific consignor (contractor) that possess rights over such goods (works and services). However, substitutes or alternate goods should be unavailable; b. When urgent demand for goods (works and services) is arisen and the conducting of tender procedures or use of any other procurement method is inexpedient; c. When an urgent demand for such goods (works and services) is arisen in connection with emergencies, and use of other procurement methods is inexpedient in view of time to be spent to them; or d. When, after procurement of goods, equipment, technology or services from any consignor (contractor), the agency arrives to decision to procure them from such consignor (contractor) in view of ensuring their compliance with standardization considerations of existing goods, equipment, technology or services.

Prior to commencement of tender procedures, the procurement agency shall set (if necessary, with the cooperation of professional assessors) estimated price of goods (works and services) to be procured⁵⁶. The estimated price of goods (works and services) to be procured must be kept in secret until the day of opening of tender packages and shall be used to assess tender results. If price of any tender proposal significantly differs from estimated price of relevant goods (works and services), procurement agency shall be entitled to reject such offer. This decision shall be approved by respective executive authority. If number of bidders is less than three, the procurement agency shall refuse to continue the tender.

⁵¹ *This minimum is different from that established by the EU framework.*

⁵² *See also, Articles 46 and 48 of the Law of the Republic of Azerbaijan on Public Procurements.*

⁵³ *See also, Article 47 of the Law of the Republic of Azerbaijan on Public Procurements.*

⁵⁴ *See also, Article 49 of the Law of the Republic of Azerbaijan on Public Procurements.*

⁵⁵ *See also, Article 50 of the Law of the Republic of Azerbaijan on Public Procurements.*

⁵⁶ *Article 27 of the Law of the Republic of Azerbaijan on Public Procurements establishes estimated price of goods (works and services).*

List of needed revisions of the legal and normative framework

In Azerbaijan, public procurement is regulated by the Law on Public Procurements, issued on 2001, and relevant procedures are enforced by the State Procurement Agency.

There are, however, several criticalities that should be faced and solved. In particular, a special normative system applicable to contracts in the sector of cultural heritage should be enforced, and its provisions should be focused on the qualifications of designers, operational directors and executors of the works; on the levels and details of the project schemes for widened cultural heritage categories; on the simplification and greater amplitude in variants; on award criteria; on verification in the realization phase and testing; and on the simplification of procedures for sponsorship.

In order to approach these issues, firstly the European legal frame work should be considered and adapted to the peculiarity of restoration works on cultural goods. In particular, 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, should be considered. These provisions do not impose mandatory obligations on the States; nevertheless, they provide a good legislative background for reflecting the quality assurance standards in the national law in case such a need is acknowledged by the State.

According to this European legislation, all public contracts with a value over a given threshold are covered by this Directive. Thresholds are calculated every 2 years and transparency is required in all the procedural phases. Only in specific cases public authorities may award contracts without publishing a call for tenders, and for the cultural sector this exception may be relevant in emergencies cases due to unforeseeable events, as well as in those cases in which contracts for technical reasons can be carried out by particular companies only.

The EU Directive also lists possible mechanisms for identification of authorized contractors. One of these mechanisms is the establishment of official lists of approved contractors, suppliers or service providers by the Member States. An alternative could be certification by certification bodies complying with European certification standards (Articles 62 - 64 of the Directive 2014/24).

For the cultural sector the provisions dictated by Article 58 of the Directive 2014/24/EU are also relevant. According to this article the selection criteria may relate to: (i) Suitability to pursue the professional activity; (ii) Economic and financial standing; and (iii) Technical and professional ability.

In adapting the European legislation, the Azerbaijan legal system could take advantage from the Italian experience, where specific provisions for cultural heritage restoration works have been enacted.

Therefore, the Law on public procurement should consider cultural heritage a specific matter in need of special provisions to ensure the respect of values, character and features of humankind relevance. A chapter on cultural heritage (possibly Chapter IX, the last chapter of the Law on Public Procurements, named “Special Provisions for the Culture Sector”), in which principles and key provisions are set out, need to be developed. In other words, it is necessary to introduce the principle that cultural heritage is a special realm deserving specific provisions, and the peculiarity of the object of the interventions should be reflected in the:

- (i) Definition of the object deserving protection, also considering its buffer zone. In order to perform it, there should be a revision of the list of cultural areas/goods, and specially of the list as approved in 2001 from the cabinet of Ministries (list that is imported from the Soviet period) in which there is a classification by national/local importance. This list is, in fact, obsolete and its revision should take in consideration the advice of important

local stakeholders (like unions of architectures or other professional unions and other private entities);

- (ii) Definition of the object and contract configuration or granting. This entails defining the scope of the object of performance expectations, in order to avoid the absorption of categories of specialist work of cultural heritage within general categories that do not consider the specific qualifications needed for this sector. In particular, the law should never assimilate the work of movable cultural property together to work of different category;
- (iii) Properly verification of the specific qualification, limiting forms of pooling and loan of the requirements. This limitation is meant to prevent that specialized conservation works, although limited in financial terms, could be absorbed into more generic categories and then carried out by enterprises lacking the necessary expertise and qualifications;
- (iv) Award criteria: a. The preference for qualitative and disfavor criteria for the maximum discount, although in principle important, should not be absolute as sometimes may bring about several application problems. Therefore, it is better to open to the use of maximum discount also for tenders concerning cultural heritage; b. On the contrary, the condition of “utmost urgency” is absolutely relevant. Compared to the ordinary procedure, the one for cultural property should increase, compared to other sectors, the threshold for the award of public works contracts. Not only. To normal requirements established to declare the need to proceed under the utmost urgency condition, in the case of cultural heritage it should be added the explicit reference to the protection of the property, and the threats to its value in case of the delay in performance due to the normal tender procedures. Whenever urgency is not attributable to the public administration, the Azerbaijan legal system should allow the use of the negotiated procedure without prior publication of a contract notice to carry the works strictly necessary to overcome the situation of extreme urgency;
- (v) Greater amplitude in the use of variants. Interventions necessary for a risk of damage or deterioration of the protected goods should not be considered "variants", provided that they do not qualitatively alter the work and do not exceed a fixed percentage change total of the contract and for each category of processing. The simplification of the rules for variants to the projects on cultural heritage takes into account the difficulties of envisaging in advance all the possible issues that may emerge during the works;
- (vi) Undergoing rigorous testing realization: a. In the field of cultural heritage, the testing of the works related to the cultural property should be mandatory, and without it there should not be conditions for issuing the certificate of regular execution⁵⁷; b. The testing should be executed by a special commission, and it is to be established the compulsory inclusion of qualified professional figures in the composition of the commission for the intermediate and final tests. Namely, restorers for the works on architectural properties and decorated surfaces and of an archaeologist for works conducted on archaeological properties should attend in order to ensure quality of the works;

⁵⁷A real problem is that the existing legislation in this field is not respected everywhere, and property owners intervene on the original design of the buildings augmenting volumes or so on. Such circumstances should be impeded creating an autonomous sanctioning system. For instance, criminal sanctions should be envisaged when the protected item is exposed at risk; and not only when it is damaged, as it happens in the current Azerbaijan penal system. Further, special administrative sanctions such as electricity bar and voidness of contracts should be imposed (this could well be envisaged considering article 180, comma 2, of the Azerbaijan civil code).

- (vii) Levels and specification of design and project schemes⁵⁸ and special qualification of the operators. All this entails new rules on qualifications of professionals involved at the design and project level as specified in the previous paragraph, on an evaluation commission for issuing licenses for professionals and enterprises that include Ministry of Culture - State Service and relevant professional organizations⁵⁹, on content of documents for tender (project), on clause indicating that all categories of works on protected cultural heritage needs to be designed by specialized professionals and carried out by specialized enterprises;
- (viii) In a dedicated PPP section in which each figure will be duly described, together with the tender procedures and related specific provisions. The newly introduced section (possibly named “Contractual Public-Private Partnerships for the Culture Sector”) could be inserted in Chapter IX, the last chapter of the Law⁶⁰.

It must be underlined that the new-created “Special Provisions for the Culture Sector” Chapter, which typically will set out principles of this sector, nevertheless may be supported by more detailed regulations, with the intention of avoiding rigidity so as to enable the specificities of the cultural sector to be adapted over time. With regard to this, the amendments to the existing legislation should be accompanied by the developing of a secondary legislation (decree, orders, guidelines, etc.). In order to work, the above suggested reforms require, in fact, the flexibility of internal regulations and guidelines defining steps, standards, criteria and timeframe for all procedures envisaged by the law. In other words, what should be created is a comprehensive set of regulations and standards for each and every procedure.

1.4.3 Law on Town-Planning and Construction Code

Assessment report

Urbanization policies and programs must ensure that they improve the necessary spaces and infrastructure for cultural development. Urban planning is called to ensure accessibility to cultural equipment for populations and for the culture sector itself. Too often, urbanization plans fail to integrate any form of cultural infrastructure, or these infrastructures are constructed without bearing in mind the specific activities that they should be providing. In a more general manner, the participation of artists and architects in the visual arts for the development of urbanization plans allows for the conception of urban environments that preserve the quality of life.

In this sector, several EU directives have been enacted, and requirements for conducting impact assessments of projects and plans are envisaged. The most important ones include: (i) The EIA Directive (85/337/EEC), in force since 1985 and amended three times (1997, in 2003 and in 2009) and codified in the EIA Directive 2011/92/EU, further amended by Directive 2014/52/EU ; (ii) The Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive). All these Directives

⁵⁸ It should be stressed that several EU directives have been enacted, and requirements for conducting impact assessments of projects and plans are envisaged. The most important ones include: (i) The EIA Directive (85/337/EEC), in force since 1985 and amended three times (1997, in 2003 and in 2009) and codified in the EIA Directive 2011/92/EU, further amended by Directive 2014/52/EU ; (ii) The Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive). All these Directives include reference to cultural heritage as one of the factors making up the environment of human beings and therefore needs to be taken into consideration when assessing impacts on heritage and environment.

⁵⁹The design activity is the type of activity that requires license only from the relevant state body in Azerbaijan, that is the Ministry of Economy.

⁶⁰It would be also opportune foreseeing ad hoc Rules issued by the Cabinet of Ministers.

include reference to cultural heritage as one of the factors making up the environment of human beings and therefore needs to be taken into consideration when assessing impacts on the environment.

In Azerbaijan, the Architecture Act (1998) was enacted in order to stop the downward slide caused by a lack of proper control, to restore architectural harmony, and to preserve for future generations the architectural heritage⁶¹ which, over the centuries, has given Azerbaijani cities their unique character. On the other hand, the Law of the Azerbaijani Republic on Town-Planning and Constructions Code, of June 29, 2012, should contribute to optimize the population distribution, to lay down standards for building and for territorial and urban planning, and to regulate the conservation of historic, cultural and natural monuments. A real problem is that the existing legislation in this field is not respected everywhere, and property owners do intervene on the original design of the buildings augmenting volumes or so on. Such circumstances should be impeded by the local executive powers that have to implement the law on urban planning. But often the staff and the budget in the local executive powers are insufficient. Further the legal system is often generic and without an autonomous sanctioning system. For instance, no sanctions are envisaged when the protected item is exposed at risk; only when damaged; and no administrative special sanctions such as electricity bar and voidness of contracts are imposed⁶².

More attention should also be paid to the liberties of municipalities as granted by the European Charter on local self-government adopted under the auspices of the Congress of the Council of Europe and opened for signature by the Council of Europe's member states on 15 October 1985. In this respect, local executive powers should be also involved in urban planning activities encouraging them to approve detailed plans⁶³ that until now do not exist.

With regard to planning activities, it should be underlined that the State Urban Planning and Architecture Committee is the key actor for General and Basic Planning. It manages four functions: (i) Territorial Planning; (ii) Developing and updating of design standards and norms; (iii) Scientific researches in state urban planning area; (iv) Supervision on urban planning activities. The functions which are more specifically linked to the culture sector are the first two.

There are many laws and regulations coping with urban planning. The main law is the “urban planning and construction code” adopted in 2010 that came into effect in 2013. For the first time the code foresees the active participation of stakeholders and society (professional unions, citizens etc.) in the area of urban planning through the realisation of open discussion. The official documentation related to the urban planning is publicly available. duties and obligations of local and central powers are clearly defined. Three typologies

⁶¹ *To ensure that this heritage is enhanced and preserved, the Act allows foreigners or foreign legal entities to realize architectural projects, but only in co-operation with Azerbaijani nationals or legal entities.*

⁶² *This could well be envisaged considering article 180, comma 2, of the Azerbaijan civil code (“A party who carries out an unauthorized construction shall not acquire the ownership rights to such construction. Such party shall not be entitled to dispose of such property whether by sale, deed of gift, lease or in any other way whatsoever”).*

⁶³ *Districts implement state policy in the field of town-planning and construction together with Ministry of Emergency, State Committee for Town Planning and Architecture. Documents of territorial planning are open to public and districts are obliged to create opportunity to get familiar with these documents (regarding detailed plans) and provide copies (Article 20.4). Theoretically, detailed plans should be prepared upon request of districts or municipalities based on a contract signed with a designer (designing detailed plans and construction projects that require permission is an activity subject to license). Plans are sent to the State Committee for Town Planning and Architecture to be confirmed and to be agreed with relevant state bodies (including MCT). Districts may define prohibitions while detailed plans is being prepared or amended (Article 35.1). Districts also organize measures on the repairs of settlements (Statute-3.9.10) and decision on the accomplishment is agreed with State Committee for Town Planning and Architecture. They issue permit both for the construction of the projects that require such permission (with consent of MCT in the protected zones of cultural and historical monuments) after the project being examined and for the utilization of the building after the construction being completed. Design and construction of water supply and sewerage systems are also agreed with Districts. They deal with repair and maintenance of the roads which are in common use and in their balance.*

of urban planning are envisaged: (i) General planning (national and regional planning), that is strategic planning on areas of national relevance concerning all territories, economical and administrative areas; (ii) Basic planning, that is planning concerning towns/ urban settlements; and (iii) Detailed planning, that is planning on parts/little areas of the cities. While for the “detailed planning”, the proposal comes directly from the local executive powers, even if on the basis of guidelines that are provided by the State Committee, for the first two kinds of planning, the State Committee is the key actor for the whole cycle, since the very first stage of planning proposal. Even if the Committee is the main actor, the proposal is presented in agreement with the MCT, the other interested institutions (if any) and, if the case, with the local government. The final approving body is the cabinet of ministers.

Regarding the function of territorial planning, the new code has a specific approach for addressing the management of “culturally relevant” areas. With specific regard to the buffer zone around monuments, official legal tools have been drafted. In order to perform the territorial planning function, they consider as “culturally relevant areas” those included in the list of cultural areas approved in 2001 from the cabinet of Ministries (list that is imported from the Soviet period) in which there is a classification by national/local importance⁶⁴.

For scientific researches in state urban planning area, the Committee is in contact with the Academy and with the scientific institutions for deciding the main topics to be researched. The Committee is also tasked with the supervision on urban planning activities, and they have a specific department performing checks⁶⁵ especially at local level with local executive powers.

In order to perform the assigned tasks, the State Committee interacts mainly with: the MCT, in particular with the “Protection of Cultural Heritage” and “Tourism” Department, mainly for agreeing about proposals on protected areas; with Ministry of Emergency Situations with which they update the territorial planning documents that must be revised every 20 years; with the State Service; the Academy of Sciences as well as with the local executive powers and with some Professional Unions (like Union of Architects).

In land planning and building activity the preservation of cultural heritage, historical landscape and natural environment must be guaranteed (Article 12)⁶⁶. Among the purposes of land use planning (Articles 19.2.2 and 19.2.3) the needs of preservation of cultural heritage (along with the protection of forest areas, traditional architecture and landscape) must be guaranteed. The finding of cultural heritage monuments entails the immediate stopping of construction work and the competent authorities must be informed. The same authorities decide the possible resumption of work and the application of the necessary measures (Article 93).

In Azerbaijan, the overall works (conservation, reconstruction, etc.) on the architectural heritage are regulated by Articles 25, 26 and 27 of the Law of the Republic of Azerbaijan on Protection of Historical and Cultural Monuments. Further, Article 10 prescribes that it is forbidden to run any kind of works (any repair, construction, housekeeping and other work) which may pose a threat to the monuments or to their enjoyment (destroy artistic-aesthetic view). No change can be made to the monuments without the permission of the

⁶⁴The list is obsolete and its revision is going on, and the State Service is proceeding to the revision of the list, which was drafted without taking in consideration the advice of important local stakeholders (like unions of architectures or other professional unions). Due to the list's imprecision, it happens, for instance, that local executive powers propose the demolition of some buildings and areas that can be considered of historical value, in order to proceed to massive construction. On the other hand, the State Urban Planning and Architecture Committee is proposing to include in the list also some newly constructed areas which are considered as valid from a cultural point of view.

⁶⁵These checks must be done at least every 3 years.

⁶⁶One of the goals (Article 1.4) and the basic principles (Article 7.0.5) of urban planning is the protection of historical and cultural monuments and generally of all the "objects of cultural heritage" and "cultural landscape". In addition, construction activities are incompatible when in conflict with the interests of the environment, the natural features of the landscape and the cultural heritage objects (Article 11.3.4).

relevant government bodies. Article 19 also prescribes similar obligation for those who have the monuments in use.

The works run on State-owned monuments are funded from the State budget; those run on municipality-owned monuments are funded from local authorities budget, upon the decision of the government offices in charge (the Ministry of Culture and Tourism of the Republic of Azerbaijan and Icherisheher Ashar). The works run on privately owned monuments are in charge to the owner, with the approval of government offices (the Ministry of Culture and Tourism of the Republic of Azerbaijan and Icherisheher Ashar).

The law defines each type of intervention (conservation, repair, rehabilitation, reconstruction and regeneration). Projects must be approved by government offices (the Ministry of Culture and Tourism of the Republic of Azerbaijan and Icherisheher Ashar) considered the opinion of Azerbaijan National Science Academy. The implementation of the work must be supervised by designers⁶⁷ and government offices (the Ministry of Culture and Tourism of the Republic of Azerbaijan and Icherisheher Ashar).

In case of infrastructure works the characteristics of protected areas (Reserve zones) must be respected, without changes to the perimeter of the areas, to the structure of buildings and to the road network. The works must be approved by government offices (the Ministry of Culture and Tourism of the Republic of Azerbaijan and Icherisheher Ashar), after consultation with the Azerbaijan National Science Academy.

The excavations (including archaeological excavations) must be carried out in the zones of protected areas (Reserve zones) free of building. The works must not produce harm and accurate documentation of the work must be done. A report of the work performed with a copy of the documentation must be sent to appropriate governmental offices.

List of needed revisions of the legal and normative framework

In Azerbaijan, urbanization policies and programs are mainly implemented through the Architecture Act (1998), the Law on culture, the Law on Protection of Historical and Cultural Monuments, and the Law on

⁶⁷The design activity is the type of activity that requires license from the relevant state body in Azerbaijan - Ministry of Economy. There are only three specialized design companies in the country qualified for design of restoration works on cultural monuments. Azerberpa is the most prominent design institute in the country, since it owns the central national archive of cultural historical monuments. The applicant who wants to get the above specific license has to submit to the above state body the following documents: (i) Application containing information about the applicant, ID details (if physical person) and full name and juridical address (if juridical person - a branch of foreign legal entity or representation), brief summary of the application, date of application and signature (if physical person), and signature and stamp, full name and juridical address (if juridical person - a branch of foreign legal entity or representation), list of documents attached to the application; (ii) Copy of certificate of state registry of the juridical person, a branch of foreign legal entity or representation; (iii) Copy of Certificate certifying the applicant is registered as tax payer; (iv) Certificate about technical-industrial personnel/staff of the applicant; (v) Copies of documents/certificates of senior management and lead specialists of the applicant per the activity type requiring license, including project chief engineer or chief architect, architect, constructor, and other specialists on engineering facilities, networks and systems, transport infrastructure projects, special parts and other sections of projects, which certify their relevant education background, qualification and minimum 5 years work experience. In case the applicant has no full time, specialists enjoying relevant qualification requirements in order to perform the functional duties of Chief Designer, Copy of Cooperation Agreement signed with the juridical or physical person enjoying relevant license for implementation of works in those areas (except for the project chief architect or chief engineer); (vi) Copy of certificate/document certifying the existence of non-residential area being under the property or legal utilization of the juridical person for the purpose of implementation of activities requiring license; (vii) Certificate about the existence of the quality control system on design works. The license issuing state body makes a decision within 10 days from receiving the application (except for specific cases when shortages are identified or when experts are to be involved).

Town-Planning and Constructions Code. These norms should contribute to optimize the urban planning and to regulate the conservation of historic, cultural and natural monuments.

A first and real problem is that a more stringent coordination among different laws, e.g. the law for urban planning, the law for heritage protection and the law for architectural activity should be envisaged. In fact, notwithstanding the considerable work developed by Azerbaijan in strengthening its legal framework, there is still some work to be done on the primary legislation. In this respect, there is the necessity of providing for a coherent and comprehensive organization of the Ministries having competences in the urbanizations sector, starting with the Ministry of Culture in its central and peripheral branches and related supporting agencies, to be coordinated with other stakeholders and municipalities. Thus, a comprehensive review of all functions would be useful, as there are many competences that are intertwined, and without a coordinated control, each administrative power intervenes in a fragmented way, overlapping its efforts with the achievements of other bodies and the overall results fell short of the proper care for this sector⁶⁸.

It is also necessary to reinforce the current regulatory framework. The Azerbaijan legal system needs to be supported by secondary legislation and ancillary regulations. It seems, in fact, necessary to define joint procedures at the regulatory level that establish a joint commission, the timing to issue the joint advice, and related guidance and standards concerning the procedures for any intervention to be carried out in the urbanization planning and specially on protected cultural heritage⁶⁹.

There should be also more attention at implementing a true participatory governance. In other words, urbanization policies should be realized in close cooperation between the central authorities, districts/Regional Offices, municipalities and the local self-government and not-governmental bodies. In particular, more attention should be paid to municipalities and their prerogatives as granted by the European Charter on local self-government adopted under the auspices of the Congress of the Council of Europe and opened for signature by the Council of Europe's member states on 15 October 1985. In this respect, local executive powers should be also involved in urban planning activities encouraging them to approve detailed plans that until now do not exist.

Civil society organizations need to be involved too at different scales in the consultation, planning and monitoring of urbanization policies and programs. To increase accountability and transparency of public and/or private resource investments, as well as to build public trust in policy decisions, is of utmost importance to involve all the stakeholder that should be allowed to converse with both the public and the private parties, and to express their opinions. Thus, it is necessary to fully implement (through regulation and/or guidelines) at central as well at local level the “urban planning and construction code” that foresees the active participation of stakeholders and society (professional unions, citizens etc.) in the area of urban planning through the realisation of open discussion.

The participatory governance approach should be also implemented in order to solve issues connected to works run on privately owned monuments. It may well be that the owners cannot support all the cost for a monument whose preservation is also considered in the public cultural interest. Such may in particular be the case for the exterior of historic buildings (e.g. facades), or for the corresponding gardens and parks, but it can also apply to interiors. In such case the complementary support by public or third-party private funding sources can be justified. However, it should be accompanied and normally conditional upon making the supported site or monument accessible to the public, at least to a degree which reasonably balances the private owners' privacy with the public interest in acceding to subsidized heritage. For instance, parts of castles or palaces may be opened to the public, and so can be parks at certain times, etc. A similar approach should be used e.g. for worship places of heritage value.

⁶⁸ For instance, “culturally relevant areas” are those included in a list of cultural areas approved in 2001 from the cabinet of Ministries in which there is a classification by national/local importance. Due to the list's imprecision, it happens, for instance, that local executive powers propose the demolition of some buildings and areas that can be considered of historical value, in order to proceed to massive construction.

⁶⁹ For detailed proposals with regard to the simplification of procedures to be adopted in the restoration of cultural goods, see paragraph 1.4.1.

As far as the respect of existing legislation is concerned, it seems that property owners do intervene on the original design of the buildings augmenting volumes or so on. Such circumstances should be impeded creating an autonomous sanctioning system. For instance, criminal sanctions should be envisaged when the protected item is exposed at risk; and not only when it is damaged, as it happens in the current Azerbaijan penal system. Further, special administrative sanctions such as electricity bar and voidness of contracts should be imposed.

Obviously, the European legal framework should be closely examined and taken into consideration. In this sector, several EU directives have been enacted, and requirements for conducting impact assessments of projects and plans are envisaged. The most important ones include: (i) The EIA Directive (85/337/EEC), in force since 1985 and amended three times (1997, in 2003 and in 2009) and codified in the EIA Directive 2011/92/EU, further amended by Directive 2014/52/EU ; (ii) The Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive).

In urban land-use planning, Member States are limited by the environmental provisions of the above-mentioned Directives. Currently, the implementation and application of EU legislation in the field of urban planning is still in progress. This does not mean that cities are not well considered by the EU. They are, indeed, seen as both the source of and solution to today's economic, environmental and social challenges. Urban areas are the engines of the European economy and act as catalysts for creativity and innovation throughout the Union. But they are also places where persistent problems, such as unemployment, segregation and poverty, are at their most severe. Urban policies therefore have wider cross-border significance, which is why urban development is central to the EU's Regional Policy. As it is felt by European Institutions, the various dimensions of urban life -environmental, economic, social and cultural- are interwoven and success in urban development can only be achieved through an integrated approach. Measures concerning physical urban renewal must be combined with those promoting education, economic development, social inclusion and environmental protection. It also calls for strong partnerships between local citizens, civil society, industry and various levels of government. Such an approach is especially important at this time, given the seriousness of the challenges cities currently face, ranging from specific demographic changes to the consequences of economic stagnation in terms of job creation and social progress, and to the impact of climate change. The response to these challenges is critical for achieving the smart, sustainable, inclusive society that should be envisaged in urban life.

Considering the Azerbaijan current situation, it is of utmost importance to: (i) Create greater opportunity for sustainable urban mobility, regeneration of deprived communities and improved research and innovation capacity ; (ii) Allocate funds for boosting knowledge-sharing between cities involved in integrated sustainable urban development and in urban innovative actions; (iii) Encourage the cities to pave the way for local stakeholders, businesses, the public sector and civil society to get more involved in urban neighbourhood regeneration; (iv) Integrate territorial investments to be used to implement area-based strategies that rely on investments across different fields.

This process could be eased being in close contact with the «URBACT», which is a European exchange and learning program promoting sustainable urban development that integrates economic, social and environmental dimensions. It enables cities to work together to develop new, pragmatic and sustainable solutions to major urban challenges, reaffirming the key role they play in facing increasingly complex societal changes. In this prospective, the European Union is also launching a three-year program to promote international urban cooperation for Europe's cities that want to link up, build and share knowledge and solutions with other cities and regions.

1.4.4 Cultural Heritage in Environmental Impact Assessment and Strategic Impact Assessment procedures

Assessment report

Cultural heritage is the legacy of physical artefacts and intangible attributes of a group or society that are inherited from past generations, maintained in the present and bestowed for the benefit of future generations. Cultural heritage includes tangible culture (such as buildings, monuments, landscapes, books, works of art, and artefacts), intangible culture (such as folklore, traditions, language, and knowledge), and natural heritage (including culturally significant landscapes, and biodiversity).

The range of what is regarded as heritage has broadened significantly over the last half century⁷⁰. Heritage properties tended to be individual objects, monuments and buildings such as places of worship or fortifications. These properties were often regarded as standalone, with no particular relationship to their surrounding landscape⁷¹. Today, there is general recognition that the whole environment has been affected by its interaction with humanity and is therefore capable of being recognized as heritage⁷².

Inevitably, this expansion of the concept of heritage has meant, in turn, an enormous expansion in the range of types of things, structures and places treated as heritage. In practice, a broad set of typologies has developed that include monuments, single or collection of cultural objects, urban centers, archaeological sites, industrial heritage, cultural landscapes and heritage routes.

Therefore, in current universally accepted understanding, cultural heritage constitutes a comprehensive category: The traditional distinction between tangible, intangible and natural heritage must by now be considered outdated. This unity is at the present universally accepted at international level⁷³. Consequently, in the guidelines adopted by EU on heritage, these categories are almost always addressed jointly. It more and more marks that heritage must by now be considered as a whole⁷⁴.

⁷⁰ With regard to this process, the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, done at Faro on October 27, 2005 should be recalled.

⁷¹ Nowadays, heritage items and places cannot be protected in isolation or only as museum pieces, isolated from environmental considerations. On the contrary, severe damages to natural environment often alter the conditions of authenticity and integrity that make a site or a single object of cultural value.

⁷² As a result, the nature of the properties inscribed on the World Heritage List has expanded to include evidence of science and technology, industry and agriculture, and to embrace the concept of cultural landscapes.

⁷³ This unity also means that environmental threats affecting an important number of heritage sites and the consequences of climate change and human pressure should be taken into account by States in their long-term funding strategies for heritage preservation and restoration methods.

⁷⁴ There is a growing demand for people centered approaches to deal with many facets of heritage. These approaches consist in: (i) respect for diversity; (ii) a focus on the past and present; (iii) enhancing the value of all cultural products; (iv) fully considering the influence of heritage on the contemporary life of people and how it can improve their quality of life; (v) perception of the heritage as perceived by people, moving away from the sharp line drawn between its various types (movable/immovable; tangible/intangible); (vi) respect for people voices in conservation and management of heritage; (vii) the improvement of relationship between heritage and people; (viii) recognition of the living dimension of heritage, particularly of religious heritage; (ix) consideration for the impact of globalization on living environments such as historic urban centers and cultural landscapes; (x) the recognition of the custodianship of people for the long-term care of heritage; (xi) the link of heritage to the sustainable development of society; and (xii) relationship with a wide variety of non-professionals.

The EU also points out the importance of cultural tourism, to be identified as an important economic asset in contemporary society. However, cultural tourism benefits from preservation and improvement of cultural heritage, which includes all the above-mentioned categories⁷⁵.

Tourist dimension is also important for a cultural policy in Azerbaijan. It is from this angle that bridges should be built between the “culture of conservation” (of the landscape patrimony, as well as the constructed, historical, and even literary and mythical patrimony) and the “culture of contemporary creation”. By doing so, local and foreign audiences could be reached⁷⁶

Cultural policy and environmental policy must therefore work together to ensure their preservation. Among others, the maintenance of biodiversity needs to bear in mind cultural perceptions and relations between man and nature, and respect of the environment is, to a large extent, a matter of education. Cultural and artistic activities can also be an excellent form of awareness raising here.

In brief, environmental and cultural policies must deal with the crucial question of the protection of natural resources. The development of cultural industries and all technologies with strong cultural content can contribute directly to their protection. It is, therefore, important to struggle against the illicit exploitation of rare natural resources, and develop control strategies for valued cultural practices that are dysfunctional with regard to the environment.

The matter is ruled by Law on special protected areas of 1996 and by the Decree on list of protected natural monuments. Departments of interest for cultural issues are: (i) The Division of Ecology and Nature Protection Policy; (ii) The Sector on Development and protection of forests; (iii) The Department of Biodiversity Protection and Development of Especially protected natural areas. These Departments have also regional offices and deal mainly with the following functions and related processes: (i) Classification and listing of “natural monuments” through which the “passport” of the natural object is officially registered. They prepare the list and they submit it to the Cabinet of Ministers for its approval. With regard to the cultural objects, when they are situated in natural protected areas/forests, it is the Ministry of Ecology which proceeds with the listing and registration; (ii) Supervision on the activities/works/state of the art of the natural protected areas under their control, and of the cultural objects situated in areas under their control⁷⁷. When those objects are situated within the administrative boundaries of cities, such supervision is made in collaboration with the local executive powers.

⁷⁵With regard to this, the European Landscape Convention, Florence, 20 October 2000, remarks that the landscape has an important public interest role in the cultural, ecological, environmental and social fields, and constitutes a resource favorable to economic activity and whose protection, management and planning can contribute to the formation of local cultures.

⁷⁶ With regard to this, it must be stressed that cultural heritage contributes to innovative jobs, products, services and processes and can be a source of creative ideas, nurturing the new economy whilst -through appropriate management- having a relatively low impact on the environment.

⁷⁷The main problem seems to be connected to the overlapping/not clear division of the competences, especially between the Ministry of Ecology and the MCT, especially when the special protected areas can be used for touristic purposes. For instance, when a company/private wants to perform touristic activities, he/she/it must apply to MCT to get a special licence that lasts 5 years. At the same time, the company/private must apply to Ministry of Ecology for the use of the land through a permission/contract, which lasts only 2 years. So there is a “3 years’ difference” that is not correctly ruled. Another important question arose in 2014 when the regional offices of MCT prepared, within a tourism plan, one project addressed to open for touristic purposes a regional area covering 128 million hectares. The MCT regional offices sent the proposal to the Cabinet of Ministers for approval without asking for the opinion of/nor informing the Ministry of Ecology, even if almost all the area was covered by forests. There should be, therefore, a law on public procedures (such as the Italian Law n. 241/1990) establishing the possibility to issue authorization for works/activities to be carried out on cultural/natural properties within the so-called conference of services, which is a collegial body formed by the representatives of the competent bodies that are called to provide their authorization or advice on certain works or activities.

List of needed revisions of the legal and normative framework

The main objective should be reinforcing the legislation on landscape protection in compliance with the European Landscape Convention requirements.

With regard to this it is of utmost importance to expand the notion of reserve by referring to the notion of cultural landscape. The objective would be integrating specific consideration of cultural heritage into Environmental Impact Assessment and Strategic Environmental Assessment procedures and develop ad-hoc impact assessment methods for cultural heritage (that result in a specific HIA report to be assessed by the Ministry of Culture – State Service). The ministry of environment is currently addressing this issue, with the collaboration of the United Nations Economic Commission for Europe (UNECE). Therefore, there is an opportunity to insert in the law now being drafted specific reference to the need to consider and assess impacts on cultural heritage, including archaeological assets, within EIA and SEA procedures through an ad-hoc methodology. Heritage Impact Assessment (examples exist throughout the world namely in the UK, in Canada, Australia and Hong Kong; in Italy a specific methodology has been developed for landscape - Landscape Report-). The amendment proposed above does not imply, as of April 2017, changes to existing laws, but it does require a proactive and timely action from the Ministry of Culture in order to ensure that the matter is addressed in the draft law currently being prepared by the Ministry of Environment and UNECE. Methodologies are available, including at the World Heritage level.

The expansion and strengthening of the legal provisions on landscape protection needs, however, a special consideration in the Law on Construction and Town-planning and the development of or secondary legislation (decrees and orders), as well as regulations to ensure that the requirements of the European Landscape Convention are met.

In brief, from the operational viewpoint, the European Landscape Convention presupposes: (i) The drawing up of specific landscape policies and concurrently the systematic inclusion of the landscape dimension in all sectoral policies that have a direct or indirect influence on changes to the territory. Landscape is therefore not additional to other themes but is an integral part of them; (ii) A transition from a policy based only on protecting a territory's features and parts recognized as outstanding to a policy based on the quality of all living surroundings, whether outstanding, every-day or degraded; (iii) a definition of and experience with new forms of collaboration between the various bodies and the various levels of administration; (iv) 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.

This means to put in place a number of activities that are key to develop landscape policies. The fundamental stages in the process leading to landscape action are: (i) Knowledge of the landscapes: identification, description and assessment; (ii) Definition of landscape quality objectives; (iii) Attainment of these objectives by protection, management and planning over a period of time (exceptional actions and measures and ordinary actions and measures); (iv) Monitoring of changes, evaluation of the effects of policies, possible redefinition of choices. In fact, the guidelines for the implementation of the European Landscape Convention suggest that the following are key principles and actions: (i) Recognize the fundamental role of knowledge; (ii) Promote awareness; (iii) Define landscape strategies.

All the above needs to be developed as a consequence of the ratification of the European Landscape Convention. Therefore, each Azerbaijan administrative level (national, regional and local) should draw up specific and/or sectoral landscape strategies within the limits of its competences. These are based on the resources and institutions which, when coordinated in terms of space and time, allow policy implementation to be programmed. The various strategies should be linked by landscape quality objectives. All this means to integrate the landscape dimension in territorial policies. In particular, the landscape dimension should be

included in the preparation of all spatial management policies, both general and sectoral, in order to lead to higher-quality protection, management or planning proposals.

All this also means to integrate landscape into sectoral policies. In particular, landscape should be fully taken into account via appropriate procedures allowing systematic inclusion of the landscape dimension in all policies that influence the quality of a territory. Integration concerns both the various administrative bodies and departments on the same level (horizontal integration) and the various administrative bodies belonging to different levels (vertical integration).

In addition, every planning action or project should comply with landscape quality objectives. It should in particular improve landscape quality, or at least not bring about a decline. The effects of projects, whatever their scale, on landscape should therefore be evaluated and rules and instruments corresponding to those effects defined. Each planning action or project should not only match, but also be appropriate to the features of the places.

Considering what above stressed, the new regulations to be developed are mainly the secondary legislation deriving from the general principles and the provisions included in the Law for Construction and Town-planning and in the Law on the Protection of Cultural Heritage. This legislation need to be developed reflecting in precise and detailed manner the steps indicated. What seems to be still missing is, in fact, a comprehensive set of regulations and standards for each and every procedure, as well as standards that can assist to enhance the quality of interventions on historic, cultural and natural monuments/areas, in all categories described in the law. The main objective will be the preparation of detailed procedures through internal regulations for each and every action regulated by the current legislation affecting cultural and natural heritage. Each activity or task need to be accompanied by clear procedures that envisages the appointment of a responsible person for each and every procedure, defined timeframe. Standards and criteria need also to be defined for all procedures.

In particular, the Law of the Republic of Azerbaijan on Protection of Historical and Cultural Monuments has potential procedures to be implemented. As an example, should be attentively considered the following:

- (i) The internal technical procedures such as: a. Elaboration of state programs, and listing of monuments that need restoration and conservation works; b. Issuing passports for immovable historical and cultural monuments; c. Designating buffer zones of immovable historical and cultural monuments; d. Establishment of database on the protection of the immovable historical and cultural monuments, creating a database system conforming modern requirements, applying multimedia and electronic observation systems; e. State purchase of the immovable historical and cultural monuments that are under private ownership or located in the territories of historical and cultural reserves; f. Adjusting normative documents on restoration-conservation works of the immovable historical and cultural monuments (including project estimate documents and state expertise) according to the international standards; g. issuing passports ; h. Drawing up maps ; k. Defining standards and guidelines for loans and lease of cultural properties ; i. Defining standards and guidelines for conditions authorizing the sale of cultural properties ; l. Criteria removal of the status of historic-cultural monuments ; m. Standards and procedures for definition of the budget ; n. Standards for safeguard and preventive conservation measures in case of interventions ; o. Definition of standards for the conservation of works on historic- cultural monuments ; p. Standards and guidelines for energy efficiency within public historic-cultural monuments ; q. Standards and guidelines for seismic rehabilitation of historic-cultural monuments;
- (ii) The external procedures relevant for private and public entities owning protected properties: a. Authorization for works on protected historic-cultural monuments ; b. Authorization for lease of cultural properties within the limits of the law ; c. Authorization of sale of cultural properties within the limits of the law ; d. Definition of the level of cultural significance ; e. Authorization for expungement of cultural

properties from the register/ list of protected monuments ; f. Procedures to impose conservation works to owners that do not carry out their conservation duties ; g. Procedures and standards for preventive and rescue archaeology ; h. Procedures and standards for authorization /denial of export of works of art ; k. Procedures for the circulation of cultural properties ; i. Procedures for the authorization of excavations and archaeological research ; l. Definition of procedure for permitting research on architectural monuments ; m. Procedures for the establishment of special reserves ; n. Procedures for authorization of works within protection zones.

1.4 .5 Listing properties as cultural heritage

Assessment report

As Umberto Eco pointed out in a famous essay (*The Infinity of Lists*, 2008), lists can express two main different kinds of approaches: one is the finalized “shape”, made of a given number of elements, where listing is a way to portray something closed and limited; the second approach is the infinite list, created through accretion of things or thoughts connected between each other by any possible link. The UNESCO approach appears to be an interesting mix of these two ones: there is the objective to identify a specific heritage, which has universal value; but there is also the idea of creating an “infinite” list of sites and objects.

The importance to have a proper listing system of cultural (tangible and intangible) and natural heritage is, however, well and extensively expressed in the international normative framework⁷⁸, and recently has been confirmed 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 2014⁷⁹ and by the

⁷⁸ See, in particular: a. *the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols*, which enlists the arrangement of inventories at first place amongst the preparatory measures that each State should take, in time of peace, in order to safeguard cultural property against the foreseeable effects of an armed conflict; b. Article 5 and Article 7 to the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*; c. Article 11, of the *Convention on the Protection of the World Cultural and Natural Heritage and its Operational Guidelines* d. Article 12 to the *Convention for the Safeguarding of the Intangible Cultural Heritage*; e. Article 3 to the *Convention on Stolen or Illegally Exported Cultural Objects*; f. Some regional instruments, such as Article 4 of the *European Convention on the Protection of the Archaeological Heritage*; g. Several UNODC documents such as the thematic discussion on protection against illicit trafficking in cultural property, held at the nineteenth session of UN’s Commission on Crime Prevention and Criminal Justice, when the “establishment of national inventories, lists of cultural objects and, if possible, a photographic archive of such objects and the establishment of a national database, with the possibility of linking national databases to each other and to international databases, in particular the INTERPOL database”, was included amongst the relevant preventive measures that States should take in order to protect cultural property; h. The ICOM’s *Red List*, which classifies the endangered categories of archaeological objects or works of art in the most vulnerable areas of the world, in order to prevent them being sold or illegally exported.

⁷⁹ See, in particular, *Guideline 1*: “States should consider establishing and developing inventories or databases, as appropriate, of cultural property for the purpose of protection against its trafficking. The absence of registration of cultural property in such inventories shall by no means exclude it from protection against trafficking and related offences”; and *Guideline 2*: “States should consider, where possible under their national legislation, the relevant cultural property as registered in the official inventory of a State that has enacted laws on national or State ownership, provided that the owner State has issued a public formal statement to that effect”.

Operational Guidelines for the implementation of the 1970 Convention as approved by the Subsidiary Committee of the Meeting of States Parties to the 1970 Convention during its second session in July 2014⁸⁰.

The registration of natural heritage and of movable and immovable cultural goods in appropriate inventories (with restricted access) is a useful measure. The inventory should be comprehensive, coordinated, and (considering cultural heritage) including all publicly owned cultural properties, as well as private collections and properties.

The inventories should be comprehensive and coordinated, including all publicly and private owned cultural properties. In case of private collections and properties, an authorization by the owner should be obtained and incentives could be granted (ex. fiscal incentives). Not only. The competent administrations should take all possible measures in order to adopt a common international standard for inventorying cultural properties, so as to facilitate the spreading and circulation of information.

The “Object-ID” standard (developed by the Getty Information Institute and recognized by both UNESCO and the International Council of Museums), which includes photographs of the work of art, and provides a brief description of it as well as a classification of the type of object, the materials and the techniques used to realize it, and so forth, can be used as a minimum reference. The inclusion of every object of art in an inventory could be coupled with the annotation of its owner and/or holder. As for archaeological objects, the inclusion in an inventory should be made immediately after its finding and even before the conclusion of the identification procedures⁸¹.

Summing up, protection should be firstly reached through the identification and the classification of cultural properties. Lists of cultural properties whose illicit dealing and export would constitute an impoverishment

⁸⁰ See, in particular, Guideline 20: “To ensure the effective implementation of the Convention, Article 5 requires that States Parties undertake, as appropriate for each country, to set up one or more national services for the protection of cultural heritage, with sufficient staff and adequate budget to carry out the following functions: ... Establishing and updating a list of cultural property whose export would constitute an impoverishment of the cultural heritage of the country ...”.

⁸¹ As it is well known, archaeological objects can be: (i) Undiscovered cultural property that falls within the relevant national or State ownership laws; or (ii) discovered cultural property that falls within the relevant national or State ownership laws and is either unregistered or already registered. States could recognize, where possible, another State’s relevant cultural property as registered in that State’s national inventories in order to increase international cooperation to combat and prevent illicit trafficking in cultural property and related crimes. The recognition of relevant cultural property as registered in a State’s inventories can have several positive impacts, including the following: a. Addressing the issue of unregistered cultural property; b. Contributing towards greater accessibility and presence of State inventories internationally, which would lead to greater connectivity among national and international inventories and databases; c. Prosecutors and judges would have a clear determination of ownership, and therefore of evidence of theft, by having inventories endorsed by multiple States, which could lead to more efficient prosecutions of trafficked, illicitly exported or imported, stolen, looted or illicitly excavated and, more generally, illicitly traded cultural property; d. Dealers, museums and private individuals would have clear notice of State ownership of relevant cultural property and of the validity of that claim in local and foreign States. In accordance with their duty to protect cultural heritage, several States have enacted unambiguous laws on national or State ownership of certain cultural property regardless of prior exercise of physical control over it, including when the relevant cultural property remains officially undiscovered or otherwise un-catalogued. In fact, Article 13 (d) of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property recognizes “the indefeasible right of each State party to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.” Azerbaijan, as State Party to the 1970 UNESCO Convention, should establish State ownership for undiscovered cultural property, indicating it by reference to categories. This provision may help in requesting the return or restitution of such property domestically or even abroad.

of the national cultural heritage should be realized. These lists can include cultural property identified either by individual description or by category.

Obviously, Azerbaijan could take into consideration the Italian experience in this sector. In particular, the above-mentioned d.lgs. 42/2004 identifies different procedures for the listing of cultural and landscape properties. Two procedures, in fact, exist for the “recognition” of cultural interest of cultural properties: one applies to belonging to the State or territorial entities, including the religious institutions, and the other apply to properties belonging to private subjects. The first is known as verification of the cultural interest, because there is a safeguard clause in the Italian legislation that considers that all properties in public ownership older than 70 years should be ideally considered exhibiting potential cultural significance until this is ascertained through an ad- hoc procedure⁸².

Properties in private ownership can be declared as having cultural interest through a procedure which can be activated by the competent office, usually the Soprintendenza, on the basis of its own research but also following petitions, or by the owner. The competent directorates of the MiBACT have over time issued guidelines on how to conduct the research and compile the technical historic-artistic report that support the issuing of the decree⁸³. This report becomes integral part of the designation decree along with the cadastral map, the cadastral data and visual documentation for the correct identification of the property. Based on the law on administrative procedures, the owner should be previously informed that such a procedure is being initiated and he/she is allowed to participate in the procedure and to object or to appeal against the decision. The final decision of the administration should be formally communicated to the owner or possessor. When the decree establishing that a property has cultural significance according to the law in force, this information is reported in the Property Registry Office, since the decree is valid for each and every subsequent owner of the property.

1.4.6 Cataloguing system and electronic database for listed properties

Assessment report

The inventorying process should be completed through a cataloguing system and an electronic database for listed properties.

Great advantages would arise from the creation of this database. Administrative authorities could establish and organize consistent, coordinated and programmed activity of study, prevention, maintenance and restoration. The art and antiquities dealers, as well as museums and other professionals, could be required to access them before engaging in their professional activities. Police and custom authorities would use them to identify the proceeds of a crime. Prosecutors and judges would rely on them in collecting evidence on the illicit origin of a cultural property. Finally, inventories/databases provide a sound basis for claims for restitution, return and repatriation. In brief, it is of utmost importance: (i) To enact unified national inventory (even consolidating existing registers and catalogues), or to implement and interconnect existing inventories -both public and private- in a coordinated network of national databases; (ii) To establish a common infrastructure, which would allow access through a single online portal to all national and international inventories and databases⁸⁴ of cultural property; (iii) To establish and develop databases concerning criminal

⁸²This procedure should be initiated by the public body that owns the property. If the process of “verification of cultural interest” is concluded positively, the electronic version of this documentation feeds into an online database accessible to the authorized technical staff of the ministry and of the owners.

⁸³ In 2009 has been issued a circular letter that describes the way in which the report should be structured and how the different topics need to be organized and presented in the report.

⁸⁴ With regard to this, the following should be considered: (i) INTERPOL provides the fundamental Stolen Works of Art Database, which is accessible to all INTERPOL member Countries. The modernization of this INTERPOL’s database is currently on the way. Under the codename PSYCHE (Protection System for

offences and administrative violations against cultural property, by detailing objects and people engaged in illegal activities.

To make it as easy as possible, there should be reference to the Object-ID system and to the necessity of storing the data collected in a computer, following the system approved by the Ministry. Again the Italian experience could be considered. In Italy, the ministry of culture has established several decades ago a system for cataloguing the information on properties exhibiting potential cultural significance and has carried out several campaigns of different types of cultural properties.

The Istituto Centrale del Catalogo e della Documentazione (Central Institute for Cataloguing and Documentation) over time has collected and managed these data and continue to do so as part of its mandate, and has produced standards for the collection and organization of data and information for different types of properties (artistic works, numismatic objects, archaeological findings, archaeological remains, architectural properties, historic centres, etc.) in order to ensure the use of a common language and the comparability among the collected data. It also has set out standards to ensure that data can be transferred from one system to another and to guarantee the interoperability of the systems.

From a data collection point of view, three levels of detail have been envisaged: (i) Inventory fiche, containing basic information, such as address, location, definition, name; (ii) Pre-catalogue fiche, with some more information that could be collected by direct observation; and (iii) Catalogue fiche, which requires also bibliographic and archival research.

The d.lgs. 42/2004 today envisages the cooperation on this matter with the regional administrations municipalities, religious organizations, universities and research bodies, with a view to establish a network of multiple poles that feed their information into dialoguing web systems.

Cultural Heritage), the Italian Carabinieri Specialized Unit for the protection of cultural heritage has concluded a project in close co-operation with INTERPOL, aiming at modernising INTERPOL database. Its objectives are: a. To enable direct data integration by member countries using a formatted message system; b. To enact direct data transfer from Italy's database Leonardo into INTERPOL's database; c. To simplify queries with the use of an image similarity software tool; d. To provide training (e-learning module and training sessions) to member countries; (ii) ICOM is classifying, through Red Lists the endangered categories of archaeological objects or works of art in the most vulnerable areas of the world, in order to prevent them being sold or illegally exported; (iii) Article 19.4 to the Convention on the Protection of the Underwater Cultural Heritage invites States parties to "take all practicable measures to disseminate information, including where feasible through appropriate international databases, about underwater cultural heritage excavated contrary to the Convention or otherwise in violation of international law"; (iv) Article 2, (b) to the Model Treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property, refers to the creation and implementation of an international database on stolen movable cultural property; (v) Some States already possess official databases on stolen, missing or illicitly exported cultural property. Italy, for example, has been implementing since 1980 the Banca dati dei beni culturali illecitamente sottratti (Data bank of illicitly stolen cultural properties, Banca dati Leonardo), run by the Comando Carabinieri per la Tutela del Patrimonio Culturale (Carabinieri Command for the Cultural Heritage Protection), which presently collects all reports (with the related, even photographic, documentation, according to the "Object-ID" standard) coming from the various national police agencies, custom authorities, Ministry of Cultural Heritage and Monuments and Fine Arts Departments, as well as from INTERPOL, and which is also connected to the digital inventory of Italian ecclesiastical cultural properties (Servizio informatico della Conferenza Episcopale Italiana - Sistema Beni Culturali), run by Conferenza Episcopale Italiana (Italian Bishops' Council). Another example of such a database is the one developed by France, called "TREIMA" (Thésaurus de Recherche Electronique et d'Imagerie en Matière Artistique, Thesaurus of electronic research and images in artistic matters), run by the Office Central de lutte contre le trafic des Biens Culturels (OCBC, Central office for combating trafficking in cultural property), within the French Home Office (Ministère de l'Intérieur).

As said, the systematization of the documentation fiches of movable and immovable properties into a web-based database is a crucial step for the effective management of cultural resources. It allows for a systematic and ordered collection and sharing of important information on protected properties in public ownership. From this database, other ones can be developed, containing different and more detailed data that could be useful to monitor the state of conservation of the properties or to orient intervention priorities. For instance, a process of progressive implementation of the assessment of seismic vulnerabilities of cultural properties in public use has been initiated. Ad-hoc guidelines for the assessment of seismic vulnerabilities of historic buildings have been developed, that keep into account the difference in the structural logic of masonry buildings compared to reinforced concrete buildings. These include specific technical fiche for the collection of information with progressive levels of details to collect information on the geometrical, structural and material characteristics of the buildings or complexes that relate to their potential vulnerability to seismic activity. This information would be fundamental to guide the prioritization of interventions for the improvement of the building response to seismic activity according to methodologies that respect the structural logic of the historic buildings.

List of needed revisions of the legal and normative framework with regard to paragraphs 1.4.5 and 1.4.6

The listing of cultural properties is far from being well developed in Azerbaijan. This listing process is mainly regulated by the Law on Culture⁸⁵, by the Law on Protection of Historical and Cultural Monuments⁸⁶,

⁸⁵ See, the following Articles : 14.2.9. The State ensures the application of the modern information and communication technologies in culture sector; 26.1. Registers, catalogues, account systems in cultural field, lists of the cultural properties and information collections are considered a state register system in the culture field of the Republic of Azerbaijan; 26.2. State register system in the culture field is a database consisting of quality and quantity features of the cultural objects; 26.3. The State List of the national cultural property of the Republic of Azerbaijan and the protection list of cultural resources in culture sector are included in the state register system. 26.4. Inclusion of the cultural resources into the State List of the national cultural property of the Azerbaijan and the protection list of the cultural resources are realized by the relevant executive authority under the rule defined by the relevant executive authority; 29.3. Electronic database system of the cultural sector includes local and central electronic database systems; 33.3. Insertion of the immovable cultural heritage monuments into the State list of national cultural property of the Republic of Azerbaijan and protection list of cultural resources is carried out by the relevant executive body. Protection area of the cultural heritage monuments and reserves included in the lists stated above and the borders of the preserves are determined by the relevant executive authority; 41.1. Composing a list of protected cultural resources is carried out by a relevant executive body; 41.2. A certification issued by a relevant executive body is presented to each cultural resource inserted in the list of protected cultural resources.

⁸⁶ See the following Articles: 8 The relevant executive power (the Ministry of Culture and Tourism of the Republic of Azerbaijan) shall register the monuments belonging to Azerbaijan but located outside the territory of the Republic of Azerbaijan by developing special list and cooperate with related agencies of the countries where such monuments are located in solution of the problems regarding with their protection and rehabilitation; 15.2 The monument discovered accidentally shall be registered by the relevant executive power (the Ministry of Culture and Tourism of the Republic of Azerbaijan and Icherisheher ASHAR) and scientific documentation of the monument shall be conducted.

by the Law on Protection and Development of Carpet⁸⁷, by the Decree of the President of Azerbaijan Republic on the Application of the Law about Library Work⁸⁸, and by the Law on Museum⁸⁹.

It must be underlined that the Azerbaijan legal framework in the listing of natural and cultural properties and in cataloguing them through electronic databases is not coordinated and fully implemented:

- (i) For being exhaustive, Azerbaijan competent administrative bodies should promptly consider the ad-hoc provisions of the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict and of its Protocols; of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; of the Convention on the Protection of the World Cultural and Natural Heritage; of the Convention for the Safeguarding of the Intangible Cultural Heritage. The Operational Guidelines of these Conventions should be also pondered in each of their suggestions in this field. Following these international legal instruments, there should be provisions with regard to the registration of natural/cultural and tangible/intangible heritage in comprehensive inventories/databases including all publicly owned cultural/natural properties, as well as private collections and properties. Such registration process should take into consideration the “Object-ID” standard as minimum and be developed lists that could include cultural property identified either by individual description or by category⁹⁰. These activities could take into consideration the Italian experience as in brief reported under paragraph 1.4.5 and 1.4.6;
- (ii) For being coordinated, the Azerbaijan legal system should enact specific provisions to translate local, regional and national inventories (consolidating existing registers and catalogues) 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 affecting cultural property, by detailing objects and people engaged in such illegal activities;
- (iii) For being fully implemented the current legal framework should be supported by more detailed regulations, with the intention of avoiding rigidity so as to enable the specificities of the cultural sector to be adapted over time. With regard to this, the existing legislation should be accompanied by the developing of a secondary legislation (decree, orders, guidelines, etc.). In order to work, the inventory activities and the creation of databases require, in fact, the flexibility of internal regulations and guidelines defining steps, standards, criteria and timeframe for all the technical data and tasks envisaged by the law. In other words, what should be created is a comprehensive set of regulations and standards for each and every phase.

⁸⁷ See, the following Articles: 4.1.2. *The State makes and conducts carpet register of Azerbaijan*; 5 *Register of Azerbaijani carpets is made and conducted by relevant executive authority for the purpose to create information base about type, school names, weaving technique, color content and artistic features of carpets.*

⁸⁸ See, Article 11.2 *Rare and valuable publications of libraries are protected in special mode and may be included to registration of national-cultural values of Azerbaijan Republic.*

⁸⁹ See, Article 1.8 *General registration documents of museum funds are protection books and catalog. Registration–protection books of museum funds is the document expressed general information each exhibit and collection included to museum fund. “State list of national culture property of Azerbaijan Republic” and “The list of protected cultural values” made by relevant Law of Azerbaijan Republic are considered catalog of museum funds. Regulation on general registration documents of museum funds are approved by relevant executive authority.*

⁹⁰ As above suggested, Azerbaijan (State Party to the 1970 UNESCO Convention) should establish state ownership for undiscovered cultural property, indicating it by reference to categories. This provision may help in requesting the return or restitution of such property domestically or even abroad.

1.5 Modernization of the museum branch

Assessment report

The priorities of the culture policy of Azerbaijan should include modernization of museum system, which serves an important educational and informational function, helping to democratize the country and integrate it into the world community.

Regarding to theoretical aspects of this required modernization, museums should rediscover their original vision. They should become open spaces of cultural expression, exchange and dialogue. In fact, there is increasing emphasis on the contribution that heritage can make to sustainable development and to social cohesion. Additionally, the idea of museums should shift from an understanding of a monolithic, academic institution towards a more socially-oriented custodian of a shared cultural heritage. There is also a need for greater integration of museums into the educational sphere. In other words, museum institutions should be appreciated from what they can teach, rather than from what they exhibit.

Considering technical aspects of the required modernization, museums should provide online access to the vast collection potential that they have accumulated. Museum materials are digitized less than the materials in libraries and archives. Of the digitized materials, far less museum materials are made available for free via online.

Indeed, digitizing museum objects is expensive. Sometimes, the physical characteristics of museum materials could make them unsuited for digitizing. The challenges of digitization are, in fact, manifold, covering large volumes of materials, increased complexity of materials, management of internal interrelationships between collection items, and future, unforeseen technological advances. The technology used and metadata created in the process of digitizing materials should meet all the use and long-term preservation demands in order to prevent the need for re-digitizing the material later. The type of the analogue material largely determines how faithful a replica the digitized version will be. Some object types, such as three-dimensional museum items, still need to be digitized as two-dimensional versions because 3D technology is fairly expensive and, therefore, not yet feasible for digitizing large collections. Because of their uniqueness, creating descriptive metadata for museum objects could be a painstakingly slow process. However, advances in the digitizing technology have created new ways to study materials, especially from a scientific point of view. One example of this is the image manipulation of scientific samples by dyeing and enlarging.

Developing copyright solutions that cover a wide range of museum materials could be also crucial so that more copyright-protected museum materials can be made accessible online.

Advantages are, however, very great: Advanced Internet search engines link museum collections and make them available to users regardless of time and place. By using online services, museum professionals learn about various collections and their interrelationships. Increased knowledge of existing collections also enhances inter-museum loans of physical collections. Museum collection information could be linked to geospatial data, to archival or library sources, or to related works in other museums.

Digital content can be used in a number of ways, for example in professional online services that support inter-museum exchanges, exhibitions, and educational online services. The ways that people use to seek information and experiences on the Internet are constantly evolving. Digitization could be also used to preserve fragile analogue cultural materials and to reduce wear and tear through use. A typical example includes digitizing homogeneous, culturally or scientifically significant collections with characteristics that make physical handling difficult.

Many larger museums have set up partnerships with a series of regional museums. This allows major collections to be enjoyed by audiences at some distance from the home museum and is particularly valuable for national collections. These partnerships are highly successful but must be established with a clear view to benefit both parties and not just be seen as the national museum delivering a ready-made display to the regional. The aim should be to collaborate and share ideas and resources and for objects to go in both

directions. In addition to objects, the major museum can advise on the standards and procedures that will have long-lasting effects on the smaller museum. Many of national museums could have partnerships with regional museums, which enable collections to be viewed outside the capital city. These partnerships usually take a few years to establish and to start working smoothly. Therefore, they should be entered into for the long-term.

There can also be partnerships with groups of museums, all acting equally to share collections and resources. No museum can expect to have all the expertise that it requires under one roof. Partnerships can pool resources and can share training, publicity, education programs, and departments handling and technical skills. These partnerships can be grouped around a collection with a similar theme. These groups are stronger than individual museums, as they can act as consortiums to attract greater attention with shared publicity and lobbying power.

Some of these museums could have been seen as rivals in the past, competing for visitors or for local funding. By joining forces, they both win, as a collaboration makes the best use of resources as well as adds more impact to funding, publicity, shared websites, or shared events. Any partnership should have a signed agreement to make it clear as to what each party has committed to and what are the benefits for all. Decisions must be agreed and documented so that there is no doubt as to who should pay for something or who should do the work.

With regard to these aspects, European museums make content available for search through the digital European library Europeana (the European Digital Library Foundation 2010)⁹¹. This makes national museums content accessible in a wider European context.

In Azerbaijan, the following tasks should be set for the modernization of the museum branch:

- (i) Preservation of museum collections, issuance of passports for all artworks, conservation and restoration, improved compilation of museum collections, digitalization of museum data, creation of a national museum data base relying on the compiled electronic catalogues;
- (ii) Improvement of the contents of museum exhibitions, organization of conceptual presentations and exhibitions devoted to various topics;
- (iii) Integration of museums in the touristic routes, elaboration of educational and interactive programs for establishing contact with all groups of citizens, considering individual tours, programs for families, children and youth;
- (iv) Development of museum marketing; compilation of tourist-oriented catalogues, calendars, brochures and souvenirs; regular questionnaires related to exhibitions currently in progress;
- (v) Improvement of museum cooperation at national, regional and local level, acting as consortiums to attract greater attention with shared publicity and lobbying power.

Nowadays, the museums situation in Azerbaijan is as it follows: All the items in the national museum collection are recorded in standard inventories, which are kept by each museum⁹². No museum has, however, a data-base at present, but the chief museums in the capital have started to create one. Because of the

⁹¹ *There is no doubt that Europeana -which receives content through numerous aggregators such as the national digital libraries of the EU member states as well as specific and cross-domain museums, archives, and library portals- will become one of the key access points to cultural heritage content on the Internet. When selecting cultural material for digitization, museums typically prioritize materials based on technical criteria (physical condition of the original material), content criteria (representativeness, uniqueness), and use criteria (demand).*

⁹² *The inventory should also state the economic value of the immovable and movable artefacts, periodically updated with market values. The estimation should be related to each artefact and, in the case of unitary collections, to the overall value. This evaluation, beyond being important for the fulfilment of normative requirements, is necessary for the stipulation of insurance contracts for compensation in case of theft, damage, etc.*

country's economic problems, museums are insufficiently funded, and so only some of those in the capital have (one or two) computers⁹³. Those which have computers tend to use them for administrative and stock-taking purposes -but not so far for exhibitions. Two of the main museums have Internet connections and websites⁹⁴. Most museums have poor technical facilities, and lack temperature and humidity control, air-conditioning and special lighting, many of them don't have guarding and fire-fighting systems. They have no transport vehicles, and rarely have access to modern packaging materials. Their storerooms are often overcrowded, and they suffer from lack of equipment. Not all museums produce their own publications and publicity material. In market economy terms, Azerbaijan museums are, however, discovering new ways of earning money (fund-raising), and the range of services they provide (expert reports on works of art, souvenir sales, etc.) is expanding. Museums try to solve some of their problems by attracting sponsorships and grants⁹⁵. The main sponsors are foreign companies and embassies, although economic problems and the government's failure to offer tax incentives are increasingly discouraging sponsorship. As a whole, this assistance is not significant and cannot make a positive effect on common development of museums.

As far as management problems are considered, there are initiatives in order to run courses on museum management, but more should be made. In many museums, developing an audience for museums seems a low priority. There still relatively few members of staff concerned with building audiences, through imaginative education and outreach programs, marketing, devising attractive temporary exhibitions, events and marketing. This does not mean sacrificing the museum's core tasks of collecting, conservation and research but rather to be able to undertake this work in an environment that is relevant, understanding and appreciative. This will require the recruitment of new skills to the workforce or the re-skilling of part of existing museum staff. It may also encourage more imaginative solutions and new partnerships, for example, the secondment of teachers to work with museums, sponsored advice from the private sector, museum staff exchanges with foreign museums and joint marketing initiatives. Flexibility and imagination may be the key words in forward planning for the medium term.

Considering this situation, the Government of Azerbaijan⁹⁶ has set out priorities for museums, and they are to:

⁹³ *There may be opportunities for sponsorship in this sector. The life cycle of IT equipment used by the private sector is often relatively short. Recycling redundant equipment to museums could be a low-cost but valuable and much appreciated sponsorship initiative.*

⁹⁴ *In Italy, there are still few museums and cultural sites using new information and digital communication tools. As a matter of fact, more than half of the institutions (57.4%) has a website, only 24.8% uses newsletters to communicate with their audience and just 13.4% makes a digital catalogue available. The 18.6% of the institutions provides visitors with free Wi-Fi though hotspot connectivity, while only 6.6% use Internet for allowing the purchase of online tickets. It should be, however, highlighted an increasing familiarity with the museum virtual community: 11.1% of the museums is active on the web through blogs and forums, and the 40.5% of the institutions is present on at least one of the major social media (Facebook, Twitter, Instagram, YouTube, etc.), but only 6.6% has online ticket sale.*

⁹⁵ *For most museums a shortage of money remains, however, the most serious problem. There is no lottery in Azerbaijan. Most (but not all) museums make a small charge for entry. The Museum Law of 2000 allowed museums, funded by the Ministry of Culture, to retain their earned income but this arrangement was changed by the Finance Decree 2002. Income now has to be returned to the Ministry of Finance, to be eventually refunded to the museum, but only to be used for employing additional staff. Further changes in the tax code, introduced in 2002, reduced the VAT threshold from \$21,000 to \$6,300, making small cultural institutions liable to tax for the first time. This matter needs to be urgently and sympathetically reviewed. Some museums have opened small shops on their premises but with only limited success because, according to some, the tourist numbers are low and the local market yet to develop. Museums are "dreaming of a shop and a café". There is room for less ambitious steps; for example, very few museums had postcards of objects or replicas from their collections.*

⁹⁶ *The Museums Act (March 2000) was passed "to facilitate the preservation and enlargement of museum collections established since 1919, improve museum activities, and promote the creation of new museums, including private ones".*

- ✓ Create a centralized computer data-base, and use Internet to optimize access to information on museum collections and activity;
- ✓ Introduce an active acquisitions policy⁹⁷;
- ✓ Bring registration procedures up to modern standards;
- ✓ Speed up the introduction of new methods and practices⁹⁸;
- ✓ Increase museum workers' professionalism⁹⁹ and improve services¹⁰⁰;
- ✓ Develop museum marketing;
- ✓ Pay more attention to people with disabilities;
- ✓ Focus attention on the general need to pay museum staff better, improve their social security and enhance their professional prestige;
- ✓ Give museums a bigger role in cultural tourism;
- ✓ Identify new types of work;
- ✓ Improve protective and security systems in museums;
- ✓ Set up an inter-museum council within the ICOM National Committee to foster communication between the country's museums.

However, there are, at present, no schemes establishing minimum standards for museums in Azerbaijan. The establishment of such a scheme, perhaps linked to appropriate training, should be considered in the medium term. This aims to raise standards for collection care, services to the public and museum management and staff, both professional and voluntary. A series of training workshops should be offered to assist participants in understanding and implementing specific minimum standards.

Some museum statistics are available. It is, however, important to establish a database of museum statistics which would set the benchmarks against which future developments could be tracked. This should begin with definitive information about the number of museums and the size of their audience. Later figures might include:

- Number and type of museums;
- Number of objects in collection;
- Attendance figures¹⁰¹, analyzed into paid admissions, free entry, school children and students, foreign visitors;

⁹⁷ In Azerbaijan, museums have little or no funding for acquisitions. It would be helpful for all museums to develop acquisitions and disposal policies. Useful guidance can be found in the UK's Museum, Library and Archive Council's Registration Guidelines. The Government should consider creating a national fund to assist museums in the acquisition of important and appropriate objects for their collections.

⁹⁸ The European Union in the Resolution of the European Parliament Towards an integrated approach to cultural heritage for Europe stresses that the enhancement of the heritage also requires responses to our fellow citizens' new lifestyles and, in that connection, calls on to consider a comprehensive digital communication strategy to highlight the initiatives it has launched, together with support for cultural projects combining heritage and modernity (e.g. using new technologies in museum areas).

⁹⁹ Today it is necessary to mix non-profit and for-profit strategies, and this mix needs to be recognized and managed effectively. This will undoubtedly demand significant change in the nature of the leadership of museums in contemporary Azerbaijan. On the contrary, very few staff are concerned with audience development and servicing the needs of the public, the ultimate owners of most collections. Many museums are finding it increasingly difficult both to recruit young people for jobs in museums and galleries and to retain existing staff, especially those with skills required by an active private sector, such as languages and IT. Therefore, every effort should be made to find ways to make salaries and wages in museums at least competitive with other equivalent jobs in other sectors.

¹⁰⁰ In Italy, museum services are ruled by Article 115 of the Code, and they can be managed directly or indirectly. The choice between the two models is at the discretion of the involved institutions. However, this outsourcing of services is to be entrusted to a business chosen through a competitive process.

¹⁰¹ No statistics seem to be available about the nature of the museum audience, its age, gender and socio-economic background. On the contrary, it is important to give priority to the collection of accurate audience data, perhaps in conjunction with the State Statistical Committee in order to establish benchmarks against which to measure future trends in the data.

- Staff numbers, analyzed by category;
- Number of volunteers;
- Income sources;
- Number of temporary exhibitions; (viii) Number of special school's events.

In general, display in the museums looked worthy but dull. Style was dated and often a little tired. This is perhaps not surprising given the financial pressures under which museums have been operating over the past years, but there is room for some imaginative low-cost solutions. Many things might be done by simple but evocative presentation.

Museums and historic sites need to recognize that not all visitors in the twenty-first century want to have a guided tour, often preferring to take their own time and to make their own discoveries. Informative labels and contextual panels would help the visitors to make their own connections and to learn for themselves. Museums should take action to improve the quality of information provided for visitors. One alternative to guides is the audio tour. These can let museum visitors move around a museum or exhibition at their own pace and according to their particular interest. With the capability of recording tours in a number of languages, they can increase access for foreign visitors. They can be used for purpose-designed tours for visitors with a disability and for children and young people.

In Azerbaijan museums, programs of risk analysis and disaster planning are lacking. Museums need to have in place considered and effective disaster plans to protect their collections, visitors and staff. ICOM has useful website *Guidelines for Disaster Preparedness for Museums* which includes a number of Action Guides. The quality of security at the museums is indeed very low, and the fire/smoke alarm/protection system in many museums is under review.

There is no evidence of Museum Friends groups¹⁰² in Azerbaijan. In many parts of the world, Friends associations have made a major contribution to the operation of individual museums. The term Friends can cover volunteers¹⁰³, trustees, members of museum boards, benefactors, donors, as well as research fellows, honorary curators and task force workers.

Many museums lack staff dedicated to marketing. Marketing museums is not simply about selling what the museum has but meeting the needs of the visitor. If museums in Azerbaijan want to attract more visitors, audience needs and values must become a primary focus.

Moreover, greater effort needs to be given to ensuring that museums are accessible to all, including disabled people, the elderly and families with small children. This means not only the provision of ramps, but also proper toilet facilities, the availability of large print guides, audio loops and staff trained to assist when required.

The beauty of museum and gallery learning is that it can bring things to life in a way that just isn't possible in a classroom. This is of course true for history, but also for science, math, literacy and all other curriculum areas. Therefore, discussions should be deepened between the Ministries of Culture and Education to explore the opportunities for museums to contribute to the school curriculum and investigate the possibility of collaboration and possible joint-funding mechanisms for museum education initiatives. The value of

¹⁰² *There are as many different kinds of Friends as there are persons providing moral or financial support, voluntary work and expertise. Friends can at the same time be anything from librarians, guides, embroiderers or sorters to blacksmiths, sailors and cleaners. Museum friends are essentially people who love museums, or perhaps one museum in particular. They may assist a museum in its daily work, enable it to add to its collection, help build bridges between the museum and the public, or intercede with government bodies on its behalf.*

¹⁰³ *The concept of the volunteer worker in Azerbaijan museums appears virtually unknown. Elsewhere in the world, many museums rely heavily on volunteers - some are staffed entirely by this means, others rely on them for reception and shop duties or for conservation and restoration work. Volunteers could usefully undertake a number of practical tasks, particularly in smaller museums. In Italy, voluntary workers, about 18000, has given support in a museum out of two (47.7%).*

museums as places for learning is not restricted to school age. Museums and their collections have an important contribution to life-long learning. Temporary exhibitions can have valuable role here, but greater effort needs to be made to raise the quality of exhibitions of this kind¹⁰⁴. Loans, temporary exhibitions and exchanges can be a valuable way of developing international relationships and promoting greater knowledge about Azerbaijan culture. Every effort should be made to redevelop confidence in international loans.

As far as normative and organizational aspects, state owned, municipality owned and private¹⁰⁵ museums exist in Azerbaijan (see, Article 8 of the Law on Museums). Municipalities and private entities/persons can found their own museums and register it as a legal person at relevant body (registration body for commercial legal entities is the Ministry of Taxes and for non-commercial is the Ministry of Justice). As of records, there are not, however, any municipal museums in the country, and there are only 2 non-state museums, that is the Museum of Miniature Books and the Modern Art Museum¹⁰⁶.

Museums are provided with financial resources by MCT and the Ministry (or its regional offices regarding the museums in regions) confirms the structures of their budgets, structures of the museums and staff schedules (the number and positions). Ministry (regional offices) appoints director and deputy directors, chief curator, chief accountant, members of Scientific (Museum) Council, Procurement Commission and Expert Commission (in 3 museums) with recommendation of the director (reference to the Statutes of museums).

Statutes of museums which are under supervision of MCT are approved by the Ministry: there is a Model Statute of history-local lore museums and some big museums have their own statutes, for example, the National Art Museum and the Carpet Museum.

There is not a direct reference to relations between museums and municipalities or regions in legislation. However, local executive power/municipality may support cultural activities in its territory.

Museums are awarded with “National” or “Academic” status which increases the salary of their staff. For getting this status they apply to MCT and then, MCT with the opinion of the Ministry of Finance sends documents for final decision to Cabin of Ministers.

¹⁰⁴ *In Italy, with the permanent exhibitions, also the organization of events is very intensive. In 2015, 44.6% of the museums has organized a temporary exhibition or exposition. The most active ones are the institutions of modern and contemporary art (63.7%) followed by museums of antique and classic art (53.5 %). Less frequently the temporary exhibitions are organized in the field of archaeology (only 16%). In average during 2015, all the museums including the archaeological area and the monumental complex organized almost four exhibitions and expositions per year which have been visited by approximately 38 million of registered visitors. The Italian museums have also been very active in promoting culture: more than half of the structures asserted to have designed and carried out didactic activities which include courses, workshops and educational projects (57.7%), meetings, conferences and seminars (51.6%), shows and other initiatives of cultural animation (50.7%). Three out of ten institutions (30.7%) have commissioned projects of research or have carried them out by themselves. A minority of 16.8 % have rented out their premises to accommodate private events and shows. A large number of institutions are well equipped for technical-scientific activities or research. 45.3% of the institutions house an archive, 37.1% have a documentation centre and photo-laboratory and 41.3% have a library. Almost a half of the museums (47.7%) allocate their premises for didactic activities or research while 12.8% of the surveyed museums house a restoration workshop.*

¹⁰⁵ *In Italy, museums are also managed in cooperation with other parties through forms of association, which could be consortium and in-house ones.*

¹⁰⁶ *The State Art Museum has a sizable twentieth-century collection (paintings, drawings, sculpture), much of it on show, but its academic emphasis may tend to give a distorted or incomplete picture of the modern art scene. Many of the best examples of contemporary Azeri art are actually dispersed in private collections (usually abroad) or in artists' studios. Setting up a national museum of modern art is one essential aspect of developing and supporting the visual arts in Azerbaijan. There is, in fact, a pressing need for an illustrated survey of modern Azeri art, which might help to publicize the work of the country's best contemporary artists.*

Museums which have their own statutes are independently managed¹⁰⁷ by the director with financial and administrative supervision of MCT.

Article 12 of Law on Museums defines the rights of museums: exhibiting historical, cultural, political and social events (collections) except from state secret, expanding its collection by using the financial sources allocated for it or with its own revenue¹⁰⁸, preparing printed materials and sell them¹⁰⁹. The revenue gained from activities of museum will be added to its budget.

Governing bodies of state museums are:

- a) Director
- b) Scientific Council
- c) Procurement Committee.

The Director leads effective management of museum and is responsible for (i) Recruiting museum staff, defines task division among them; (ii) Signing orders and decrees in accordance with law, confirming work plans of museum and its departments; (iii) Representing museum, leading its economic activity.

The Scientific Council, on the other hand, is an advisory body to the Director and: (i) Oversees scientific activities of the museum and use of financial resources; (ii) Discusses main directions of expenditure of the museum, annual schedule of expenses and gives its opinion; (iii) Discusses annual work and scientific research plan of the museum and gives its opinion; (iv) Discusses Director's annual report about activities of the museum; (v) Discusses financial/logistical support plan of international scientific cooperation; (vi) Confirms Director's/departments' report about the work done; (vii) Discusses books and magazines to be published.

The Procurement Committee is, instead, composed by head of departments, scientists and restorers. Members are appointed by the Ministry with recommendation of the Director. Committee is mainly responsible for evaluating cultural items purchased/received by museum.

However, structures of museums differ: Small museums have only positions such as director, chief curator, chief accountant, etc.; while there are several departments in big museums.

Procedure to work with private sector is not directly indicated in the legislation. However, museums can cooperate with private entities and receive grants/donations (see, Article 3 of the Law on Grants). For receiving grant, an agreement must be signed with donor and it must be registered at Ministry of Justice. Donations will be accepted by the museums without notifying any state bodies since special procedure of informing Ministry of Justice and Ministry of Finance is only related to the donations received by NGOs.

¹⁰⁷ In Italy, the first line of action is the recognition of a greater autonomy to new museums and State archaeological parks: In addition to the 20 museums of national interest with special autonomy, the Ministerial Decree of January 23, 2016 provides the possibility of establishing additional 10 autonomous museums of national interest. The main objective of the changes is to put in place suitable conditions to improve the enhancement and fruition of State Museums and cultural places, in order to be more competitive at international level. Moreover, a particular attention to the enhancement of archaeological heritage has been applied through the creation of 4 archaeological parks and of 1 archaeological site of national interest. This reform has shifted the focus from "things" to institutions. The museum -which was previously identified with the things it contained and was seen as a mere object of cultural policy- becomes the active subject of the cultural policy. Taken inspiration from the French management, the museum becomes the driving force of a new system of conservation and enhancement of cultural heritage. Therefore, this new conception of museum brings to the need of identifying the responsibilities and proficiencies mostly of the Director.

¹⁰⁸ In Italy, museums that offer subscription forms or museum cards are 12.9% of the total. Bigger museums are the museum which focus more on audience retention initiatives which attract 48% of the visitors.

¹⁰⁹ Private companies pay a certain percentage of the revenue gained from duplicating museum heritage since museums have copyright over their collections.

Income of the organizations financed through state budget (except the profit gained from entrepreneurial activities) is not subject to tax (Tax Code, article 106.1.4). So, museums will not pay any tax for grants and donations received.

List of needed revisions of the legal and normative framework

It should be underlined that in the Azerbaijan legislation, there is not direct reference to an integrated museum system, under which strategies and development goals in the area of jurisdiction are defined and shared. The system could also coordinate all the activities involved in the management, development, communication and promotion of the national museum system within the region. Neither is there any reference to cultural itineraries that should promote the integration of cultural use routes and cultural tourism itineraries.

A new structure for the Azerbaijan museum system is, therefore required: In order to reach the above-mentioned targets a different approach to management and competences of the authorities involved¹¹⁰, as well as to fund rising policies, should be urgently put in place. Proper museum management at the international level¹¹¹ should follow criteria and good practices suggested by organizations such as ICOM and its scientific committees and should be able to step into the cultural and administrative reality of the country and the region of reference. In brief, a museum system should be able to:

- Face future challenges regarding the update of field competencies;
- Support, through a variety of sources, public investment;
- Have know-how to attract and receive a growing number of visitors from around the world. Investing in the museum system means to strengthen the concept of culture as a possibility for social, ethical and economic development of a country able to communicate the value of its cultural heritage worldwide.

Within the Twinning project, it is considered appropriate to envisage a model of competences of the Azerbaijan museums network, based on the indications of Presidential Decree No. 273/2014 approving a "Culture Concept of the Republic of Azerbaijan" and on the European approach to museum management. Following these indications and approach, it could be suggested, for the Azerbaijani museum system, a macro division of State Museums having a direct autonomy and Regional Museums which could be gathered within an autonomous regional network, under the Directorate-General of the Department for Cultural Institutions and Folk Art of the Ministry of Culture and Tourism (MCT). Both State Museums Network and Regional Museums Networks could be characterized by scientific and administrative autonomy and be dependent on the Director of the Department for Cultural Institutions and Folk Art (MCT).

The governing bodies of State Museums and Regional Museums could be:

¹¹⁰ In Italy, Article 150 of Italian Legislative Decree 112/1998 foresees the devolution of museum management from the State to the regions, provinces and municipalities, and the Italian Ministerial Decree of 10 May 2001 provided guidelines to lead the devolution, setting minimum standards for user services, facilities, collection management, etc. that local governments had to respect to manage devolved museums. In particular, the Ministerial Decree defined criteria and standards for eight different management areas: (1) legal status; (2) financial status; (3) museum structures; (4) museum staff; (5) museum security; (6) the management and care of individual collections; (7) relationships with the public and visitor services; (8) relationships with the territory.

¹¹¹ The differences in approaching the museum matter are linked to different cultural models. For example, the Anglo-Saxon concept that emphasizes the idea of museum as an enterprise/business is different from the European idea of the museum as a public service.

- (i) The Department for Cultural Institutions and Folk Art (MCT);
- (ii) The Director; and The Scientific Committee. Moreover, only in the case of Regional Museums, could be foreseen a Management Committee, which could ensure the coordination among the local authorities, Regional-Directorate of Museums and the MCT.

The governing bodies should:

1. Ensure the museum mission;
2. Verify the suitability, efficiency and effectiveness of museum activities;
3. Check the quality of cultural offer and conservation practices, of use and enhancement of museum assets.

To the Department for Cultural Institutions and Folk Art (MCT) are to be granted the following main duties:

- (i) It should guide and coordinate the Azerbaijani State Museums, performing functions of address and control, drawing up guidelines in compliance with the highest international standards, and helping Azerbaijan museums to grow and improve;
- (ii) It should enhance state national cultural heritage, performing functions and tasks to make the most of state cultural heritage, favouring policies for the integration of cultural heritage and the landscape at territorial level;
- (iii) It should regulate and promote access to structures, drawing up guidelines on opening hours, ticketing and policies for admission prices to museums and state cultural places;
- (iv) It should work in the region, taking care of coordination among regions, public authorities and private organisations, offering technical and administrative support at national level and promoting the formation of local museum centres for the integrated management of the activities of museums and cultural places;
- (v) It should take care of cultural projects, promoting agreements and facilitating the exchange of works at international level, establishing the criteria for the loan of assets and declaring the relevant cultural or scientific interest of exhibitions, events and displays;
- (vi) It should monitor quality, constantly updating the service charter, drawing up qualitative parameters in compliance with the ICOM standards and ensuring observance of the guidelines by state museums; (vii) It should encourage active participation, drawing up and publishing an annual report on the management of museum services, promoting and managing awareness projects and public fundraising campaigns of cultural interest.

On the other hand the Director -taking inspiration from the European models, the ICOM Code of Ethics and the Presidential Decree No. 273/2014- of both the National Museums and Regional Museums Networks could perform the following functions:

1. To plan, lead, coordinate and monitor all management activities of the museum, including the organization of exhibitions, as well as the conservation, the study, development, communication and promotion of the collections;
2. To care the cultural project of the museum, making it a vital place, inclusive, capable of promoting the development of culture;
3. To establish the price of tickets in compliance with the general guidelines and with the MCT;
4. To establish the opening hours of the museum so to ensure the most extensive use;
5. To ensure high quality standards in the management and communication, in educational innovation and technology, in promoting the active participation of users;
6. To ensure full cooperation with the MCT and the Directorate of Regional Museum and vice versa;

7. To ensure close relationship with the region also in order to increase the museum collection with new acquisitions, organize exhibitions and promote activity of cataloguing, study, restoration, communication, enhancement in cooperation with the MCT;
8. To authorize the loan of items under its jurisdiction for exhibits in the country or abroad, upon opinion of the relevant Director of the MCT for loans abroad;
9. To authorize activities of study and publication of materials belonging to the museum;
10. To grant to external figures, on the basis of guidelines prepared by the Director of MCT, the museum services and activities of enhancement;
11. To set the conditions of the delivery of contributions by individuals in support of culture, also through special agreements with institutes and places of culture and local authorities. To this end, he/she should promote awareness raising projects and specific fundraising campaigns, including collective financing modalities;
12. To carry out researches and makes these public, even electronically. He/she should also proposes initiatives of dissemination, education, training and research;
13. To act as contracting authority. In brief, with the Director lies the general leadership and he or she has the overall responsibility for the museum.

The Scientific Committees of the State Museums Networks and Regional Museums Networks should assist both the Director of each State Museums Network and Regional Museums Networks. This Committee could consist of four members, in addition to the Director, who could be appointed by the Ministry and chosen among the academies and universities having scientific profiles related to the specialization of the museum or the regional network.

The Scientific Committees of both the National Museums Network and the Regional Museums Networks should play advisory role of the Director on scientific matters and in particular should: (i) Make proposals to the director; (ii) Support the director in the preparation of the annual and multi-annual program; (iii) Prepare annual evaluation reports on museum's activities; (iv) Check and approve, in consultation with the Director, lending policies and plan of exhibitions; (v) Evaluate and approve the publishing projects of the museum; (vi) Provide opinion on museum's statute and statutory changes.

The Management Committee for Regional Museums should ensure the coordination between the Regional Museums Directorate, local authorities and the Department for Cultural Institutions and Folk Art (MCT), in particular should: (i) Ensure the coordination between local institutions and central Government; (ii) Support the Director of the Regional Museums in decisions related to the promotion of culture in the region, in particular the integration of museums in touristic routes, elaboration of educational and interactive programs for establishing contact with all groups of citizens: individual tours, programs for families, children and youth.

Summing up, in the short term, it is opportune to consider the following:

- (i) Preservation of museum collections, issuance of passports for all artworks, conservation and restoration and improved compilation of museum collections;
- (ii) Improvement of the contents of museum exhibitions, organization of conceptual presentations and exhibitions devoted to various topics;
- (iii) Pay more attention to people with disabilities;
- (iv) Improve protective and security systems in museums. In particular, programs of risk analysis and disaster planning are lacking in Azerbaijan. Museums need to have in place considered and effective disaster plans to protect their collections, visitors and staff. ICOM has useful website Guidelines for Disaster Preparedness for Museums which includes a number of Action Guides;
- (v) Set up consortiums of museums as they are stronger than individual museums in attracting greater attention with shared publicity, costs and even lobbying power;
- (vi) Set up an inter-museum council within the ICOM National Committee to foster communication between the country's museums;
- (vii) Join forces between thematical museums, as a collaboration makes the best use of resources as well as adds more impact to funding, publicity, shared websites, or shared events;
- (viii) Discover new ways of earning money (fund-raising, sponsorships, lotteries, grants etc);
- (ix) Allow museums to retain their earned income and raise the VAT threshold;

- (x) Exempt museums from paying taxes for grants and donations received;
- (xi) The good practice and results achieved in Italy though break taxes and the lack of a similar tool in Azerbaijan legislation suggest the application of a tax credit¹¹² to encourage donations for supporting culture.

In the medium term, it is necessary to:

- (i) Recruit new skills to the workforce or provide to the re-skilling of part of existing museum staff, taking into consideration the secondment of teachers to work with museums, sponsored advice from the private sector, museum staff exchanges with foreign museums and joint marketing initiatives;
- (ii) Provide integration of museums in the touristic routes;
- (iii) Elaborate educational and interactive programs for establishing contact with all groups of citizens, considering individual tours, programs for families, children and youth. The value of museums as places for learning is not restricted to school age. Museums and their collections have an important contribution to life-long learning;
- (iv) Develop of museum marketing; compilation of tourist-oriented catalogues, calendars, brochures and souvenirs;
- (v) Set up partnerships with a series of regional museums. This allows major collections to be enjoyed by audiences at some distance from the home museum and is particularly valuable for national collections. These partnerships usually take a few years to establish and to start working smoothly;
- (vi) Provide for digitalization of museum data, creation of a national museum data base relying on the compiled electronic catalogues;
- (vii) Provide for online access to museum materials making them available for free via online. The technology used and metadata created in the process of digitizing materials should meet all the use and long-term preservation demands in order to prevent the need for re-digitizing the material later;
- (viii) Link museum collections and make them available to users regardless of time and place, thus increasing knowledge of the existing collections;

¹¹² Recently, In Italy, a specific law, no. 106 of July 29, 2014 was approved, which introduced a tax credit to encourage donations for supporting culture: the so called “Art Bonus”. Art bonus is a tax regime for those who support culture with charitable donations and is equal to 65 % of charitable contributions that individuals or companies make in favour of public cultural heritage. The tax credit Art bonus is granted to individuals, to non-profit organizations and businesses which wants to contribute to protecting Italy’s cultural heritage, and passing it on to the next generations. The charitable contributions can be destined to the following: (i) Maintenance, protection and restoration of public cultural works (i.e. monuments, historic buildings, works of art); (ii) Support of public cultural institutions (i.e. museums, libraries, archives, archaeological areas and parks), opera/symphonic foundations and traditional theatre; (iii) Realization, restoration and upgrading of facilities of public institutions dedicated to performances. The donor, after having identified a cultural work to which contribute, can contact the owner or ALES (in-house society of the Ministry of Cultural Heritage and Activities and Tourism) to agree upon the details of money transfer (through a bank, post office, debit or credit and debit cards, bank checks), and save the receipt of the Art bonus transaction to take advantage of the tax benefits. If the donor has not chosen the cultural work which he/she would like to support with your contribution, they can review the list of projects published on a specific website (where it is possible to submit suggestions on other cultural works not included) or review the website of public institutions/cultural organizations within their region or city, and choose the cultural works they could support. The beneficiary of donations can put on display their cultural work to support; publish on the website and on their corporate website the amount of donations that they have received and how they are spending it. On the other hand, the Art bonus donors can register on the website to download the receipt of the contribution and add their name to the list of contributors who help saving Italian cultural heritage.

- (ix) Use digital content in a number of ways, for example in professional online services that support inter-museum exchanges, exhibitions, and educational online services.

In the long term, it is necessary to:

- (i) Recognize a greater autonomy to museums and establish State archaeological parks;
- (ii) Introduce an active acquisitions policy, giving to the museums useful guidance and funding for acquisitions, creating a national fund to assist museums in this process. To this national fund could contribute also private individual/organizations;
- (iii) Establish a database of museum statistics, setting the benchmarks against which future developments could be tracked. Currently, no statistics seem to be available about the nature of the museum audience, its age, gender and socio-economic background;
- (iv) raise standards for collection care, both professional and voluntary. The concept of the volunteer worker in Azerbaijan museums appears virtually unknown. Elsewhere in the world, many museums rely heavily on volunteers - some are staffed entirely by this means, others rely on them for reception and shop duties or for conservation and restoration work;
- (v) Develop international relationships; every effort should be made to create confidence in international loans;
- (vi) Create a State Museum of contemporary Azeri art, so far dispersed in private collections (usually abroad) or in artists' studios;
- (vii) Ease the foundation and proliferation of municipal museums in the country that are close to the cultural needs of local population.

For modernizing its museums and realizing the above suggested reforms, Azerbaijan legal system should introduce opportune amendments at least to:

- The Law of Azerbaijan Republic on Museums;
- The Law on Culture of the Republic of Azerbaijan;
- The Law of Azerbaijan Republic on Grant; (iv) The Tax Code.

For being fully implemented, the amended legal framework should, then, be supported by more detailed regulations, with the intention of avoiding rigidity so as to enable the specificities of the cultural sector to be adapted over time. With regard to this, the amendments to the existing legislation should be accompanied by the developing of a secondary legislation (decree, orders, guidelines, etc.). For instance, the inventory activities, the creation of databases and the use of digital technologies require the flexibility of internal regulations and guidelines defining steps, standards, criteria and timeframe for all the technical data and tasks envisaged by the law.

In other words, what should be created is a comprehensive set of regulations and standards for each and every phase. Accordingly, a new set of guidelines and statute should accompany the secondary legislation so far enacted, which, in its turn, should be reviewed and amendments introduced in:

- (i) The Ministry of Culture and Tourism, Guidelines on Records and Preservation of the Museum Items and Museum Collections in the Republic of Azerbaijan 2008;
- (ii) The Presidential Decree No. 273/2014 Culture Concept of the Republic of Azerbaijan;
- (iii) The Decision 1 Ministry of Culture and Tourism, April 27, 2015 Statue on Department of Cultural Institutions and Folk Art of Ministry of Culture and Tourism of the Republic of Azerbaijan;

- (iv) The Rules on Awarding Cultural Organizations with Special Status confirmed by the Cabin of Ministers, October 5, 2016 ;
- (v) The Rules on duplicating cultural items, producing souvenirs and printed works confirmed by the Cabin of Ministers, September 23, 2016 ;
- (vi) The Statute of History-Local Lore Museums confirmed by MCT ;
- (vii) The Statute of National Art Museum confirmed by MCT ;
- (viii) The Statute of Procurement Committees of Museums confirmed by MCT ;
- (ix) The Statute of Museum of Natural History confirmed by the Cabin of Ministers, July 10, 2015 ;
- (x) The Statute of Scientific Council of National Art Museum.

1.6 Modernization of libraries and related information supply

Assessment report

Libraries are indispensable tools for the collection, storage and transfer of historical, culture, literature, art, scientific and philosophic heritage of every countries, as well as in the development of the intellectual and moral potential of each society. They are also essential in order to ensure self-education and lifelong learning and useful opportunities. To accomplish this mission, library institutions have to make resources available to the people, and to sustain and preserve national cultural heritage as a collection of knowledge and creativity for future generations.

Although Azerbaijan national reports recognize that the library system serves an important educational and informational function, in the past years this long link with education appears to have been weakened¹¹³, and

¹¹³ While maintaining more or less a stable nucleus of "strong readers" (about 14% of readers), according to the ISTAT 2015 report *La lettura in Italia*, only 42% of Italians read at least one book in the previous year; and looking at European figures, Italy is slightly below the average of the Organization for Economic Cooperation and Development (OECD) data. Reading promotion is therefore a task perceived as crucial by the book and library professionals. The Italian Library Association (AIB) has the ownership of the best known project in this field, *Nati per leggere* (Born to read), started in 1999 with the aim to promote reading aloud to children aged 6 months-6 years, in collaboration with the Cultural Association of Pediatricians and the Center for Child Health (CSB). *Nati per leggere* is operative throughout the National territory with approximately 800 local projects involving more than 2,000 Italian municipalities. The local projects are promoted by librarians, pediatricians, educators, public bodies, cultural associations and voluntary services. Furthermore, school libraries and libraries of local authorities have a critical role in reading promotion. While the former are yet too heterogeneous to generally speak about their engagement, the public libraries, especially in well-organized contexts, usually work hard in promoting reading. As for the initiative of the State, in this field a breakthrough year was 2013, thanks to the publication of the *Rapporto sulla promozione della lettura in Italia* (Report on the promotion of reading in Italy), commissioned by the MCT to the association *Forum del Libro*. The report represents a systematic and official study on good practices to promote reading in Italy, reporting the virtuous experiences of publishers, bookstores, libraries, schools and associations. Among its conclusions, it states that: "It is essential to coordinate public policies, State, regional and local, in a great plan for reading, adequately funded, to evaluate and update periodically". The Ministry has responded to this need by promoting the realization of a National Reading Promotion Plan, as guidance tool in order to evaluate key issues and formulate proposals (Ministerial Decree 10/23/2013). The

there was a significant decline in the number of public libraries due to the fact that, gradually, libraries in rural areas have been converted into cultural centres. Nowadays, however, both infrastructure and technical equipment of the libraries has been improved. New favorable conditions for automation of library-bibliography processes in country libraries have been created. Some of the libraries are already connected to Internet¹¹⁴, and have information centres allowing readers to search for information and consult material from the stocks and catalogues of the world's leading libraries.

Howbeit, part of this radical modernization is facing several problems, and keeping libraries supplied with new books remains an important issue. Owing to the very small sums allocated for acquisitions and the high price of books, most libraries have not up-dated their stocks. The National Library, for instance, does not receive new publications because of the assignment of small sums for purchase of new literature and high cost of new books. In fact, state funding for libraries is minimal. Moreover, weakness of material-technical base and staff shortages due to low wages are causing serious problems in library organization.

Radical improvements are needed, and they include the following measures:

- Registering all libraries;
- Stocking libraries with books in the Roman alphabet;
- Developing and improving libraries' technical and other facilities;
- Introducing modern information technologies;
- Setting up a central computer system, linking all the country's libraries;
- Setting up a national library information system and a standard cataloguing system;
- Funding restoration and preservation of book stocks throughout the country;
- Funding new acquisitions;
- Promoting international, inter-regional and inter-departmental co-operation between libraries.

The library sector is principally ruled by the Law of Azerbaijan Republic on Library, and the organization of the library system is divided into governmental and non-governmental¹¹⁵ libraries. The latter include: (i) Libraries of municipalities; (ii) Libraries of public associations, private and other libraries; (iii) Libraries established by foreign legal and physical persons in accordance Law of Azerbaijan Republic.

With regard to governmental library, Azerbaijan has an extensive network of libraries. They are as following:

- (i) Library network of the Ministry of Culture and Tourism;
- (ii) Library network of the Ministry of Education; (iii) library network of the Confederation of Trade Unions;
- (iii) Library network of the Ministry of Health.

carrying out of proposals has been entrusted to CEPELL (Ministerial Decree 08/08/2014. Among the many initiatives undertaken, the project in vitro is undoubtedly the most significant novelty factor, also in terms of financial importance. It is an experimental project promoted by CEPELL in collaboration with Regions, Provinces, Municipalities, professional and trade associations (AIB, IEA, ALI); funded with 2 million Euros by the Arcus society (see Interministerial Decree 12/13/2010), it has involved six pilot territories, (the Provinces of Biella, Ravenna, Nuoro, Lecce, Syracuse and the Umbria Region). The focus of the project has been identified in children aged 0-14 years. Practical tools required to implement the project on the territory have been the Local Pact for reading and the Project Local Groups. Among the planned actions, the gift of books: over 100,000 books have been distributed to children and teenagers; the titles, selected by a panel of experts, have been published by CEPELL in form of bibliographic guides. Another significant aspect was the formation, entrusted to the Center for Child Health (CSB), which organized courses of reading aloud, and to AIB, which conducted a course designed to form the new figure of the "reading promoter". Finally, it has been realized Attenti a chi legge! (Mind the readers!) a national database that has collected over two hundred "good practices" to be shared.

¹¹⁴ The focus on digitalization is in line with the principles set by the European Union in the Resolution of the European Parliament: "Towards an integrated approach to cultural heritage for Europe".

¹¹⁵ See, Article 6 of the Law of Azerbaijan Republic on Library.

Obviously, the National Library¹¹⁶ is the national leading institution in the field of librarianship and bibliography, as well as methodical reference point for all the libraries in the country. For this reason, it would be desirable it to increase continuously translating and disseminating the most important international guidelines and best practices, and make them available on its website. It is very important also to increase providing all the other libraries with systematic guidance aimed at addressing specific challenges presented by the multilingual cultural heritage of Azerbaijan (e.g. translation and transliteration). Library publishing activity (National Bibliography, bibliographies and publications on single subjects) is one of its strong points. Library would definitely benefit from a wider (including economically viable and profitable) autonomy in this field.

Although provision of library funds is presented and carried out as a major priority in current regulations, the presence of best-known foreign authors in the library catalogue is still largely inadequate; it is important to increase such presence (especially English-language writers), to provide users the opportunity to enrich their cultural and linguistic background.

It is worth to highlight that Legal Deposit¹¹⁷ is closely related with national cultural heritage preservation, rather than library funds provision. According to the current Law, National Library is entitled to receive 4 mandatory copies of every single book, and 2 copies of every issue of serials. One of these copies is saved in the Library's Archives, one is allocated on the shelves in the reading rooms, and two are maintained in the main book fund. In addition to them, according to the profile of single publications, publishers must provide other 2 copies to other relevant institutions, also free of charge. Penalties are provided if a publisher does not meet the obligation.

According to IFLA Guidelines for legal deposit legislation, the number of the above mentioned mandatory copies is too high. Publishers, who are important stakeholders in the book chain and usually benefit from being represented in library catalogues, might feel not constructively involved in cultural activities because of such expensive obligation. Besides (although it is not a present issue), the lacking of space on the stacks is a major enemy of libraries, and it is highly advisable to save room for a multiplicity of resources rather than duplicate them.

With regard to digitization, the National Library has digitized historical materials, as well as classic and new literature editions, providing its users PDF files available on its website (protected by watermarks because of copyright issues). It is a favorable form of reading promotion, but also an example of the its static digital environment. Moreover, as for the most valuable, ancient and rare documents of the Library, they have been digitized in the same framework. However, the Library policy in this case is that the digital copy is not to be available on the web, but solely in the Library premises. Since digitization does allow both prevention and promotion through one single action, it is a real contradiction not to make available the most precious digitized documents. As ancient documents are also free of property rights issues, they could be freely accessed by all the internet users (as well as by registered, customized users so as to promote creative re-use of public cultural documents).

The Institute of manuscripts of the Azerbaijan Academy of Sciences too, for the importance of its funds and its high specialization in book restoration, has a similar mission, in its specific field, to the one of the National Library. It is highly advisable also to develop a similar open digitization policy. The Scientific Library of Baku State University is also well equipped in its field.

As for other libraries of national level (the Youth Library, the Children's Library, and the Library for blind people), along with the National Library, they have to gradually implement a model of mutual integration of their functions, managing together preservation as well as educational, vocational and promotional issues. It is advisable, in general, boosting the autonomy of State major libraries, so as to increase managerial practices.

¹¹⁶ See, Article 7 of the Law of Azerbaijan Republic on Library.

¹¹⁷ See, Article 15 of the Law of Azerbaijan Republic on Library.

According to the upgrading of the organizational structure of the Ministry of Culture and Tourism of the Republic of Azerbaijan, have been recently created 15 Regional Culture and Tourism Departments, which have also assumed all the responsibilities related to public libraries (see Presidential Decree “Upgrading organizational structure of the Ministry of Culture and Tourism of the Republic of Azerbaijan” of the 29 March 2016). This reform represents the opportunity to realize an integrated, service-oriented library network on the territory, in order to both rationalize existing library services and improve them, as well as enhancing a new, up-to-date social function of public libraries.

Nowadays about 3,000 libraries are located throughout the 64 districts of Azerbaijan; in each district there is a central library connected with minor libraries. Among the 64 central libraries, 33 are connected with the library cataloguing system ALISA, governed by the National Library: this is a web-based system built on standard formats and protocols MARC 21, ISO2709, UNICODE, Z3950.

It is also worth noting that in the latest years the State Agency for Public Service and Social Innovations has taken important steps in implementing innovation-related activities, among them the ASAN Service Centers, aimed to ensuring unified and coordinated delivery of administrative services rendered by State entities. So, the development of infrastructures for the implementation of decentralized services to citizens is not totally lacking, even still in progress.

To take advantage of the 2016 reform, and gradually overcome the inadequate level of many smaller local libraries and their premises, it is expected to set 15 Regional Library Systems (networks), each of which centred on the best equipped library in the Region (which will probably be one of the former central libraries, that are also expected to be connected with the ALISA System). The Regional Library networks will integrate ALISA functionalities (possibly ASAN and/or similar functionalities too). Yet building a platform for the provision of both specific library services and other, citizen-oriented services may also be based on different systems, provided that are always adopted technical standards ensuring interoperability.

Library services must include at least: availability in the library premises of books, newspapers, magazines; availability of a collection of documents of local interest, both historical and up-to-date; bibliographical information, user support, reference services; loan; reading promotion activities; bibliographic selections and exhibitions. Very minor libraries can remain at least local loan points, on the model of minor ASAN service points and Italian “Bibliobus”¹¹⁸. In particular, in order to become attractive for different targets of users (scholars, students, children, etc.), as well as to offer value-adding linkage perspectives to other sectors (education, tourism), the focus will be mainly on the provision of a wide range of digital services, such as e-book loan, online training courses, virtual exhibitions and thematic routes, delivery of multimedia content, integration of user-generated content and feedback by social media (Facebook, Twitter, YouTube). Delivery of multimedia contents selected by librarians must be the bridge to a new, service-oriented public library shape (on the model of the Italian Biblioteche civiche torinesi and Biblioteca delle Oblate, or the one of British Idea Store¹¹⁹).

In a framework of open data and interoperability, multimedia contents will be firstly selected within the ones made available as a result of digitization activity of the major National cultural institutions: museums, libraries, universities. Furthermore, libraries will be able to turn to library service providers, and join online platforms dedicated to providing and lending of digital media content (see the Media Library On Line Italian model¹²⁰).

¹¹⁸ As it is well known a bibliobus or mobile library or itinerant library is a vehicle used for library functions. It contains books arranged on shelves so as to allow access to users when it is parked. In accordance with the guidelines IFLA / UNESCO, the mobile library provides services in favor of groups or individuals who have difficulty going to the library.

¹¹⁹ See on internet the initiatives of these new, service-oriented libraries.

¹²⁰ MLOL is the first Italian digital library network, that is a platform for access to digital lending of e-books, newspapers and magazines from around the world.

As said, there is no doubt that during the last fifteen years the Internet has been the main driver of innovation in the field of libraries, for many different reasons. For libraries that preserve important historical collections, it has represented the ability to protect them, and at the same time to make them immediately accessible to users worldwide, on a scale unimaginable before. In addition, the virtual nature of digital collections allows the user to approach physically separate documents, and virtually restore their integrity.

In the case of libraries, by providing users an internet connection, they strengthen their social function and play a strategic role in the fight against digital divide. It is no coincidence that some of the most interesting contemporary architectural projects worldwide have been realized for library buildings.

Under the circumstances, the biggest challenge is definitely in the long-term preservation of digital objects: on the one hand those derived from the digitization, on the other hand the digital native ones spread through the network. In fact, they constitute a social and cultural feature of the contemporary society, worth to be preserved by the so-called “Institutions of the memory”. Yet this matter requires awareness and involvement at the political level, because the maintenance of dedicated infrastructures (in Italy Magazzini Digitali¹²¹ stands as candidate for being the major), along with the initial investment also requires huge financial support over time. On the other hand, the role of librarians and information professionals in general will be significant too, in order to select relevant information and in designing sustainability-oriented solutions, both technically and in terms of governance.

At the beginning of XXI Century, the European Commission has recognized the key role of digitization of scientific and cultural heritage in order to achieve a competitive, dynamic and knowledge-based economy; and has asked the various countries to promote actions and projects in this direction¹²².

¹²¹ As it is well known, *Magazzini Digitali (Digital Stacks)* is the coordinated Italian service for preservation and long-term access to digital resources. *Magazzini Digitali* is based on three different storage sites, managed by the two Central National Libraries of Rome and Florence and the Biblioteca Nazionale Marciana in Venice. The technological architecture and the digital archives comply with standards ISO 27001 and OAIS, for the certification of trusted digital repositories (i.e., repositories ensuring viability, renderability, authenticity, availability). Data storage is based on data replication (different machines in different places), online storage, operating systems and services completely open source. The system, thanks to the continuous search of interoperability, will be able to manage the harvesting of digital documents also taking into account that metadata patterns can change over time. At present, the system can receive data held both in container WARC (ISO 28500), and MPEG21-DIDL (ISO 21000).

¹²² Italy has participated in several European projects (among the most relevant MINERVA, MINERVAPlus, MICHAEL, MICHAELPlus, ATHENA, ATHENAPlus), thanks to which Italian libraries acquired technical and managerial infrastructures open source and multi-lingual, and realized digital collections and virtual exhibition projects. On a national scale, in 2001 was launched the project *Biblioteca Digitale Italiana (BDI)*, in order to identify the priorities of the interventions, indicate common standards and technologies to be used, connect the national level activities with international initiatives. In the framework of the BDI Italian libraries started most of their major digitization projects. The recent activities of re-engineering and renewal of the BDI editorial format have led to the creation of the portal *Internet Culturale: catalogs and digital collections of Italian libraries*. The website highlights the organization for thematic collections, to assert its identity as main access to the heritage of Italian libraries, and reference point for all those who are stakeholders in the “world of the book”. According to this principle, the conditions of use of the content made available through the *Internet Culturale* and *Cultura Italia* provide for metadata the license CC0 1.0 (Universal Public Domain Dedication) conditions. Italy in March 2010 also joined the *Google Books Project*, involving other major countries and national libraries of global significance such as the Bavarian State Library, the British Library, the Austrian National Library, the Nationale Bibliotheek van Nederland. The Italian Google Project involves the Central National Libraries of Rome and Florence, the Biblioteca Nazionale Vittorio Emanuele III of Naples and the ICCU. The agreement between Google and the Ministry provides for the digitization of at least 500,000 volumes by Google, while libraries are responsible for SBN cataloguing, metadata control, long term preservation. In the 1st phase of the Project (2012-2014) were digitized 265,972 volumes; in the 2d phase (2015-2016) 227,975 volumes. The Project is now entering its 3d phase. The Google Project metadata format is Mag 2.0.1 METS compatible, the single page files are JPEG 2000, the text files adopt OCR optical recognition methods that improves keywords research. Digital files

In Azerbaijan, libraries, as well as other cultural institutions (Academy of Sciences, Institute of Manuscripts) have computerized most of their services and launched a massive digitization of documents; but they have still not made the qualitative leap usually driven by digital environment, i.e. designing new, value-added services based on digital features. In fact, often digitization is used only as a preventive measure, and resources are not always available online to the general public. Moreover, cultural institutions play usually a role of content providers for State publishing, and also in view of digital access to the output of this activity, it is needed appropriate development of metadata standard and long-term preservation strategies: especially the second issue is still underestimated.

In general, looking at the achievements in this field, it can be argued that more structured information, integrated in a framework of interoperability between all the subjects related to cultural management, would allow to take advantage of all the potential of the digital environment, and greatly expand the range of services to the public. In fact, in such a framework, if structured data are exposed to other applications, it is possible to design many different attractive routes throughout the national cultural heritage, simply by linking related content, without duplicating information and cataloguing efforts.

At regional level this would be even more important, because it would allow library systems to organize a wide range of services addressed to the whole community, gathering the citizens' needs and spreading cultural heritage among new potential users all over the web, as well as having feedbacks in form of user-generated content, with positive effects in civic, educational and touristic fields.

It is important to move from a static digital environment, that users can only browse on the surface, to a dynamic one, that users can surf in depth, allowing both national and international users, even from a single point of access (National Cultural Portal) to navigate across national cultural heritage documents and memories, integrating structured multimedia information (texts, pictures, videos, audio, etc.). Such a framework will allow national users, also through Regional library systems, to find information and access to services for education, professional training, culture, leisure and everyday life, according to their own interests, so they can look at the libraries as a familiar resource, closely linked to their needs.

List of needed revisions of the legal and normative framework

can be consulted and downloaded in full text free of charge, as they refer to works in the public domain (published until 1871); they are accessible from the libraries websites, from Internet culturale, Cultura Italia and Europeana, as well as on the Google site. Google will be the holder of the rights on the files for 15 years time, but the libraries will have the right to use their digital copies (fully or partly) within their services, thus ensuring collections an absolute accessibility. Internet Culturale is based on MagTeca, a digital case that performs a free service of digital, in web-resolution collections management and preservation, along with a full set of metadata created in XML format according to the MAG model. The MagTeca software is distributed free of charge to content providers. The protocol adopted is the international standard Protocol for Metadata Harvesting of the Open Archive Initiative (OAI-PMH). Internet Culturale provides content to the portal Cultura Italia managed by the Ministry. Through Cultura Italia, users are led in a metadata system, which aggregates and organizes information from providers (museums, libraries, archives, galleries, exhibitions, etc.). Actually, the portal does not contain the resources, yet it is proposed as a single access point to them, in order to facilitate the users approaching to the rich Italian cultural heritage. Of course Italy participates, with the content of the Internet Culturale and even through Cultura Italia, in the European digital library Europeana. Interoperability between resources from different sectors of the cultural domain as well as the opening of the data in Cultura Italia are ensured through the application of the OAI-PMH standard for data collecting (harvesting); through the adoption of the PICO application profile based on the international standard Dublin Core for the creation of descriptive metadata; through the Extensible Markup Language (XML) for data representation; finally, through the Resource Description Framework (RDF) standard for the publication of Linked Open Data.

Considering what above-mentioned, Azerbaijan legal system should address the following goals for modernizing its libraries:

A) Priorities concern the centrality of the National Library:

- (i) It should become an autonomous institution under the MCT general coordination, with scientific, financial, administrative and accounting autonomy. It should provide for the achievement of institutional responsibilities through its own budget. It should increase its financial resources using its assets and spaces, and especially by performing publishing activity, cultural promotion, research and scientific cooperation with other public and private institutions (conferences, exhibitions, workshops, vocational training, etc.);
- (ii) It should also become the nationwide scientific authority in library field. It should produce, translate, adapt to the local situation and disseminate standards, guidelines and best practices. It should manage the national cataloguing system as well as the national digitization policy as a form of both preservation and promotion of the national cultural heritage;
- (iii) It should increase provision of foreign literature in original language, as well as databases of foreign academic journals. As for the second task, it will possibly join the Azerbaijan Library and Information Consortium, through which the Scientific Library of Baku State University get access to international online databases;
- (iv) It should realize a strong collaboration, both on digitization and conservation programs with the Institute of Manuscripts of the Azerbaijan Academy of Sciences; integrating its initiatives also with the Youth Library, the Children's Library, and the Library for blind people.

In order to address these targets norms to be amended are:

- The Law of Azerbaijan Republic about Library (Article 15 on legal deposit);
- Regulation of the National Library of Azerbaijan, in order to set a more autonomous status of the library, highlight its role as nationwide scientific authority in library field, design a framework of mutual integration of functions of all the State major libraries;

B) Other major goals are to be indicated in:

1. Realizing 15 Regional Library Systems (networks), including a variable number of libraries, that will be gradually able to manage all their services through automated procedures;
2. Identifying 15 central libraries, one in each network, to be connected with the ALISA System. All the other libraries, even gradually, will join the System with the assistance of the central ones;
3. Assessing by every single Regional System existing collective resources of its libraries, designing both the nature and the procedures of the services to be delivered, realizing 15 Regional Portal websites aimed to become the main, single access points to the networks and their services ;
4. Connecting, in turn, every single Portal with others Regional Systems, and the National Library as nationwide authority ;

5. Designing and carrying out gradually the wide range of digital services as above defined;
6. Organizing minor libraries as local loan points, on the model of mobile library or itinerant library.

In the absence of norms on the subject, it should be of utmost importance to:

- (i) Identify the territorial areas of interest of the 15 Regional Library Systems, based on the Presidential Decree “Upgrading organizational structure of the Ministry of Culture and Tourism of the Republic of Azerbaijan” of the 29 March 2016;
- (ii) Enact a regulation in order to establish the 15 Regional Library Systems and other local points of reference, identifying their mission statement and the legal form (convention, consortium, etc.) better fitting it.

C) In order to both develop the whole potential of the information system the following is required:

- Moving from a static digital environment and making digital copy available on the web, while respecting property rights issues;
- Designing and managing the whole life-cycle of digitization, from selection of documents to long-term preservation;
- Adopting technical standards to ensure interoperability, such as:
 - a. Open source software, as well as open content, whenever it is possible;
 - b. Metadata based on Dublin Core model and its development;
 - c. XML (Extensible Mark-up Language) databases;
 - d. Standard OAI-PMH for metadata harvesting;
 - e. Standard terminology (e.g. ISO, UNESCO, W3C);
- Implementing accurate reflection on DRM (Digital Rights Management) policy. Whenever it is possible, it is highly recommended adopting the license model Creative Commons Attribution-Non-Commercial. In different situations (e.g. e-books loan service), it is recommended adopting license as DRM Adobe or similar.

In the absence of norms on the subject, it is necessary to enact a regulation on the re-use of documents containing public data in public authorities availability. A model is the Italian D. Lgs. 24 January 2006, n. 36, implementing the Directive 2003/98/EC on the re-use of public sector information, (as amended by D. Lgs. 18 May 2015, n. 102 in implementation of Directive 2013/37/EU). The premise for such a normative tool to produce good results is that at the same time it strongly invites cultural institutions to adopt an Open Data policy¹²³.

Summing up, for modernizing its libraries and realizing the above suggested reforms, Azerbaijan legal system should introduce opportune amendments at least to the Law about Library. Consideration should be fully given at the European digital library Europeana, at the principles set by the European Union in the Resolution of the European Parliament: “Towards an integrated approach to cultural heritage for Europe” and to the Directive 2003/98/EC on the re-use of public sector information, as amended by the Directive 2013/37/EU.

¹²³ *The above-mentioned EU Directives recognize that digitized collections of cultural heritage and their metadata have tremendous potential for innovative reuse, and can contribute to economic growth and creation of jobs. These normative instruments therefore invite Member States to ensure that the documents whose intellectual property rights are held by libraries, museums and archives, are reusable.*

For being fully implemented, the amended legal framework should, then, be supported by more detailed regulations, with the intention of avoiding rigidity so as to enable the specificities of the libraries to be adapted over time. With regard to this, the amendments to the existing legislation should be accompanied by the developing of a secondary legislation (decree, orders, guidelines, etc). For instance, the use of digital technologies require the flexibility of internal regulations and guidelines defining steps, standards, criteria and timeframe for all the technical data and tasks envisaged by the law. In other words, what should be created is a comprehensive set of regulations and standards for each and every phase.

Accordingly, a new set of guidelines and statute should accompany the secondary legislation so far enacted, which, in its turn, should be reviewed and amendments introduced in:

- (i) The Regulation of the National Library of Azerbaijan; and
- (ii) The Presidential Decree Upgrading organizational structure of the Ministry of Culture and Tourism of the Republic of Azerbaijan” of the 29 March 2016.

1.7 Protection of immaterial cultural heritage

Assessment report

In current universally accepted understanding, cultural heritage constitutes a comprehensive category made of tangible heritage (buildings, monuments, landscapes, books, works of art and artefacts), intangible heritage (folklore, traditions, language and knowledge¹²⁴) and natural heritage (cultural landscapes and biodiversity). The traditional distinction between tangible and intangible heritage must be considered outdated¹²⁵. This unity is at the present universally accepted at international level.

Each nation’s intangible cultural heritage exhibits the coexistence of the universality of humanity and the special features of the community in the area where the intangible heritage was created and transmitted. According to UNESCO, priority should be given to correctly understanding each nation’s intangible cultural heritage.

The importance of the matter is emphasized by the connection of intangible heritage with the spheres of national and ethnical identities. It makes the field very sensitive and delicate especially in some areas of conflicts or potential conflicts.

The current universally accepted understanding, is reflected in the guidelines adopted by EU on heritage, where both categories are almost always addressed jointly. It more and more marks that heritage must by now be considered as a whole. The EU points out the importance of preserving cultural landscapes and, in particular, intangible cultural heritage which represents a living culture and fuels traditional crafts.

¹²⁴ *Intangible cultural heritage includes: (i) Traditional oral literature and the language as a carrier thereof; (ii) Traditional fine arts, calligraphy, music, dance, drama, folk art and acrobatics; (iii) Traditional artistry, medicine and calendar; (iv) Traditional rituals, festivals and other folk customs; (v) Traditional sports and entertainment; and (vi) Other intangible cultural heritage.*

¹²⁵ *However, unlike tangible heritage, intangible cultural heritage and its performers can move from one area and can travel to perform in another.*

Interconnection is felt operating also at economic level, and cultural tourism, to be identified as an important economic asset in contemporary society, benefits from preservation and improvement of cultural heritage, which includes not only the physical heritage and landscape, but also the intangible heritage, such as languages, religious and culinary traditions¹²⁶.

Cultural intangible heritage protection includes issues of identification, documentation, research, application, recreation, teaching, dissemination of intangible cultural values, protection of the property rights over such values, maintenance of the intangible cultural heritage, international cultural cooperation, cultural communication between peoples of foreign countries. Defining the procedures for participation of natural and legal persons in this sector, as well as the powers of state and local self-government bodies is also of utmost importance.

Abiding the international legal system and mostly the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, a law on intangible cultural heritage should rule on the following domains:

- Preservation and monitoring¹²⁷ of intangible cultural heritage, ensuring public participation in the reproduction process thereof;
- Ensuring introduction, preservation, safeguarding and application of intangible cultural heritage values;
- Ensuring the drawing up of a list of preserved intangible cultural heritage values, the planning and introduction of activities assuring their viability, as well as the preservation thereof;
- Ensuring the drawing up of lists of intangible cultural heritage in need of urgent safeguarding and safeguarding of the heritage included therein;
- Application of intangible cultural heritage in modern art and ensuring its transmission through educational programmes;
- Defining the competences and functions of state, territorial and local self-government bodies in the field of intangible cultural heritage¹²⁸;
- Defining the mechanisms and procedures for cooperation in the field of intangible cultural heritage, exchange of information, implementation of joint programmes among public administration and scientific-educational organisations;
- Defining forms of and procedures for providing state assistance to legal and natural persons carrying out activities in the field of intangible cultural heritage, including to bearers of intangible cultural heritage;
- Defining the dimensions and procedures for international cooperation.

¹²⁶ *This intangible heritage can provide an important contribution to the reinforcement of cultural industries, to the successful implementation of many sector policies and to various goals of sustainable development. On the whole, it constitutes an inexhaustible source of inspiration for new artistic expression. Local festivals, other than building collective identities and support social cohesion, hold serious economic potential, notably for socio-economic development and autonomy, to a large extent for the population and, in particular, for the poorest communities, and represent gains that modern technology could better exploit.*

¹²⁷ *One of the aims of the monitoring is to prevent intangible heritage from being lost forever, and replaced by an urbanized and often spurious brand of folk culture. It is also obviously vital to centralize all the precious and widely-scattered information on a single data-base, operated by one of the existing cultural institutions. A specific law for intangible heritage is still lacking, as well as a law for copyrights protection.*

¹²⁸ *In order to preserve, restore and support country intangible heritage in Azerbaijan, the following tasks are, inter alia, to be pursued: (i) Promotion of customs and traditions, preservation of national holidays and ceremonies, restoration of historical symbols and traditional knowledge with the purpose of developing country studies as well as historical and cultural experience of the people of Azerbaijan ; (ii) Fostering the development of national music and dance art ; (iii) Preservation of national story-telling traditions, revival of national dance and games ; (iv) Development of folklore studies with the purpose to revive it, preservation of the national decorating art, revival of painting art ; (v) Exploitation of the available personnel at city (district) culture clubs, so as to use their assistance for the development of subsidiaries for country studies, folklore and crafts as well as foundation of culture parks utilizing modern technologies, creation of crafts workshops to be integrated into the existing touristic routes.*

Another question to be taken into consideration is the matter of copyrights for intangible cultural heritage. The rights of those who created and transmitted an intangible cultural heritage have to be respected. Usually when we speak of a copyright we tend to limit it to an individually created work of art. Intangible cultural heritage, however, is not created by an individual. It is the product of a community. The issue of ownership and other rights to intangible heritage is now taken up by the World Intellectual Property Organization (WIPO), which is now preparing rules for protecting traditional knowledge and traditional cultural expressions. These norms favour an area's community residents who own the intangible cultural heritage.

These copyright laws not only have programs for affirming their rights to their intangible cultural heritage. They are also to include rules against using cultural expressions negatively or disparagingly. WIPO considers legal issues of state and international laws as well.

Therefore, the need to draft a specific law on intangible cultural heritage, as well as a related law on the intellectual property, results to be in line with the above-mentioned trends¹²⁹.

It must be stressed that the Information Bank of portfolios held by specialists, performers, collectives, researchers, and private structures in the field of Azerbaijan intangible cultural heritage is being created. The State Register of Azerbaijan Intangible Cultural Heritage Examples and the Cadastre of the Infrastructural Units of Azerbaijan Intangible Cultural Heritage are also being created. Relevant National Action Plans have been designed and are being implemented, in order to ensure the safeguarding of examples of Azerbaijan intangible heritage. Lastly, it has initiated the process of reorganisation of the cultural houses and community cultural clubs system, aiming at broadening the platform of social participation in cultural life in the current economic circumstances.

In Azerbaijan, when protecting intangible cultural heritage, focus is laid on its authenticity, integrity and inheritance: The use of intangible cultural heritage in a distorted or derogatory way is prohibited and sanctioned. The work concerning the protection and preservation of intangible cultural heritage in ethnic regions, remote regions and poor regions is supported.

When conducting investigations of intangible cultural heritage, the departments in charge of culture and other relevant departments should collect representative objects that are a constituent part of the intangible cultural heritage, organize the information obtained from the investigation work, and properly keep the objects and information, preventing the damage or loss of the objects and information. The pictures of the physical objects and the duplicate copies of information obtained by other relevant departments should be submitted to the departments in charge of culture at their same levels.

The departments in charge of culture are also requested to fully understand the relevant status of the intangible cultural heritage, establish records and relevant databases of the intangible cultural heritage. Except for the information that shall be kept confidential in accordance with the law, the information in the records and relevant databases of intangible cultural heritage shall be made public and be available for inspection by the public.

When conducting investigations of intangible cultural heritage, the consent from the investigation targets is to be obtained, their customs shall be respected and their lawful rights and interests shall not be prejudiced.

With regard to the items of intangible cultural heritage that are on the verge of extinction as discovered by investigation or other means, the departments in charge of culture of the people's governments at the county level is requested to immediately record and collect the relevant physical objects or to adopt other rescue and preservation measures.

¹²⁹ See, the European Resolution Towards an integrated approach to cultural heritage for Europe of 2015, where the importance of preserving intangible cultural heritage and fostering a comprehensive intellectual property rights strategy in Europe is stressed. Anyway, the major authority dealing with the intangible is UNESCO, this is the reason why it is preferable referring to the suggestions indicated by UNESCO in order to allow intangible cultural heritage to achieve in the global context a respect and understanding equal to the tangible heritage.

The department in charge of culture shall organize the expert review team and the expert review committee to conduct preliminary evaluation and review of the item of intangible cultural heritage that is recommended¹³⁰ or suggested to be included in the catalogue of the representative items of intangible cultural heritage at the national level. The local departments in charge of culture may formulate special protection plans. If the implementation of regional overall protection involves the spatial planning of the village, town or street where the intangible cultural heritage clusters together, the local department in charge of urban and rural planning shall formulate the special protection plan in accordance with the relevant regulations.

The State should encourage activities such as scientific and technical research related to intangible cultural heritage, the research of the methods of protecting and preserving intangible cultural heritage, the record of intangible cultural heritage and the compilation and publication of the representative items of intangible cultural heritage. Schools shall carry out education relating to intangible cultural heritage. The news media shall carry out the publicity of the representative items of intangible cultural heritage and popularize knowledge¹³¹ of intangible cultural heritage. Public cultural institutions such as libraries, cultural centers, museums and science and technology museums, academic research institutions and protection institutions of intangible cultural heritage and artistic and cultural performance groups and entities operating venues for performance that are organized with fiscal funding should carry out the compilation, research and academic exchange of intangible cultural heritage and the publicity and exhibition of the representative items of intangible cultural heritage according to their respective business scope.

Entities that use the representative items of intangible cultural heritage in a reasonable manner should be entitled to the preferential tax policies prescribed by the State in accordance with the law.

If the use of intangible cultural heritage involves intellectual property right, the provisions of the relevant laws and administrative regulations shall apply.

If other laws and administrative regulations prescribe otherwise concerning the protection of traditional medicine and traditional arts and handicrafts, etc., those provisions shall prevail.

The National Registry of Intangible Cultural Heritage should be structured as it follows:

- (i) Missing list of intangible cultural heritage items;
- (ii) List of items of intangible cultural heritage in danger of extinction;
- (iii) List of items that make up living existing intangible cultural heritage.

¹³⁰ The following materials are to be submitted when making the recommendation: (1) The introduction of the items, including the name, history, current conditions and value of the items; (2) The introduction of the inheritance situation, including the inheritance scope, the inheritance pedigree, the artistry standard of the inheritor and the social impact of the inheritance activities; (3) The protection requirements, including the objectives that shall be realized by the protection and the measures, steps and management system that shall be adopted; and (4) Materials such as the visual and audio information that may help to explain the items.

¹³¹ Representative inheritors of the representative items of intangible cultural heritage approved may be determined. The representative inheritors of the representative items of intangible cultural heritage shall meet the following conditions: (1) Familiar with the intangible cultural heritage they inherit; (2) Are representative in the specific area and have more significant influence in certain areas; and (3) Actively carry out inheritance activities. The representative inheritors of the representative items of intangible cultural heritage shall perform the following obligations: (1) Carry out inheritance activities and cultivate talented successors; (2) Properly keep the relevant physical objects and information; (3) Cooperate with the departments in charge of culture and other relevant departments in the investigations of intangible cultural heritage; and (4) Participate in public welfare publicity for intangible cultural heritage.

Intangible cultural heritage authorities are requested to perform the following specific duties:

1. Develop policies and strategies in the field;
2. Coordinate, at the national level, activities of public institutions with responsibilities in the area of intangible cultural heritage;
3. Support financial institutions with responsibilities in the work of identifying, preserving, protecting and enhancing the elements that make up the intangible cultural heritage;
4. Support the promotion of intangible cultural heritage elements in Azerbaijan communities abroad;
5. Support institutions with responsibilities in implementing strategies to safeguard intangible cultural heritage items;
6. Initiate and develop projects and activities programs on conservation, protection, enhancement and promotion of intangible cultural heritage;
7. Support, including financially, projects, programs and research activities, conservation, protection, enhancement and promotion of intangible cultural heritage, initiated by individuals or legal public or private, in accordance with the strategies and policies of the Ministry of Culture;
8. Methodologically coordinate the work of cultural establishments in intangible cultural heritage;
9. Work with specialized institutions in order to achieve programs and research activities;
10. Publish and disseminate any material support books and other publications in the field of intangible cultural heritage with the Ministry of Culture.

Many shortcomings affect this sector, starting with the lack of professionalism among many operators; the poorly structured nature of the chain, the absence of specialized vocations; the strong prevalence of an informal market; isolation of actors and, in particular, traditional artists, their poor knowledge of the legislation, their rights and profession of music, markets etc; difficult production and creation conditions due to the lack of or poor quality of equipment, practice halls, training etc; limited distribution possibilities on local and sub-regional levels, due to the lack of basic infrastructure, the costs of mobility, and various limits on circulation, etc; the problem of very limited international distribution, notably due to visa issues. Instead, this is an area with an enormous amount of diversity, as it is where almost all of the communities have developed their own practices. In the majority of states, intangible heritage employs a large amount of people, especially in the countryside and among women. It can thus serve to slow the rural exodus and ensure the socio-economic promotion of the elements of society that are often most fragile or poor.

It brings in cultural exports and, as previously said, can be a factor for the touristic promotion of towns. On an environmental level, the sector uses a significant proportion of locally available natural resources thus ensuring that development can contribute to the preservation of these resources. The sector also constitutes a reservoir of resources and techniques that can be very useful for other domains of cultural industries, especially the visual arts and architecture.

The dangers of environmental degradation or, by contrast, the requirements imposed by the need to preserve them limiting access to raw materials should not be undervalued. Natural sites are, in fact, an integral part of tangible cultural heritage and are often directly linked to intangible cultural heritage. Their degradation has inevitable negative impacts on many forms of cultural expression.

Therefore, cultural and environmental policy should work together to ensure their preservation. Among others, the maintenance of biodiversity needs to bear in mind cultural perceptions and relations between man and nature. Numerous traditional values, uses and beliefs considered taboo and forbidden can nevertheless prove useful for the preservation of the environment and the management of ecosystems such as forests, lakes, mountains, trees, vegetation, etc. It is necessary to determine the scientific foundations, to preserve them or promote them, all while working towards the transformation of those that would have a negative impact on the environment. Respect of the environment is, to a large extent, a matter of education. Cultural and artistic activities can also be an excellent form of awareness raising here.

The Azerbaijan intangible heritage is mostly composed of folk music (Azerbaijan musical instruments are famous with their variety - more than 60), dance, traditional epic poet-singers and old crafts (crafts have

survived into modern times; they include carpet-making, stone-carving, silk-weaving, copper-working, jewellery-making, etc.).

With regard to folk music, it is safe to say that, in Azerbaijan, a substantial amount of material has already been collected; but, huge amounts of material of major historical and cultural importance are also in private collections. It is obviously vital to centralize all this precious and widely-scattered information on a single data-base, operated by one of the existing cultural institutions.

List of needed revisions of the legal and normative framework

The 2003 Law of the Republic of Azerbaijan On Legal Protection of Azerbaijani Folklore Expressions, adopted before the setting up of UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, already provides protection of national intangible heritage¹³².

The subject of the protection of intangible cultural monuments is, however, among the goals set by the Twinning project fiche as one of national primary legislation to be reviewed, amended and/or elaborated.

The convenience to undertake a revision of the rules presently in force on the subject in Azerbaijan actually relies on:

- (i) The fact that Azerbaijan signed and ratified, on January 2007, the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, and Articles 11 to 15 of the Convention list the measures that the States member are committed to taken to fulfil their membership. A revision of the present rules is, therefore, advisable in order to comply with the pledges assumed at international level;
- (ii) The growing importance that intangible heritage is assuming in modern countries. Tangible and intangible heritage are playing a parallel role in shaping the international images of the countries. This growing role is influencing the managing practices and approaches towards intangible heritage even for tourism purposes. The new situation and the changes that it entails are by now clearly assumed in EU planning instruments and guidelines. In the European Parliament resolution of 8 September 2015 Towards an integrated approach to cultural heritage for Europe, tangible and intangible heritages are importantly considered a unified field when issues like heritage protection, enhancement and social use are addressed;

¹³² *Related legislation on intangible cultural heritage is the following: (i) Law on Culture (see in particular, Article 36.3 of Law on Culture: state registry of intangible cultural heritage is implemented by relevant state body - MCT); (ii) Law on Protection of Azerbaijani Folklore; (iii) Rules of permission for commercial use of folklore outside the territory of the Republic of Azerbaijan by legal and natural persons of other states (confirmed by Cabin of Ministers, N172- 20.10.2011); (iv) Law on Copyright and Related Rights (see in particular, Article 27 – Public domain); (v) Code of Administrative Offences (see in particular Article 187: Violations of rules on use of folklore - copies of folklore expressions produced or disseminated with violation of requirements on use of folklore expressions -pirated copies- will be confiscated and a penalty at rate of 80-150 manats on physical persons, 600-800 manats on officials, 1500-2500 manats on legal persons will be applied); (vi) Criminal Code (see in particular, Article 165-2: Violations of rules on use of folklore -if it causes significant amount of damage more than 1000 manats, a penalty at a rate of 150-500 manats or 320-480 hours of public work will be applied. The act committed: a. Repeatedly; b. On a preliminary arrangements by a group of people or by an organized group, shall be punished by a penalty at a rate of 500-1000 manats or imprisonment up to 3 years. It should be also stressed that one of the main purposes of the “Azerbaijan 2020: Look into the future” Concept of Development (signed on 29th of December, 2012) is protection and effective management of cultural heritage, including intangible cultural heritage (see, Article 11); and that the Copyright Agency, National Academy of Sciences and Ministry of Culture and Tourism were appointed as competent bodies for the safeguarding of the intangible cultural heritage by Presidential Order N2031, 12.03.2007.*

- (iii) The necessity of preserving the role of intangible heritage as testimony of Azerbaijani national identity.

In brief, amendments on the present Azerbaijan legal system will be drawn up to:

- Update intangible heritage's legal framework of and so to cope with challenges and opportunities that it is facing today;
- Systematize the response of Azerbaijan to the commitments made with the ratification of UNESCO 2003 Convention.

These targets come to be addressed considering the draft of the Law of the Republic of Azerbaijan on Protection of Intangible Cultural Monuments already conveyed to MCT with previous deliverable.

As established in the transitional and final provision of the above draft, the Ministry of Culture and Tourism shall develop and approve detailed regulations, implementing the above reported drafted Law on Protection of Intangible Cultural Monuments. In particular, what should be created is a comprehensive set of regulations and standards for each and every procedure; and the developing of a secondary legislation (decree, orders, guidelines, etc) should mostly consider the following measures addressed to:

- Update inventories and the relevant information therefrom¹³³. They should be enhanced by providing opportune digitalization of data¹³⁴ and by creating a national portal relying on the compiled electronic inventories. A single portal (dedicated to tangible -cultural/natural- and intangible heritage) should consider three main aspects: a. A database of tangible and intangible objects, including examples of best practices in preservation and promotion with all relevant references; b. Funding opportunities for heritage, as well as data on the state of Azerbaijan heritage and data of importance with regard to conservation and details of projects already carried out; and c. News and links concerning heritage-related policy developments, actions and events; ensuring opportune interconnection between data on tangible (natural and cultural) and intangible heritage fostering their information and common enjoyment;
- Face the lack of professionalism among many operators¹³⁵, the poorly structured nature of the chain, the absence of specialized vocations, and the strong prevalence of an informal market;
- Create a system of planning, implementation and monitoring procedures, which should include regular monitoring, periodic reporting and reactive monitoring, with improvements, outputs and outcomes as results¹³⁶;

¹³³ See, the obligations arising from Article 12 to the Convention for the Safeguarding of the Intangible Cultural Heritage.

¹³⁴ The technology used in the process of digitizing materials should meet all the use and long-term preservation demands in order to prevent the need for re-digitizing the material later. There should be also online access to the materials collected and the availability of free via online, while respecting property copyrights. The digitalization of data is a task that has to be performed by the Ministry of Culture and Tourism, as established by Article 5 of the drafted Law on Protection of Intangible Cultural Monuments.

¹³⁵ Train in management of the intangible cultural heritage is a task that has to be performed by the Ministry of Culture and Tourism, as established by Article 5 of the drafted Law on Protection of Intangible Cultural Monuments.

¹³⁶ See, the obligations arising from Article 13 to the Convention for the Safeguarding of the Intangible Cultural Heritage.

- Enhance educational, awareness-raising and information programmes, aimed at the general public, in particular young people, keeping the people informed of the dangers threatening intangible heritage and promoting education for the protection of natural spaces and places of memory¹³⁷;
- Enhance cultural communication in this sector and the sharing of experiences and best practices with experts of foreign countries, defining mechanisms and procedures for cooperation, exchange of information, implementation of joint programmes and procedures for international cooperation;
- Involve groups and relevant non-governmental organizations whose role is to be enhanced, promoted and better specified¹³⁸;
- Ensure the exploitation of the available personnel at city (district) culture clubs and municipalities¹³⁹, so as to use their assistance for the development and the broadening of the platform of social participation in cultural life;
- Replace public funding, mainly by private funding sources, enhancing sponsorship, PPP and other forms of business involvement in this sector;
- Establish new preferential tax policies to be implemented via amendments to the Tax Code;
- Ensure -even through incentives- that the huge amounts of material of major historical and cultural importance that are in private collections are collected into the above recommended centralized data-base.

Finally, a law for copyrights protection for intangible cultural heritage should be enacted considering the World Intellectual Property Organization (WIPO) rules. The rights of those who created and transmitted an intangible cultural heritage have to be respected. Usually when we speak of a copyright we tend to limit it to an individually created work of art. Intangible cultural heritage, however, is not created by an individual. It is the product of a community. The issue of ownership and other rights to intangible heritage is now taken up by the World Intellectual Property Organization (WIPO), which is preparing rules for protecting traditional knowledge and traditional cultural expressions. These norms favour an area's community residents who own the intangible cultural heritage.

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1.8 Illegal trafficking and cultural/natural heritage penal protection

Forward

Criminal protection of cultural/natural heritage and reaction to its trafficking/destruction 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.

In cultural sector and in the environmental protection, the investigations are very peculiar and often connected to larger criminal issues. They are frequently urgent and difficult to carry on, as the time to collect

¹³⁷ See, the obligations arising from Article 14 to the Convention for the Safeguarding of the Intangible Cultural Heritage.

¹³⁸ See, the obligations arising from Article 11 and 15 to the Convention for the Safeguarding of the Intangible Cultural Heritage.

¹³⁹ Also Article 6 of the drafted Law on Protection of Intangible Cultural Monuments is establishing competences of local self-government institutes in the field of protection of intangible monuments.

the evidence is often very short. Art and environmental crimes are also specific in term of legislations, in term of expedient used to remove or hide the provenance/situation of a cultural/natural good/areas.

The high complexity of the cultural heritage and environmental offences requires personal motivation and abilities, which are not common in police officials if they lack training. It is important, therefore, to take into account the new trafficking methods and polluting activities to develop appropriate counter-strategy. An efficient cooperation between the institutions of the State responsible in the field is highly required. Law enforcement capability to counter trafficking in cultural properties and to protect natural heritage seems low in Azerbaijan, where other resources stretched and art/environmental offences seem to be less important than other ones. Law enforcement bodies are, instead, ways to enhance national and international cooperation. These bodies could help in the knowledge of the problems to address in Azerbaijan on cultural/natural heritage protection.

The adequacy of a given judicial space appears to be of vital importance for the cultural heritage of a single nation, and for all the other countries, at least of the same cultural area. It is a known fact that the criminals acting in this sector take advantage of the weak links in the various legal systems, adopting for their laundering manoeuvres the country most permeable to the illegal traffic. Internal and international efforts in fighting the illicit traffic are urgently required.

Those who work for the return of looted cultural property bear perfectly in mind that the returning of items to the country of origin may be a victory, but is only a partial one. It is important mostly for restraining the market. That is why one should never lose sight of the fact that stopping the trafficking immediately and in the first place should be the primary target. Furthermore, the persons involved are much the same. In this regard, the individual targets of investigations and their final outcomes are often connected to collection of evidence used to defeat criminal organizations with a strong sense of belonging which are usually deeply rooted into a given community.

The “omertà” is increasing its involvement in these areas of criminal activity. Confidential tips from informants to the authorities are immediately rewarded by expulsion from the criminal group and exclusion from the benefits of its lucrative traffic. In addition, the criminal organizations are often acting through many legitimate and illegitimate companies, well-articulated in foreign territories and composed of multi-off-shore firms.

At the same time, investigations in the cultural field have a wider spectrum, because the ordinary police activities must take into account other contradictory and conflicting aspects. Thus, the recovery of cultural goods could sometimes hinder the efforts to defeat and punish the criminals, when, for instance, they make reprisals on cultural items to obtain impunity.

In brief, the Azerbaijan legal system, if consistent with its legal system, should fully consider new approaches, and for the cultural heritage protection should urgently implement the International Guidelines elaborated in Vienna and the Operational Guidelines to the 1970 UNESCO Convention, focusing its attention on the following:

1. Specialized law enforcement bodies or units

The Azerbaijan legal system should consider creating specialized law enforcement bodies or units for illicit conducts against cultural/natural heritage. Specialized units will lead, among other things:

- to a deeper knowledge of the laws concerning the cultural property sector and the natural environment, often difficult to coordinate
- to a better knowledge of crimes and criminals involved in cultural and natural heritage offences and their highly sophisticated operative modalities; and
- to a better coordination with other, national and international law enforcement.

The intensification of investigations in the national/international field, which will very likely lead to the limiting of illegal purchases and of conducts detrimental to the natural environment, will be carefully assessed by the criminals. These units could help in the knowledge of the problems that should be addressed in Azerbaijan on cultural/natural heritage protection. It will be advisable for this investigative body to work in close connection with the Ministry of Culture and Tourism or with the Ministry of Ecology, according to the field of interest.

In Azerbaijan, a greater coordination among the State institutions should be achieved. Specialization of law enforcement bodies is a way to enhance such coordination. It is a well-known fact that the first and most important step in protecting cultural/natural heritage is made through an efficient national and international cooperation. Obviously, it is also fundamental to modify the organization of the Judiciary with the creation of specialized groups of public prosecutors.

At the same time, specialized experts at central level should be selected as well as a centralized store of investigatory data and of stolen cultural items. From a shared experience one can derive that special entities involved in fighting cultural items trafficking and in protecting natural heritage could address one or more of the following targets:

- (i) Facilitation of gathering, management and effective use of knowledge on the criminal phenomena of concern;
- (ii) Development of specific expertise in criminal policies and related methods;
- (iii) Creation of a higher capability in the application of specialized investigative and prosecutorial legal tools;
- (iv) Coordination or unification of investigations and prosecutions, so to avoid possible clashing of initiatives and maximise the results of prosecutorial efforts.

With regard to the indication now under examination, this is fundamental with respect to all the other medium and long-term strategies. In fact, through the creation of various work pools (groups of public prosecutors, of investigating police operators and of experts) effective results can be achieved. This is especially true with regard to understanding of criminal methodology and techniques in these areas and to developing and establishing investigatory models and processes. In other words, the orchestration of the multiple national activities should create a system of real co-management of the fight against cultural/natural heritage crimes.

At national level, there are very few inspections¹⁴⁰ and cases of in depth investigations, which are actually possible only with specialized bodies. Further, in the cultural sector, the responses to the requests for international assistance will also enable internal controls to be tightened up and made more incisive, thanks to the data obtained abroad.

Cooperation in fighting the illicit traffic in cultural goods should not be requested only abroad, as great part of the solution lies on source countries. In protecting known archaeological sites from unauthorised excavation and pillage, local communities should be involved and cooperate in the protection of cultural heritage. Instead, the knowledge of the problems that should be addressed is worryingly still limited. A number of factors contribute to this situation:

- (i) The nature of the phenomenon which is based on commercial exchanges occurring in an underground market and whose assessment is consequently difficult; and

¹⁴⁰ *Inspections should be contemplated every time and for every motivated reason for listed and not yet listed cultural goods/natural areas. The inspectors (be they coming from a special police unit or in the administrative capacities) should have specific competencies. It will also be advisable for the inspectors' office to be properly staffed with a reasonable number of members and operative instruments.*

- (ii) A lack of proper communication strategies, and research efforts on its scale, magnitude and consequences. In fact, the involvement of organized crime rarely comes to the surface and criminals continue to carry out their illicit lucrative business undisturbed.

2. The sanctioning and the statute of limitations

More targeted and detailed sanctions should be envisaged.

In Azerbaijan, for instance, special crimes are envisaged only in respect to listed cultural goods; and until now no list seems to be created. With regard to this, no listed objects are to be protected considering common crimes or administrative offences, not providing for sufficient disincentives to illegal behaviors.

It happens, therefore, that only common smuggling can be indicted for not listed cultural items, when illegally exported. All this creates an overlapping between crimes and administrative offences.

Further, there is no specificity for the object of the crime, that is when an item can be considered to have cultural value.

The Azerbaijan legislation should foresee more serious and/or other kind of sanctions. For example, too lenient administrative sanctions are envisaged for cultural goods and natural environment protection.

Other penalties should be considered also for violations concerning constructions and illegal conducts about urbanization involving cultural goods and natural areas (for instance, confiscation, voidness of the contracts, no electricity supply etc.).

Administrative arrest should be envisaged also for cultural goods protection¹⁴¹; and the time limit for cultural good administrative violations should be 1 year¹⁴².

Violation of commercial rules at markets and fairs and violation of the electronic commerce legislation should be improved¹⁴³.

Moreover, no serious penal sanctioning is foreseen either for violations to the urban plans or to landscape monuments.

The Azerbaijan penal code requires that damage, or destruction should occur in order to trigger penal consequences. The possible exposition of the monuments to peril is neglected by the administrative and/or penal sanctioning and its ancillary consequences (seizure of the object and/or tool of the illicit).

Further, the crimes of laundering and handling should be seriously sanctioned by penal provisions, taking into account the fact that these crimes are frequently committed in the cultural good trafficking. With regard to this, Article 194 of the Criminal Code (handling or receiving) does not provide for aggravating circumstance for cultural goods and too lenient punishment is established.

When investigations involve cultural goods, there should be exclusion of responsibility, whenever one gives himself up and confesses, taking active actions on the disclosing of a crime, on the exposure of other accomplices of a crime and on the search and detection of the property obtained as a result of a crime¹⁴⁴.

The Azerbaijan legal system should also consider to autonomously punish the counterfeiting of cultural goods. Article 313 of the Criminal Code concerns, in fact, only the forgery of documents by public officials; not considering, for instance, any penalties for the intentional expertise or authentication of cultural goods counterfeited.

Not only. Crimes should be not subject to time limitation and should be considered of a permanent nature. Alternatively, the statute of limitations should not run until the authorities become aware of the offence

¹⁴¹ See, article 398 of the Code on Administrative Violations.

¹⁴² See, article 36 of the Code on Administrative Violations.

¹⁴³ See, articles 239 and 240 of the Code on Administrative Violations.

¹⁴⁴ In this respect, article 40 bis -to coordinate with articles 59, 72 and 73 of the Criminal Code- could be inserted.

committed, and Azerbaijan should establish a long statute of limitations period in which to commence proceedings for many of the offences against cultural goods and natural environment. Damages brought about by criminals in cultural and natural sectors are often permanent in their effects and only after the re-contextualization of the object or the reduction in pristine of the natural area the victim can have a sort of relief.

With these adjustment, the public prosecutor would be exonerated from a burden of proof which is often diabolical with its frequently merely circumstantial answers. Impunity caused by time limits follows too often for serious acts of delinquency.

3. Onus probandi, the reporting of suspected cases and special procedural provisions

Azerbaijan, if consistent with its legal system, is invited to allow cultural property to be seized when those in possession of the property cannot prove the licit provenance of the objects or when they do not have a reasonable belief in the licit provenance of the objects¹⁴⁵.

¹⁴⁵ *Whenever there is a shift in the onus probandi or should be inferred knowledge/criminal intent by failure to exercise due diligence, there could be problems linked to a very delicate theme, i.e. the strict liability issues and its constitutional implications. It must be stressed that, at least in the civil contest, all around the world jurisprudence demonstrates the increasing level of diligence, which affects the distribution of the burden of proof. Often a claimant has only to prove the existence of suspicious circumstances, whereas the defendant has to present proof that he/she complied with all obligations of diligence. Art professionals are required to abide by the higher standards of conduct established by statutory norms as well as the codes of ethics adopted by their associations or international organizations. Even the conduct of dilettanti is scrutinized carefully in order to verify whether they had taken steps to investigate the origin of the artwork they were interested in, whether it has been legally dealt with, and the status of the transferor. Failure to engage in reasonable efforts to investigate the provenance of art to be bought or sold entails that the standard of care regarding due diligence has not been met. Given that, buyers normally require evidence of title when buying luxury items or immovable property on the international market that is not an unreasonable burden. Cultural property has been the last major valuable asset that could be traded without checking the title and the only one where concealment of provenance has been defended. This has enabled its use for laundering money from criminal activities and attracted activity by organized international criminal groups. Time could be ripe for a general extension (mutatis mutandis) of the principles established by the 1998 Washington Conference and the 2009 Prague Conference, both of them raising concerns about the evidential standard to be adopted and the level of proof required, being stated that the benefit of the doubt should go to the claimant. On a penal level, obviously, it would be important to exonerate the Public Prosecutor from the burden of proof which is often diabolical with its frequently merely circumstantial answers, and from which too often impunity for many crimes against cultural heritage follows. In this respect, in many legal systems a relatively low standard is required when a violation of a customs statute has happened, being the government's burden of proof one of the probable causes. On the strict liability issues, it is possible to register an open position by the International community. For instance, the European Court of Human Rights holds that the reversal of the burden of proof (the shift of the onus), through which is the defendant who should demonstrate the licit origin of the good at issue, does not constitute a "per se" violation of the ECHR nor of its first Protocol (see decision of 5th July 2001, Arcuri v. Italy nr. 52024/99, which states that "the presumption of innocence is not absolute"). Any legal system conceiving de facto or de jure presumptions offers the possibility to consider illicit the origin of certain good whose acquisition and circumstances cannot be demonstrated by the defendant, without contrasting the right to prove the contrary by any means. Additionally, the Palermo Conventions and its provisions should be taken into consideration. Article 6, comma 2, (f) states: "knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this Article may be inferred from objective factual circumstances". Article 12, comma 7 states: "States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation". These Articles are contemplating a strict liability requirement for laundering phenomena and seizure and confiscation orders,*

Azerbaijan legal system should consider introducing in its legislation a crime for the violation of the obligation to report discovery and detention of cultural items. This obligation could ease the registration process of cultural items, the investigations and the scientific knowledge of the Azerbaijan cultural heritage. Legal base of this obligation could be Article 40.2 of the Constitution and Article 38 of the Law on Culture that states: “Everybody is obliged to protect national historical, natural and cultural heritage objects including historical, natural and cultural monuments in the Republic of Azerbaijan”. Therefore, Article 307 of the Criminal Code (“Not informing about crimes and concealment of crimes”) could be extended to information about the detention and illegal dealings of cultural goods.

In the Code of Criminal Procedure, there are not special provisions with regard to cultural goods or natural environment protection. For instance, the following could be considered:

1. Whenever consistent with the Azerbaijan system, there should be the possibility to enact a confiscation order also in case of acquittal resultant from procedural constraints¹⁴⁶;
2. As the time limit of the pre-trial phase is no longer than eighteen months, this period seems too short, especially considering the international dimension of crimes involving cultural goods, to investigate abroad through rogatory letters.

Other investigative/procedural measures should be envisaged or better ruled, as they could be useful to fight art crimes. The following measure should be allowed:

- ✓ Verifying simulated acquisitions or sales. To allow investigators to constantly monitor the market and sometimes to act as a potential buyer is a useful tool, especially when controlling internet sales and localizing web sites and providers;
- ✓ Delaying the police intervention even in the face of crimes that have already been committed and arranging controlled deliveries;
- ✓ Considering the possibility of covert investigations, making precise arrangements for the security of the undercover officers;
- ✓ Allowing cross border surveillance even with the use of electronic devices;
- ✓ Setting up joint investigation teams in order to facilitate the use of the mentioned operative tools.

4. Inventories, databases and statistics on trafficked cultural property

“to the extent that such a requirement is consistent with the principles of States domestic law and with the nature of their judicial and other proceedings.”

¹⁴⁶ *It will be useful to foresee the possibility of confiscating cultural objects even in the case of statute of limitation barring prosecution; obviously, without prejudice to the rights of persons extraneous to the crime who can demonstrate that they are in good faith. The Italian experience could be considered. As there is continuity in the Italian legislation since June 1909, confiscation appears to be one of the most effective sanction in combating illegal trafficking in cultural items, given that it has to be applied even in those cases where the crime is not punishable due to statute of limitation. In this respect, one should take note of the Italian jurisprudential decisions when confronted with a third party who is in good faith. “In order to qualify a person extraneous to the crime and prove his right to free the goods from seizure and obtain their restitution, he/she has the burden of demonstrating that he/she has not engaged in culpable conduct by failing in diligence to maintain control over the person who materially and illicitly perpetrated the crime” See, the Italian Supreme Court of Cassation, Section I, Sentence nr. 1927, of 9 December 2004.*

The registration of movable and immovable cultural goods in an inventory (with restricted access) is a useful measure. The inventory should be comprehensive, coordinated, and including all publicly owned cultural properties, as well as private collections and properties. Azerbaijan should consider translating the so obtained national inventory into digital databases, to facilitate their access and crosschecking through a coordinated network.

Law enforcement authorities should also establish and develop databases concerning criminal offences and administrative violations against cultural property, by detailing objects and people engaged in illegal activities. Great advantages would arise from the creation of these databases. Administrative authorities could establish and organize consistent, coordinated and programmed activity of study, prevention, maintenance and restoration. The art and antiquities dealers, as well as museums and other professionals, could be required to access them before engaging in their professional activities. Police and custom authorities would use them to identify the proceeds of a crime. Prosecutors and judges would rely on them in collecting evidence on the illicit origin of a cultural property.

Statistics on the trafficking of cultural goods have not reached a valuable level. The above-cited International Guidelines require that “States should consider: (a) Introducing or improving statistics on import and export of cultural property; (b) Introducing or improving statistics, where practical, on administrative and criminal offences against cultural property; ... (e) Contributing to international data collection on trafficking in cultural property and related offences ...”¹⁴⁷.

Establishing “risk analysis with customs to prevent the illicit import and export of cultural property ...”¹⁴⁸ is another measure that should be considered.

A systematic data collection on exported and imported cultural goods, their country of origin/provenance, transit and market, their characteristics and the dealers involved can provide valuable information on the destination of cultural goods and market trends. This data could enhance international cooperation and assist in proactive investigations by law enforcement agencies.

5. Codes of ethics and registration procedure for dealer

The Azerbaijann legal system should encourage the adoption of codes of conduct by all stakeholders. Azerbaijan should also consider inferring perpetrator's intent when these codes are violated.

Inference of knowledge should be even considered when the cultural property is registered as trafficked in a publicly accessible database.

Obviously, the burden of proof on the public prosecutor will be simplified, without introducing a problematic strict liability.

These codes could also impose duties to report suspect cases of trafficked cultural property.

There should be also a consistent registration procedure or system of cultural goods for dealers, all of whom should be licensed. A major instrument of the market control is, in fact, a register of cultural movable property, called “police register”. Every dealer must put into special register information on each possessed item, along with personal data of people he bought it from, how much it costs, characteristic features of the item, personal data of people he sold it to, and the selling price. From one register to another, the police can follow how a given item circulated, through subsequent sales by dealers in good faith. When something out-of-the-way appears in the register (for instance, the data are false or they are not recorded), it could be assumed that the owner is dishonest, and he deals with legalizing illicit items, laundering and bringing them back to the market. This is why this instrument is so useful. A clear system for recording the ownership history of a cultural object, linked directly to the capacity to conduct a legitimate transaction, is an extremely important tool in tackling the illicit trade in cultural property and is therefore desirable in principle. On one hand, these restrictions on transfer do not seem to amount to an illegitimate interference with the essential human right to peaceful enjoyment of property (similar restrictions are imposed in many other sensitive

¹⁴⁷ See, *Guideline n.3.*

¹⁴⁸ See, *Guideline n.79 of the above-cited Operational Guidelines.*

sectors of the society). On the other hand, the deliberate suppression of information by the trade cannot be anymore tolerated. It also makes difficult to mobilise public opinion against the marketing of illicit antiquities. If details of provenance were to be withheld, a well-meaning collector could not choose only to buy licit material but might be forced to rely on case.

In conclusion, severe controls on the sale-purchase activities of dealers are deemed very important to ensure the legitimacy of the sale or purchase of objects whose licit provenance should be certified. Potential sellers and buyers should have to prove actively that the object they wish to sell or acquire does not have any illicit history to it, rather than they did not know about an object's illicit history. This would turn the proof of due diligence and good faith from its current passive system to one that required active proof, primarily on the seller and then on the buyer. A system of sanctions should also be envisaged for dealers that do not put into special register information on each possessed item. The above-mentioned International Guidelines require that States should consider adopting bans, disqualifications and revocations of licenses as complementary criminal or administrative sanctions whenever possible.

6. Trafficking in cultural property via the Internet and via auction houses

The use of the Internet has greatly facilitated the illicit trade of cultural goods between persons around the world. The single items are not necessarily very significant, but the whole traffic causes serious damage. It seems to be creating a new market for cheap antiquities, many of which, of course, may be fakes.

Stimulating collecting, this e-commerce can only stimulate further looting of sites.

Sales of cultural properties via auction houses pose problems too.

It is, therefore, important that Azerbaijan start to take into account the new trafficking methods and to develop an appropriate counter-strategy.

The first step for an effective prevention policy could be the adoption of codes of conduct. Azerbaijan authorities should be also sufficiently organized to supervise offers on the Internet and via auction houses when they appear to be advertising protected cultural property. The support of all Internet providers and the supervision by the public should be envisaged and involved in these efforts.

7. Definition of movable and immovable cultural property, the State ownership of undiscovered archaeological items and the underwater cultural heritage

The presence of such a definition could be very useful in order to grant adequate definition, clarity and precision to criminal and not criminal law provisions. Cunning offenders are accustomed to exploit all the law loopholes.

Therefore, Azerbaijan should consider better defining movable and immovable cultural property:

- (i) On one hand by introducing limits of age and value; and
- (ii) On the other hand defining cultural goods by categories.

Further, the Azerbaijan legal system should make a clear assertion of State ownership of undiscovered archaeological items, so far ruled by Articles 4, 15 and 20 of The Law of the Republic of Azerbaijan on Protection of Historical and Cultural Monuments. Special challenges pose, in fact, the products of archaeological clandestine excavations and elements of archaeological goods and sites that have been dismembered. For those finds, States are often unable to produce specific inventories. To avoid the problem of identifying specifically an object of archaeological significance and to create the first barrier against the laundering of such a material, it has been demonstrated that one useful approach is to make a clear assertion of State ownership of undiscovered objects¹⁴⁹, so that the State Party can request its return under the provisions of the 1970 Convention and/or by recourse to any other relevant means.

¹⁴⁹ "Model Provisions" were adopted at the ICPRCP at its 17th session in 2011. They are finalized to "assist domestic legislative bodies in the establishment of a legislative framework for heritage protection ... in order to adopt effective

The Azerbaijan legal system should also better regulate the underwater cultural heritage and ratify the Convention on the Protection of the Underwater Cultural Heritage, adopted by UNESCO in November 2001. In particular, key aim of the Convention is to reach a universal protection of cultural objects on the ocean floor, even beyond national jurisdictional waters. It gives priority to States cooperation and “shared” public property. The system created by this Convention could be summarized as it follows: a) States shall abide international law; b) States shall consider protecting all traces of human existence having a cultural character found on the seabed and ocean floor and subsoil thereof. This protection shall involve the exclusive economic zone of the Member States and beyond their limits of national jurisdiction. The Contracting Parties may also declare that the rules shall apply to inland waters not of maritime character; c) States shall encourage the protection of underwater cultural heritage through in situ preservation that shall be considered the first option. Activities shall be strictly regulated to ensure proper recording of cultural, historical and archaeological information; d) States are requested to assure that underwater cultural heritage shall not be traded, sold, bought or bartered as commercial goods. Particular regard shall be paid to the preferential rights of States of cultural, historical or archaeological origin in respect of the items concerned or which have a “verifiable link” to the underwater cultural heritage in question; e) States are requested to take measures to prevent the entry into their territory, the dealing in, or the possession of, underwater cultural heritage illicitly exported and/or recovered. The sanctions applicable in respect of violations shall be adequate, providing also for the seizure of underwater cultural items recovered not in conformity with this Convention; f) States are requested to cooperate in order to ensure enforcement of sanctions. They shall take all practicable measure to disseminate information, through appropriate international databases of underwater cultural items illegally excavated or recovered. Underwater cultural heritage shall be also protected through inventories and through its conservation, presentation and the management of best practices. The legal framework of this treaty should be translated in the Law on Culture amending articles 1.0.16 and 34.

List of needed revisions of the legal and normative framework

To address the above-mentioned targets (see, points 1-7), the Azerbaijan legal framework should be improved and amended.

Actually, for many of these targets a key organizational framework should be established and tasks correctly identified.

In particular, different laws should be amended, e.g. the Law on Culture; the Code on Administrative Violations, the Criminal Code and the Code of Criminal Procedure, following at least the suggestions as in each point reported.

The work to be done on the primary legislation should be also address the following:

legislation for the establishment and recognition of the State’s ownership of undiscovered cultural objects with a view to facilitating return in case of unlawful removal and to ensure that courts will have full knowledge of the relevant legal provisions abroad” (see, Guidelines 28 and 29 of the Operational Guidelines). This Model has the following provisions: “Article 1. (General Duty). The State shall take all necessary and appropriate measures to protect undiscovered Cultural Objects and to preserve them for present and future generations; Article 2. (Definition). Undiscovered cultural objects include objects which, consistently with national law, are of importance for archaeology, prehistory, history, literature, art or science and are located in the soil or underwater; Article 3. (State Ownership). Undiscovered Cultural Objects are owned by the State, provided there is no prior existing ownership; Article 4. (Illicit excavation or retention). Cultural objects excavated contrary to the law or licitly excavated but illicitly retained are deemed to be stolen objects; Article 5. (Inalienability). The transfer of ownership of a cultural object deemed to be stolen under Provision 4 is null and void, unless it can be established that the transferor had a valid title to the object at the time of the transfer; Article 6. (International enforcement). For the purposes of ensuring the return or the restitution to the enacting State of cultural objects excavated contrary to the law or licitly excavated but illicitly retained, such objects shall be deemed stolen objects”.

- Providing for a coherent and comprehensive organization of the competent authorities in their central and peripheral branches and related supporting agencies; and
- Creating a regulatory framework.

This secondary legislation and ancillary norms are, in fact, necessary to define procedures at the regulatory level and related guidance and standards.

RECOMMENDED TEXTS OF REVISED LAWS, DECREES AND BYLAWS

1.1 Application of modern methods in culture management - development of cooperation with the local self-government bodies in culture management, including art management

A) The shift from procurement to management should be realized by Azerbaijan legal framework improvement, and the following legal instruments should be amended and/or envisaged: (i) New provisions on a participatory process: to be inserted in Article 3.2.11 of the Law on Culture; (ii) New provisions on full transparency and information: to be inserted in Articles 3.2.13, 14.2.9, 14.2.13 and 17 of the Law on Culture of the Republic of Azerbaijan ; (iii) New provisions on the training in management of cultural officers: to be inserted in Article 3.2.3 of the Law on Culture.

The full implementation of the new provisions should be accompanied by appropriate secondary legislation.

B) The enhancement of the role of municipalities and of other local entities should be realized via:

1. Improvements to and full implementation of primary existing legislation, such as: (i) Articles 142 and 144 of the Constitution of the Republic of Azerbaijan; (ii) Articles 3, 5.1.7, 29.2 of the Law on Culture; (iii) Articles 6 and following of the Law on Town-Planning and Construction Code; (vi) Articles 6 and 25 of the Law about Library; (vii) Articles 8 and the following of the Law on Museums; (viii) Articles 4 and 18 of the Law on Theatre and Theatrical Activity; (ix) Article 11 of Law on Tourism;

2. The above-mentioned 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.

1° Table of concordance

	<i>Topic addressed</i>	<i>Legal instrument</i>	<i>Present text</i>	<i>Changes recommended</i>	<i>New article to be introduced</i>
1	Modern method of management				
		Law on Culture	Article 3.2.11	Participatory process	Article 3 bis
		Law on Culture	Articles 3.2.13, 14.2.9, 14.2.13 and 17	Transparency	Article 3 bis
		Law on culture	3.2.3	Training in management	Article 3 bis. This Article -to be accompanied by secondary legislation- should, therefore, rule on participatory process, transparency and training ¹⁵⁰
2	Competences of municipalities and of other local entities	Constitution of the Republic of Azerbaijan	Articles 142 and 144	Full implementation	
		Law on Culture	3, 5.1.7, 29.2	Full implementation	Secondary legislation
		Law on Town-Planning and Construction Code	6 and the followings	Full implementation	Secondary legislation
		Law about	6 and 25	Full	Secondary

¹⁵⁰ **Article 3 bis. Cooperation in culture sector and participatory governance**

3bis.1. In the Republic of Azerbaijan State cooperation in the cultural sector is an integral part of the domestic and foreign policy of the Republic of Azerbaijan.

3bis.2. Main directions of state cooperation cultural policy of the Republic of Azerbaijan consist in the development of cooperation with self-government bodies in culture management, including art management, creating dynamic synergies between the state, regional, local, civil, volunteer, independent, entrepreneurial, private and commercial components national and international of the wider cultural sector in Azerbaijan and abroad.

3bis.3 In order to foster participatory governance models, the Republic of Azerbaijan encourages culture/tourism sector via:

- (i) cultural assets conservation and valorization;
- (ii) quality of service and high-level professional skills;
- (iii) the promotion of well-trained specialists in the field;
- (iv) online presence; and
- (v) research, innovation and new technologies.

3bis.4 Sub-laws shall be enacted to trust building, allowing participation of all the stakeholders, management training and simplification, offering transparency through online communication, tutorials and helpdesk services.

		Library		implementation	legislation
		Law on Museums	8 and the followings	Full implementation	Secondary legislation
		Law on Theatre and Theatrical Activity	4 and 18	Full implementation	Secondary legislation
		Law on Tourism	11	Full implementation	Secondary legislation ¹⁵¹

¹⁵¹ In order to give full implementation to the above-mentioned legal framework, this should be accompanied by appropriate secondary legislation. In particular, sub-laws should rule on municipalities and districts competences and equip them with local cultural infrastructure and spaces. These local self-government bodies should be actively involved in the planning phase as well in its management. Local awareness arising campaigns, territorial controls and volunteers recruiting activities as well as the organization of minor libraries as local loan points, on the model of mobile library could also be entrusted to those bodies.

1.2 Diversification of funding sources and improvement and expansion of culture services

A) The improvement and expansion of culture services do not necessarily imply changes to existing laws. They, however, require secondary legislation in order to establish/promove: (i) A single Azerbaijan portal dedicated to tangible and intangible cultural and natural heritage; (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.

B) The aim to structure and manage PPPs in the cultural field can be achieved by adapting existing laws or enacting PPP-specific law. Adapting the existing legal framework means to clarify the legal rights that apply to PPPs within the relevant laws and regulations, as well as to introduce PPP specific processes and responsibilities. Therefore, the main laws affected by PPP introduction are: (i) The Law on Culture: It is necessary to introduce the concept of “valorisation” of cultural heritage and to foresee the possibility that private sector figures are engaged in the valorisation process. Modifications are also to be introduced in Articles 18 and 47.4; (ii) The Civil Code: It is necessary to introduce PPP Institutional legal figures devoted to the valorisation of Cultural Heritage in which each figure -Foundation for participation; Consortium for valorisation; and Public-Private Company- will be described and regulated; (iii) The Law on Municipalities: It is necessary to allow the collaboration between Municipalities and private sector figures, and to this end the existing Article 34 should be modified ; (iv) The Law on Public Procurement: It is necessary a dedicated PPP section establishing specific tender procedures for the cultural sector. This will entail amendments to the existing Article 16.1.

The amendments to the existing legislation (or the enactment of a specific law) should be accompanied by the developing of a secondary legislation (decree, orders, guidelines, etc.), defining the steps, standards, criteria and timeframe for all procedures envisaged by the law.

C) In order to improve the Azerbaijan legal system 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, and to adequate the regime of possible use of public properties for private purposes: The Azerbaijan Tax Code should be amended. This entails to: (i) Add a new Article to foresee VAT reductions for buying cultural goods; (ii) Add a new Article to foresee the so-called tax reliefs on the buying of ancient art objects (exemption from tax and/or taxation at zero rate); (iii) Add a new Article to introduce the “transfer of art in lieu of tax payment”; (iv) Add a new Article to allow special tax deductions for sponsorship; (v) Introduce new provisions in order to foresee tax credits available for artists to reduce payable taxes. Since tax credit is a new concept in Azerbaijan, it is suggested to introduce a definition of the instrument within Article 13 of the Tax Code; (v) Introduce a new Article to allow tax deduction for donations in cash or in kind for cultural purposes; (vi) Introduce a new Article stating that gifts are not taxable if transferred to the state, regions, provinces or municipalities, public organisations, foundations or associations in the field of education, research or private entities that execute cultural/social activities; (vii) Introduce a new Article stating that cultural goods as testamentary gifts are not subject to tax payment or tax reductions; (viii) Introduce a new Article to foresee that revenues generated through the national lottery are in percentage allocated to the Ministry of Cultural Activities; (ix) Introduce new provisions dedicated to percentage legislation in favour of the arts; (x) Introduce a new article dedicated to the so called “Art Bonus”, establishing the tax credit percentage that individuals or companies obtain making contributions to the cultural sector.

Other related legislation to consider and amend is the Presidential Decree on Rules to issue investment promotion certificate (n.745, 18 January 2016) and the Presidential Decree on confirming investment fields, minimum amount of investment and investment regions (n.878, 20 April 2016). However, all the amendments should be accompanied by the developing of a secondary legislation (decree, orders, guidelines, etc.).

2° Table of concordance

	<i>Topic addressed</i>	<i>Legal instrument</i>	<i>Present text</i>	<i>Changes recommended</i>	<i>New article to be introduced</i>
1	Improvement and expansion of culture services	Policies, projects, guidelines, measures and best practices	To be reviewed	1. A single dedicated portal; 2. Indicators and benchmarks (e.g. on sustainable cultural tourism); 3. Small scale initiatives	Secondary legislation and guidelines
2	Diversification of funding sources and possible Public/Private/Partnership figures	Law on Culture	5.2, 14.2.2, 18 and 47.4	Valorisation of cultural heritage even through public and private entities ¹⁵²	Primary and secondary legislation
		Civil Code		Provisions on cultural heritage Foundation for participation, Consortium for valorisation and	Primary legislation accompanied by secondary legislation

¹⁵² The Law on culture should introduce the concept of “valorization” of cultural heritage and to foresee the possibility that private sector figures are engaged in the valorization process. The proposed amendments are: (i) To add a new Article stating that: “Valorization of cultural heritage is one of the priority directions of the State Policy. Valorization activities can be implemented also through the collaboration between public and private entities”. This Article will be numbered as 5.2.1, and will follow the existing Article 5.2 as these two articles are logically connected, that is the new Article 5.2.1 resumes the concept of State Priority expressed in the previous article 5.2 linking to it the notion of valorization; (ii) To modify the existing Article 18 as follows: “In the Republic of Azerbaijan, the subjects of cultural activities are considered governmental bodies, physical persons, including creative persons, legal persons, as well as cultural institutions, non-governmental organizations and legal entities established in partnership by public entities and private sector figures (Institutional-type Public-Private Partnerships)”; (iii) To add a new Article (in line with Article 14.2.2) stating that: “Public entities may engage private sector figures, by means of specific contractual agreements (Contractual-type Public-Private Partnerships), in order to pursue the valorization of cultural heritage”. This Article will be numbered as 19 bis and it is meant to specifically introduce the Contractual PPP-type, just after Articles 18 and 19, where the subjects of the cultural activities has been introduced; (iv) To amend Article 47.4 extending to all the tasks that imply valorization the privatization of cultural objects, as the choose between direct and indirect management should only come from a specific evaluation, in terms of efficiency and effectiveness, of objectives, and means available. Thus, many services, considered solely ancillary to the core mission of cultural heritage valorization, could become crucial in the discourse about management of heritage. Therefore, Article 47.4 should state: “In accordance with the valorization of the cultural heritage, privatization of cultural objects should only be permitted after specific evaluation, in terms of efficiency and effectiveness, of objectives, and means available. Sub-laws shall be enacted to rule on the indirect management and its monitoring”.

				Public-Private Company ¹⁵³	
		Law on Municipalities	34	Amendment : Collaboration between Municipalities and private sector figures ¹⁵⁴	Primary and secondary legislation
		Law on Public Procurement ¹⁵⁵	16.1	Specific tender procedures for the cultural sector	Primary legislation accompanied by secondary legislation
3	Tax deductions and incentives for Culture	Tax Code	Articles 11, 13, 102, 106, 164, 165 and Chapters 7 and X modifications	1. Articles for cultural heritage VAT reductions ; 2. Tax reliefs ; 3. Transfer of art in lieu of tax payment ; 4. Special tax deductions for sponsorship ; 5. Tax credits ; 6. Tax deduction for donations and gifts ; 7. Lottery, percentage legislation ; and	Primary legislation accompanied by secondary legislation.

¹⁵³ Article 19.2. of the Law on culture is stating that Cultural institutions can be found in any organizational-legal form stipulated by the Civil Code of the Republic of Azerbaijan. It is, therefore, necessary to introduce in the civil code PPP Institutional legal figures, that is to recognize that a legal entity may be established in partnership by public and private legal entities (Public-Private-Partnership legal entities), with the specific aim to pursue the valorization of Cultural Heritage, as provided by the Art. 5.2.1 new formula of the Law on Culture. In concrete, it will be necessary to enact in the civil code a special PPP section in which each figure -Foundation for participation; Consortium for valorization; and Public-Private Company- will be described and regulated, as it is done for all the other legal entities listed in the Code under Section 2. "Persons". The newly introduced section could be numbered as Paragraph 4 and named "Public-Private legal entities for the Culture Sector". It could replace the former Paragraph 4 "Bill, annual balance and audit of legal entities", which was deleted.

¹⁵⁴ The Law on Municipalities should be amended in order to allow the collaboration between Municipalities and private sector figures, and to this end the existing Article 34 should be modified as follows: "According to the law, municipalities may create and join legal person, by means of specific contractual agreements (Contractual-type Public-Private Partnerships), in order to pursue economic and other activity not prohibited by the law, and may resolve the issues related to their re-organization or termination".

¹⁵⁵ The Law on Public Procurement should have a dedicated PPP section in which each figure -Sponsorship and Service Concession- will be duly described, together with the tender procedures and related specific provisions, as it is done for all the other procurement methods. The newly introduced section (possibly named: Contractual Public-Private Partnerships) could be inserted in Chapter IX, the last chapter of the Law, and named "Special Provision for the Culture Sector". It would be also opportune foreseeing ad hoc Rules issued by the Cabinet of Ministers. Further, it will be necessary to introduce Public-Private tenders among the Procurement methods. This will entail amendments to the existing Article 16.1 that should be modified as follows: "Public procurements of goods (works) and services in the Republic of Azerbaijan depending on conditions of application indicated in articles 17-21 of present Law shall be conducted by methods of open tender, two-stage tender, tender with limited participation and closed tender, public-private tender, request for proposals, request for quotations and procurement from one source".

				8. "Art Bonus" ¹⁵⁶	
		Presidential		Amendments	

¹⁵⁶ The Tax Code should be amended as follow: (i) Add a new Article to foresee VAT reductions for buying cultural goods, within that amount to X%, for journals and daily newspapers, books, periodicals, printed musical editions, geographical maps, and the like. It could be placed under Article 164 which is devoted to "exemption from tax"; (ii) Add a new Article to foresee the so-called tax reliefs on the buying of ancient art objects, which is a scheme for VAT transactions on the purchase of works of ancient art. The VAT system is applicable to persons who trade/used goods and works of ancient art with the aim of avoiding repeated taxation on goods that are supplied to a taxable person for subsequent resale after they have been purchased. It could be placed under Article 164 or 165, respectively dedicated to "exemption from tax" and to "taxation at zero rate"; (iii) Add a new Article to introduce the "transfer of art in lieu of tax payment". This scheme foresees the possibility to cede cultural goods as well as works of living authors to the state instead of paying taxes. Since Chapter 7th of the Code defines general rules for paying taxes, the new Article could be added to this chapter; (iv) Add a new Article to allow special tax deductions for sponsorship. In this way, advertisement expenses and representation costs can be totally deducted from company income. Sponsorship is thus considered as a fully deductible expense for tax purposes. As for individuals, the law allows only the deduction of a specified percentage from personal income taxes for financial aid given to private and public institutions that are active in the cultural sector. The new Article could be added to chapter 10th of the Tax Code since several deductions from income are defined there both for legal and physical persons; (v) Introduce two Articles in order to foresee tax credits available for artists to reduce payable taxes. Through this instrument exemptions are permitted in the form of tax credits and tax shelters in the field of cinema as follows: a. tax credit for production companies for national films; b. tax credits for executive and post-production companies for "cultural films" commissioned by foreign productions; c. tax shelter for re-investment of profit for the production or distribution of national films. Since tax credit is a new concept in Azerbaijan, it is suggested to introduce a definition of the instrument within Article 13 of the Tax Code, and then to add the specific incentive to article 106; (vi) Introduce a new Article to allow tax deduction for donations in cash or in kind for cultural purposes. If donations for culture are deducted from income, the new article could be added to chapter 10th, while if the concept is intended as a tax deduction for companies/persons that donate to culture sector, it should be added to article 106/102; (vii) Introduce a new Article stating that gifts are not taxable if transferred to the state, regions, provinces or municipalities, public organizations, foundations or associations in the field of education, research or private entities that execute cultural/social activities. It could be inserted within Article 106 of the Tax Code, stating that incomes of state bodies, municipalities donations (except income from entrepreneurial activities) and donations/grants received by non-commercial organization are not subject to tax; (viii) Introduce a new Article stating that cultural goods as testamentary gifts are not subject to tax payment or tax reductions. It could be added to the existing Article 102.1.3; (ix) Introduce a new Article to foresee that revenues generated through the national lottery are allocated to the Ministry of Cultural Activities for the restoration and preservation of cultural, archaeological, artistic and archival and library (the allocated sum can have a fixed ceiling amount or not). In Azerbaijan, lotteries are organized by state owned company "Azerlottery" OJSC, and revenue goes to State. Since the company is a legal entity, the percentage to be devoted to support interventions in the field of culture could be deducted from the income tax paid by the company. Therefore, the new Article could be housed in chapter X of the code (which specifies different deductions) or in Article 106 (which describes tax exemptions of legal entities); (x) Introduce two new articles dedicated to percentage legislation in favor of the arts. This instrument -introduced as a new form of public financing for the third sector- is useful to stimulate intervention in favor of culture while offering the possibility to choose the organization to support. People should be free to choose a cultural institution (art organization, social organization, university, etc.) to which they intend to route a percentage of their due tax amount. In case the taxpayer fails to indicate how to direct the amount, this remains to the state. This concept is something new for Azerbaijani legislation: Actually, one of the main features of taxes in the Country (see tax legal definition in article 11 of the Code) is that they are paid to state/local budget. In this case, a percentage of tax would go to other organizations. Therefore, the introduction of a "percentage legislation" in favor of the arts implies, firstly, the necessity of making an exception to the abovementioned Article 11, by introducing a new article 11-1 to briefly define this new percentage concept, and the necessity of inserting a separate article to illustrate the specific procedures, that could be added at the end of chapter X; (xi) Introduce a new article dedicated to the so called "Art Bonus", establishing the tax credit percentage that individuals or companies obtain making contributions destined to the following: a. Maintenance, protection and restoration of public cultural works (eg. monuments, historic buildings, works of art); b. Support of public cultural institutions (eg. museums, libraries, archives, archaeological areas and parks), opera/symphonic foundations and traditional theater; c. Realization, restoration and upgrading of facilities of public institutions dedicated to performances. The amendments to the Tax Code should be accompanied by the developing of a secondary legislation (decree, orders, guidelines, etc.), defining the steps, standards, criteria and timeframe for all the new deductions and incentives envisaged by the law.

		Decree nr.745/2016 on Rules to issue investment promotion certificate		according to taxes deductions and incentives as above- mentioned	
		Presidential Decree nr.878/2016 on confirming investment fields, minimum amount of investment and investment regions		Amendments according to taxes deductions and incentives as above- mentioned	

1.3 Improvement of the educational and re-training systems in the field of culture

The Azerbaijan legal framework should fully implement 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 ratified by Azerbaijan in 1999;
- 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 of which the Azerbaijan is full member since 2005.

In particular, the Azerbaijan legal system should strengthen its educational and training system at three different levels:

(i) Higher education in cultural heritage, with specific technical curricula for architects, engineers and archaeologists. Norms to be considered are: 1. The Education Program on Bachelor degree qualification (Order of the Ministry of Education n. 913 dated August 22, 2014); 2. The Regulations for Master's degree preparation at the multi-tier higher education system of the Republic of Azerbaijan.

These reforms refer to Article 8.3 of State Standards of Higher Education (confirmed by Cabinet of Ministers);

(ii) Professional and Vocational Education, to provide workers with skills specific for the cultural field. It is necessary to amend the Decision of the Cabinet of Ministers, 11 October 2016, establishing the subjects that can be object of vocational training;

(iii) Permanent education and training of technical staff of the Ministry of Culture and related Agencies as well as of professionals, such as engineers, architects, surveyors. The Azerbaijani Law on Licenses and Permits of Azerbaijan, which was endorsed by the presidential decree dated 15 March 2016 should be amended in close cooperation with the Union of Architects, universities, as well as producers of materials and technologies, and should require: a. Specific educational and professional qualifications for issuing professional licenses that include the design of conservation/restoration of monuments or protected built heritage, based on educational curricula and certified experience in the practice; b. The issuing of licenses for architects or engineers who are allowed to make interventions on protected cultural heritage items. These licenses need to be issued by the Ministry of Economy jointly with the Ministry of Culture - State Service; c. Compulsory permanent training and professional adjournment for architect and engineers.

The legal framework to be amended is: a. The Law on Licenses and Permits of Azerbaijan introducing a sub category for “Design of Buildings and Structures”, which covers the interventions of any type on protected monuments, structures and heritage buildings as individual objects, within buffer zones or protected areas or reserves; b. The Law of the Azerbaijani Republic about Architectural Activities (15 May 1998, as amended) ; c. The Decree of the President of the Republic of Azerbaijan on establishment of State Service of Cultural Heritage Conservation, Development and Rehabilitation under the Ministry of Culture and Tourism of the Republic of Azerbaijan; d. The Regulation of the Department for Development and Rehabilitation of the cultural heritage ; e. The Order n.9/14-05 dated October 4th, 2013 by the State Agency on Public Services and Social Innovations on approving the regulations of ASAN Service Centers; f. The Law of the Azerbaijan Republic on making changes and additions to some normative acts of the Azerbaijan Republic dated 09 October, 2007.

3° Table of concordance

	Legal instrument	Present text	Changes recommended	New article to be introduced
Improvement of the educational and re-training systems in the field of culture				
	Order of the Ministry of Education n. 913/2014 on Education Program on Bachelor degree qualification		Higher education in cultural heritage conservation ¹⁵⁷	Secondary legislation
	Regulations for Master's degree preparation at the multi-tier higher education system of the Republic of Azerbaijan		Higher education in cultural heritage conservation ¹⁵⁸	Secondary legislation
	State Standards of Higher Education (confirmed by Cabinet of Ministers order)		Higher education in cultural heritage conservation ¹⁵⁹	Secondary legislation
	Order n.95/2011 by the Cabinet of Ministers		Higher education in cultural heritage conservation ¹⁶⁰	Secondary legislation
	Decision of the Cabinet of		Professional and vocational education	Secondary legislation

¹⁵⁷ The secondary legislation should be enacted taking into consideration the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, i.e. the Lisbon Recognition Convention ratified by Azerbaijan in 1999; the Council Recommendation 98/561/EC/EC of 24/09/1998 on European cooperation in quality assurance in higher education; the Recommendation n. 2006/143/EC of European Parliament and of the Council on further European cooperation on quality assurance in higher education; the Directive 2005/36/EC on the recognition of professional qualifications that is completed with the European Qualification Framework; the principles of European Higher Education Area (EHEA), and the outcomes of the Bologna Process of which the Azerbaijan is full member since 2005. This secondary legislation should be also enacted in cooperation with the universities, called to define in detail curricula for architects, engineers and archaeologists. Further, provisions should rule on : a. Specific educational and professional qualifications for issuing professional licenses that include the design of conservation/restoration of monuments or protected built heritage, based on educational curricula and certified experience in the practice; b. The issuing of licenses for architects or engineers who are allowed to make interventions on protected cultural heritage items. These licenses need to be issued by the Ministry of Economy jointly with the Ministry of Culture - State Service; c. Compulsory permanent training and professional adjournment for architect and engineers.

¹⁵⁸ See, the previous note.

¹⁵⁹ See, note 157.

¹⁶⁰ See, note 157.

	Ministers, 11 October 2016		to provide workers with specific skills ¹⁶¹	
	Law on Licenses and Permits of Azerbaijan as endorsed by the presidential decree dated 15 March 2016		Permanent training with credit and monitoring systems of professionals (Ministry staff, engineers, architects, archaeologists) ¹⁶² .	Primary and secondary legislation
	Law on Licenses and Permits of Azerbaijan as endorsed by the presidential decree dated 15 March 2016		Licenses for architects or engineers issued by the Ministry of Economy jointly with the Ministry of Culture ¹⁶³ .	Primary and secondary legislation
	Law on Licenses and Permits of Azerbaijan as endorsed by the presidential decree dated 15 March 2016		Introduce a sub category for “Design of Buildings and Structures” related to cultural properties ¹⁶⁴	Primary legislation accompanied by secondary normative acts
	Law of the Azerbaijani Republic about Architectural Activities (15 May 1998, as amended)		Permanent training of professionals (Ministry staff, engineers, architects, archaeologists) ¹⁶⁵	Primary and secondary legislation

¹⁶¹ See, note 157. In particular, through amendments should be introduced more matters that can be object of vocational training.

¹⁶² **ARTICLE 19 BIS Re-construction, restoration and renovation of historical-cultural monuments**

19bis.1 The issuing of licenses for architects or engineers who are allowed to make interventions on protected cultural heritage items shall be done by a commission of the Ministry of Economy jointly with the Ministry of Culture - State Service. Specific educational and professional qualifications shall be certified by the applicant and be based on educational curricula, certified experience in the practice and projects designed for cultural heritage immovable properties that have been approved by the Ministry of Culture - State Service.

19bis.2 The commission established under paragraph 1 shall establish a national roster of companies who are allowed to make interventions on protected cultural heritage items, and the inclusion into the roster shall be based: (i) On the possession of a sufficient amount of accredited staff for certain categories of work, to whom is reserved a consistent part of the company's budget; (ii) On previous projects designed for cultural heritage immovable properties that have been approved by the Ministry of Culture - State Service.

19bis.3 The use of ASAN Services to submit request of professional licenses shall be allowed, and its issuing shall be done by the commission established under paragraph 1.

19bis.4 The implementation of the project shall be satisfactorily carried out and certified by the commission established under paragraph 1. The commission shall be competent to control over the issuing and compliance with the license conditions and permissions, and to refuse, fix terms, suspend, cancel the license, and monitor the licensee's activities, according to Articles 20, 22, 25, 26 and 27 hereby reported. Variants and changes in the project shall be made on the basis of agreement between licensee and the commission established under paragraph 1.

19bis.5 For architects or engineers who are allowed to make interventions on protected cultural heritage shall be set up a system for compulsory permanent training and professional adjournment to be adopted by the commission established under paragraph 1, on the basis of consultations with relevant professional organizations.

19bis.6 Sub-laws shall fix criteria, standards, steps, and procedures for the commission established under paragraph 1 competences and activities.

¹⁶³ See, note 162.

¹⁶⁴ See, note 162.

¹⁶⁵ See, note 162.

	Decree of the President of the Republic of Azerbaijan on establishment of State Service of Cultural Heritage Conservation, Development and Rehabilitation under the Ministry of Culture and Tourism of the Republic of Azerbaijan		Permanent training of professionals (Ministry staff, engineers, architects, archaeologists) and licenses ¹⁶⁶	Secondary legislation
	Regulation of the Department for Development and Rehabilitation of the cultural heritage		Permanent training of professionals (Ministry staff, engineers, architects, archaeologists) and licenses ¹⁶⁷	Secondary legislation
	Order n.9/14-05 dated October 4th, 2013 by the State Agency on Public Services and Social Innovations on approving the regulations of ASAN Service Centers		Licenses for engineers, architects ¹⁶⁸	Secondary legislation

¹⁶⁶ See, notes 157 and note 162.

¹⁶⁷ See, notes 157 and 162.

¹⁶⁸ See, notes 157 and 162.

1.4 Restoration and protection of historical and cultural monuments

A) A more stringent coordination among the Law for Urban Planning, the Law for Heritage Protection and the Law for Architectural Activity should be realized. In fact, there is the necessity of: (i) providing for a coherent and comprehensive organization of the Ministry of Culture in its central and peripheral branches and related supporting Agencies; (ii) reinforcing the current regulatory framework, defining procedures for joint commissions, for lease and sale, for ensuring a common basis of assessment, transparency in judgment and guidance for applicants and assessors; (iii) ruling on the qualifications of enterprises intervening on historic and cultural monuments, which requires actions at different levels: a. Introduction of a chapter on specifications of public procurement for historic and cultural monuments and properties within the relevant legislation; b. Definition of categories of work related to cultural heritage; c. Definitions of standards for qualifications of enterprises/company; d. Setting up a system for the recognition of enterprises' qualifications.

The following norms should be amended or introduced:

1. Law on public procurement. A chapter on cultural heritage, in which specific provisions are to be established concerning: qualifications of professionals involved at the design level, qualification of workers and enterprises involved at the implementation level, content of documents for tender, bid offer;
2. Law on construction and town planning. Introduction of clause indicating that all categories of works on protected cultural heritage needs to be designed by specialized professionals (cross reference in: the law on licenses and permit issuing, law on public procurement) and carried out by specialized enterprises (cross reference in the law of public procurement);
3. Law on licenses and permits. Introduction of reference to the need to establish an evaluation commission for issuing licenses for professionals and enterprises that include Ministry of Culture - State Service and relevant professional organizations;
4. Law on Protection of Historical and Cultural Monuments that should fully rule on preliminary research for potential presence of archaeology (see, in particular Article 14 for costs to be covered by the contractor or developer).

Specific regulations need, then, to be developed/amended to regulate the matter, such as classification of work types, issuing qualification certificates to enterprises based on successful completion of other works. E.g. of secondary legislation to be reviewed is: a. The Decree of the President of the Republic of Azerbaijan on establishment of State Service of Cultural Heritage Conservation, Development and Rehabilitation under the Ministry of Culture and Tourism of the Republic of Azerbaijan; b. The Regulation of the Department for Development and Rehabilitation of the cultural heritage; c. The Presidential decree n.706/5 Sept 2012 establishing the Regulations of the State Agency on Public Services and Social Innovations and its related Order N: 9/14-05 dated October 4th, 2013 by the State Agency on Public Services and Social Innovations regarding the approval of the regulations of ASAN Service Centers.

B) Procedures for planning and implementing restoration works should fully consider the European legal frame work, 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.

The Law on public procurement should consider cultural heritage a specific matter in need of special provisions. A chapter on cultural heritage (possibly Chapter IX, the last chapter of the Law on Public Procurements, named "Special Provisions for the Culture Sector"), in which principles and key provisions are set out, need to be developed and the peculiarity of the object of the interventions should be reflected in the:

- (i) Definition of the object deserving protection, also considering its buffer zone. This entails revision of the list of cultural areas/goods, and specially of the list as approved in 2001 from the cabinet of Ministries;
- (ii) Definition of the object and contract configuration or granting;
- (iii) Verification of the specific qualification;

- (iv) Award criteria: a. The preference criteria; b. The “utmost urgency” criteria;
- (v) Greater amplitude in the use of variants;
- (vi) Rigorous testing realization;
- (vii) Levels and specification of design and project schemes and special qualification of the operators;
- (viii) Dedicated PPP section in which each figure will be duly described, together with the tender procedures and related specific provisions.

This new-created “Special Provisions for the Culture Sector” Chapter, should be supported by more detailed regulations.

C) Urbanization policies and programs require a more stringent coordination among different laws, such as the Architecture Act (1998), the Law on Culture, the Law on Protection of Historical and Cultural Monuments, and the Law on Town-Planning and Constructions Code.

The European legal framework should be taken into consideration, that is: (i) The EIA Directive (85/337/EEC), in force since 1985 and amended three times (1997, in 2003 and in 2009) and codified in the EIA Directive 2011/92/EU, further amended by Directive 2014/52/EU ; (ii) The Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive).

In brief, measures concerning physical urban renewal must be combined with those promoting education, economic development, social inclusion and environmental protection. Therefore, it is of utmost importance to:

- (i) Create greater opportunity for sustainable urban mobility, regeneration of deprived communities and improved research and innovation capacity ;
- (ii) Allocate funds for boosting knowledge-sharing between cities involved in integrated sustainable urban development and in urban innovative actions;
- (iii) Encourage the cities to pave the way for local stakeholders, businesses, the public sector and civil society to get more involved in urban neighborhood regeneration;
- (iv) Integrate territorial investments to be used to implement area-based strategies that rely on investments across different fields;
- (v) Implement a true participatory governance with the active participation of stakeholders and society (professional unions, citizens etc.).

As far as the respect of existing legislation is concerned, this should be assured by creating an autonomous sanctioning system: (i) Criminal sanctions should be envisaged when the protected item is exposed at risk; and (ii) Special administrative sanctions such as electricity bar and voidness of contracts should be imposed. It is also necessary to reinforce the current regulatory framework, defining joint procedures, commissions, the timing to issue the joint advice, and related guidance and standards.

D) The Azerbaijan legal framework on landscape protection should abide the principles set up by the European Landscape Convention. Therefore, it should 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.

Accordingly, the Law on Construction and Town-planning, the Law on Culture, the Law on Protection of Cultural and Historical Monuments, the Law on Public Procurement and other connected legislative provisions as well as specific secondary legislation (decrees and orders) should be fully coordinated and developed. This means to put in place a number of activities that are: (i) Knowledge of the landscapes: identification, description and assessment; (ii) Definition of landscape quality objectives; (iii) Attainment of these objectives by protection, management and planning over a period of time (exceptional actions and measures and ordinary actions and measures); (iv) Monitoring of changes, evaluation of the effects of policies, possible redefinition of choices.

In particular, the Law on Protection of Historical and Cultural Monuments should be implemented via secondary normative tools attentively considering the following:

(i) The internal technical procedures such as: a. Elaboration of state programs, and listing of monuments that need restoration and conservation works; b. Issuing passports for immovable historical and cultural monuments; c. Designating buffer zones of immovable historical and cultural monuments; d. Establishment of database on the protection of the immovable historical and cultural monuments, creating a database system conforming modern requirements, applying multimedia and electronic observation systems; e. State purchase of the immovable historical and cultural monuments that are under private ownership or located in the territories of historical and cultural reserves; f. Adjusting normative documents on restoration-conservation works of the immovable historical and cultural monuments (including project estimate documents and state expertise) according to the international standards; g. Drawing up maps ; h. Defining standards and guidelines for loans and lease of cultural properties ; k. Defining standards and guidelines for conditions authorizing the sale of cultural properties ; i. Criteria removal of the status of historic-cultural monuments ; l. Standards and procedures for definition of the budget ; m. Standards for safeguard and preventive conservation measures in case of interventions ; n. Definition of standards for the conservation of works on historic- cultural monuments ; o. Standards and guidelines for energy efficiency within public historic-cultural monuments ; p. Standards and guidelines for seismic rehabilitation of historic-cultural monuments;

(ii) The external procedures relevant for private and public entities owning protected properties: a. Authorization for works on protected historic-cultural monuments ; b. Authorization for lease of cultural properties within the limits of the law ; c. Authorization of sale of cultural properties within the limits of the law ; d. Definition of the level of cultural significance ; e. Authorization for the removing of cultural properties from the register/ list of protected monuments ; f. Procedures to impose conservation works to owners that do not carry out their conservation duties ; g. Procedures and standards for preventive and rescue archaeology ; h. Procedures and standards for authorization /denial of export of works of art ; k. Procedures for the circulation of cultural properties ; i. Procedures for the authorization of excavations and archaeological research ; l. Definition of procedure for permitting research on architectural monuments ; m. Procedures for the establishment of special reserves ; n. Procedures for authorization of works within protection zones.

E) For appropriate listing of cultural properties and their inventory via electronic database, the Law on Culture, the Law on Protection of Historical and Cultural Monuments, the Law on Protection and Development of Carpet, the Decree of the President of Azerbaijan Republic on the Application of the Law about Library Work, and the Law on Museum should be implemented through secondary legislation.

In particular, the Azerbaijan legal framework should:

(i) Fully implement the ad-hoc provisions of : a. The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict and of its Protocols; b. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; c. The Convention on the Protection of the World Cultural and Natural Heritage; d. The Convention for the Safeguarding of the Intangible Cultural Heritage. The Operational Guidelines of these Conventions should be also pondered in each of their suggestions in this field. Therefore, there should be provisions with regard to the registration of natural/cultural and tangible/intangible heritage in comprehensive inventories/databases including all publicly owned cultural/natural properties, as well as private collections and properties; and

(ii) Enact specific provisions (secondary legislation) to 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.

4° Table of concordance

	Legal instrument	Present text	Changes recommended	New article to be introduced
Restoration and protection of historical and cultural monuments				
	Law on public procurement.		1. Specific provisions on: a. qualification of professionals at the design level; b. qualification of workers and enterprises at the implementation level; 2. Content of documents for tender and bid offer ¹⁶⁹	Primary and secondary legislation
	Law on construction and town planning.	Articles 52 and 53	Specialized professionals and enterprises for works on protected cultural heritage ¹⁷⁰	Primary and secondary legislation

¹⁶⁹ See, note 157 and 162. The Law on public procurement should be coordinated with the Law on Licences (see, in particular the proposed new Article 19 bis), and both implemented through secondary legislation. It seems, in fact, necessary to define joint procedures at the regulatory level that establish a joint commissions, the timing to issue joint advices, and related guidance and standards concerning the technical documents to be submitted for any intervention to be carried out on protected cultural heritage. For instance, it is important to simplify procedures to obtain permits to intervene on protected historic cultural monuments, by favoring joint assessment of the projects by the National Academy of Science (NAOS) and the State Service so as to shorten the time necessary and reduce the administrative steps. If NAOS examines also requests for leases (bearing world or national values, limited to the purposes enounced in the law for the protection of cultural monuments) or sales of protected cultural properties (bearing local value), the revised procedure needs to be applied also to these situations. Equally, guidelines and standards need to be established for lease and sale, to ensure a common basis of assessment, transparency in judgment and guidance for applicants and assessors. There should be also a revision of current definition of works that can be carried out on monuments, in order to keep it wide enough that potential new category of interventions can be considered included.

¹⁷⁰ See, note 157 and 162. The Law on on construction and town planning should be coordinated with the Law on Licences (see, in particular the proposed new Article 19 bis that should amend, inter alia, Articles 52 and 53), and both implemented through secondary legislation. It seems, in fact, necessary to define categories of work related to cultural heritage. Distinction may be needed among architectural heritage, decorations and movable artifacts, archaeological excavations and conservation of archaeological remains, technical installations in historic monuments.

	Law on licenses and permits		Joint commission for issuing licenses for professionals and enterprises including Ministry of Culture - State Service and relevant professional organizations ¹⁷¹	Primary and secondary legislation
	Law on Protection of Historical and Cultural Monuments	14	On preliminary research for potential presence of archaeology (costs to be covered by the contractor or developer). ¹⁷²	Primary and secondary legislation
	Decree of the President on establishment of State Service of Cultural Heritage Conservation, Development and Rehabilitation under the Ministry of Culture and Tourism		Classification of work types	Secondary legislation
	Presidential decree n.706/2012 establishing the Regulations of the State Agency on Public Services and Social Innovations and its related Order N: 9/14-05/2013 by the State Agency on Public Services and Social Innovations regarding the approval of the regulations of ASAN Service		Special commissions for issuing qualification certificates to enterprises based on successful completion of other works ¹⁷³ .	Secondary legislation

¹⁷¹ See, notes 157 and 162.

¹⁷² Article 14 of the Law on Protection of Historical and Cultural Monuments should specify that a special commission will examine the application of construction works and that costs of preliminary research for potential presence of archaeology need to be covered by the developer or contractor. Hereinafter, the proposed amendments:

Article no 14. Archeological research on new construction areas

14.1 During installation of main utilities (oil, gas pipelines, etc.) and other construction works, the contractor which will be in charge of construction works shall apply to the special commission jointly composed by the Ministry of Culture and Tourism of the Republic of Azerbaijan and Icherisheher ASHAR and Azerbaijan National Science Academy in the feasibility phase during construction in the sites covering more than 1 ha area.

14.2 Necessary funds shall be allocated by the contractor for implementation of preliminary research works.

14.3 In case any archeological monument is discovered in such zone, it is prohibited to conduct construction and housekeeping works without permission of relevant commission as established under paragraph 1 and implementation of necessary scientific measures.

¹⁷³ See, notes 157 and 162.

	Centers			
	The Regulation of the Department for Development and Rehabilitation of the cultural heritage		Joint Commission Competences and rules	Secondary legislation
Procedure for planning and implementing restoration works	Legal instrument	Present text	Changes recommended	New article to be introduced
	Law on public procurement		Chapter IX named “Special Provisions for the Culture Sector”: 1. Definition of the object deserving protection (its buffer zone and revision of the 2001 lists); 2. Contract configuration or granting; 3. Verification of the specific qualification; 4. Award criteria: a. The preference criteria; b. The “utmost urgency” criteria; 5. use of variants; 6. Rigorous testing realization; 7. Dedicated PPP section with the tender procedures ¹⁷⁴	Primary and secondary legislation

¹⁷⁴ The Law on public procurement should consider cultural heritage a specific matter in need of special provisions to ensure the respect of values, character and features of humankind relevance. A chapter on cultural heritage, possibly Chapter IX, the last chapter of the Law on Public Procurements, named “Special Provisions for the Culture Sector”, should be added. In this chapter, principles should be set out, and the peculiarity of the of the interventions are reflected in the following proposed articles:

“Article 1 Definition of cultural property and of the buffer zones deserving protection

1. Cultural property consists in immovable and movable things belonging to the State and other territorial government bodies, as well as any other public body and institution, and to private, which possess artistic, historical, archaeological or ethno-anthropological interest, as indicated per each category and value in annex 1.

2. For the purposes of effective protection of the cultural immovable property, a buffer zone shall be established providing for an added layer of protection to the property. This shall include the immediate setting of the property, important views and other areas or attributes that are functionally important as a support to the property and its protection. The area constituting the buffer zone shall be determined in each case. 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, shall be provided”.

With regard to this new proposed article, there should be also a revision of the list of cultural areas/goods, and specially of the list as approved in 2001 from the cabinet of Ministries (list that is imported from the Soviet period) in which there is a classification by national/local importance. This list is, in fact, obsolete and its revision should take in consideration the advice of important local stakeholders (like unions of architectures or other professional unions and other private entities).

“Article 2 Conservation works on cultural property and its buffer zone

Urbanization policies and cultural heritage	Legal instrument	Present text	Changes recommended	New article to be introduced
	Law on Town-Planning and Construction Code		1. Sustainable urban mobility; 2. Regeneration of deprived communities; 3. Urban innovative actions ¹⁷⁵ ; 4.	Full implementation and coordination of the existing primary legislation accompanied by

2.1 Specialized conservation works on cultural property and its buffer zone, although limited in financial terms, shall not be absorbed into more generic categories of works, and shall be carried out by enterprises with the required expertise and qualifications.

2.2 Article 19 bis of the Law on License and its sub-laws shall rule on the required expertise and qualification”.

The secondary legislation should be enacted taking into consideration the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, i.e. the Lisbon Recognition Convention ratified by Azerbaijan in 1999; the Council Recommendation 98/561/EC/EC of 24/09/1998 on European cooperation in quality assurance in higher education; the Recommendation n. 2006/143/EC of European Parliament and of the Council on further European cooperation on quality assurance in higher education; the Directive 2005/36/EC on the recognition of professional qualifications that is completed with the European Qualification Framework; the principles of European Higher Education Area (EHEA), and the outcomes of the Bologna Process of which the Azerbaijan is full member since 2005. This secondary legislation should be also enacted in cooperation with the universities, called to define in detail curricula for architects, engineers archaeologists and restores. Further, provisions should rule on : a. Specific educational and professional qualifications for issuing professional licenses that include the design of conservation/restoration of monuments or protected built heritage, based on educational curricula and certified experience in the practice; b. The issuing of licenses for architects or engineers who are allowed to make interventions on protected cultural heritage items. These licenses need to be issued by the Ministry of Economy jointly with the Ministry of Culture - State Service; c. Compulsory permanent training and professional adjournment for architect and engineers.

“Article 3 Special conditions for tenders concerning cultural property and its variants

3.1 The preference for a qualitative tender shall not be absolute and the maximum discount for tenders shall be considered by the competent authority whenever circumstances are in favor of the discount criteria.

3.2 Whenever urgency is not attributable to the competent authority, the authority shall have recourse to the negotiated procedure without prior publication of a contract notice, in order to carry out the works strictly necessary to overcome the situation of urgency.

3.3 Interventions necessary for a risk of damage or deterioration of cultural property shall not be considered variants, provided that they do not qualitatively alter the work and do not exceed a percentage change total of the contract and for each category of processing, as established by the competent authority”.

“Article 4 Testing of works related to cultural property

4.1 The testing of works related to cultural property shall be mandatory, and without it there shall not be conditions for issuing the certificate of regular execution.

4.2 The testing, implying intermediate and final tests, shall be executed by the special commission as established in Article 19 bis of the Law on Licenses”.

Sub-laws should be enacted to rule on levels and specification of design and project schemes and special qualification of the operators. All this entails new rules on: (i) Qualifications of professionals involved at the design and project level as specified in the previous table; (ii) On an evaluation commission for issuing licenses for professionals and enterprises that include Ministry of Culture - State Service and relevant professional organizations, as specified in the previous table; (iii) On content of documents for tender (project); (iv) On clause indicating that all categories of works on protected cultural heritage needs to be designed by specialized professionals and carried out by specialized enterprises, as specified in the previous table. As far as the necessity of a dedicated PPP section in which each figure should be duly described, together with the tender procedures and related specific provisions: the newly introduced section (possibly named “Contractual Public-Private Partnerships for the Culture Sector”) could be inserted in Chapter IX, the last chapter of the Law.

¹⁷⁵ On point 1,2 and 3, there should be full implementation and coordination of the existing primary legislation accompanied by secondary legislation. In particular, sub-laws should fully consider the principles as established by the following international instruments: (i) The EIA Directive (85/337/EEC), in force since 1985 and amended three times

			Autonomous sanctioning system: a. Criminal sanctions for cultural item exposed at risk ¹⁷⁶ ; b. Special administrative sanctions (electricity bar and voidness of contracts) ¹⁷⁷	secondary legislation
Cultural Heritage in Environmental Impact Assessment and Strategic Impact Assessment procedures	Legal instrument	Present text	Changes recommended	New article to be introduced
	Law on Landscape		1. Specific policies (definition of landscape: territory as a whole); 2. Identification, description, assessment and listing; 3. Protection (management, planning and monitoring) ¹⁷⁸	Reference to the law that is in the drafting phase. Secondary legislation for standards and guidelines

(1997, in 2003 and in 2009) and codified in the EIA Directive 2011/92/EU, further amended by Directive 2014/52/EU ; (ii) The Directive 2001/42/EC on the assessment of the effects of certain plans and programs on the environment (SEA Directive). All these Directives include reference to cultural heritage as one of the factors making up the environment of human beings. Civil society organizations need to be involved at different scales in the consultation, planning and monitoring of urbanization policies and programs. To increase accountability and transparency of public and/or private resource investments, as well as to build public trust in policy decisions, is of utmost importance to involve all the stakeholder that should be allowed to converse with both the public and the private parties, and to express their opinions. Thus, it is necessary to fully implement (through regulation and/or guidelines) at central as well at local level the Law on Town-Planning and Construction Code that foresees the active participation of stakeholders and society (professional unions, citizens etc.) in the area of urban planning through the realisation of open discussion. Considering the Azerbaijan current situation, it is of utmost importance to: (i) Create greater opportunity for sustainable urban mobility, regeneration of deprived communities and improved research and innovation capacity ; (ii) Allocate funds for boosting knowledge-sharing between cities involved in integrated sustainable urban development and in urban innovative actions; (iii) Encourage the cities to pave the way for local stakeholders, businesses, the public sector and civil society to get more involved in urban neighborhood regeneration; (iv) Integrate territorial investments to be used to implement area-based strategies that rely on investments across different fields. Further, it seems necessary to define joint procedures at the regulatory level that establish joint commissions, the timing to issue the joint advice, and related guidance and standards concerning the procedures for any intervention to be carried out in the urbanization planning and specially on protected cultural heritage.

¹⁷⁶ See, table 8 on the criminal sanctions for cultural item exposed at risk.

¹⁷⁷ Specific administrative sanctions such as electricity bar and voidness of contracts should be imposed. This could refrain citizens and entrepreneurs by violating urban instruments as the illegal building they have constructed would not receive electricity or would be not sellable at all. This new sanctioning system could well be envisaged considering, for example, article 180, comma 2, of the Azerbaijan civil code.

¹⁷⁸ The main objective should be the reinforcing of the legislation on landscape protection in compliance with the European Landscape Convention requirements that presuppose: (i) The drawing up of specific landscape policies in which landscape is not additional to other themes but is an integral part of them; (ii) A transition from a policy based only on protecting a territory's features and parts recognized as outstanding to a policy based on the quality of all living

	Law on Protection of Cultural and Historical Monuments		1.Elaboration of state programs and definition of the level of significance; 2. Listing/removing of monuments (passports, maps and buffer zones); 3. Database system restoration-conservation works and related obligations; 4. Loans, lease and sale (SL); 5. Standards and procedures for conservation, energy efficiency and seismic rehabilitation; 6. Exportation and circulation of cultural properties; 7. Preemption of private ownership; 8. Obligations for conservation works; 9. Procedures for preventive and rescue archaeology, for special reserves and works, for archaeological and architectural research ¹⁷⁹	Secondary legislation

surroundings, whether outstanding, every-day or degraded; (iii) a definition of and experience with new forms of collaboration between the various bodies and the various levels of administration; (iv) 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. Considering these tasks, the new legislation should be developed through secondary norms deriving from the general principles and the provisions included in the Law for Construction and Town-planning and in the Law on the Protection of Cultural Heritage. This legislation need to be developed reflecting in precise and detailed manner the steps indicated. What seems to be still missing is, in fact, a comprehensive set of regulations and standards for each and every procedure, as well as standards that can assist to enhance the quality of interventions on historic, cultural and natural monuments/areas, in all categories described in the law. The main objective will be the preparation of detailed procedures through internal regulations for each and every action regulated by the current legislation affecting cultural and natural heritage. Each activity or task need to be accompanied by clear procedures that envisages the appointment of a responsible person for each and every procedure, defined timeframe. Standards and criteria need also to be defined for all procedures. Closely considering cultural heritage protection, the law that now is being drafted should include specific reference to the need to consider and assess impacts on cultural heritage, including archaeological assets, within EIA and SEA procedures through an ad-hoc methodology. The Heritage Impact Assessment (whose methodologies are easily available, including at the World Heritage level) requires a proactive and timely action from the Ministry of Culture in order to ensure that the matter is addressed in the draft law currently being prepared by the Ministry of Environment and UNECE.

¹⁷⁹ Many of the provisions of the Law on Protection of Historical and Cultural Monuments have the potential to be integrated and amended. In particular, should be considered the following: (i) The internal technical procedures such as: a. Elaboration of state programs, and listing of monuments that need restoration and conservation works; b. Issuing

	Law on licenses		Special competences in issuing licenses, qualified workers and enterprises ¹⁸⁰	Secondary legislation
	Law on Public Procurement		Special procedures and joint commissions for tenders ¹⁸¹	Secondary legislation
Listing of cultural properties and their inventory via electronic database	Legal instrument	Present text	Changes recommended	New article to be introduced
	Law on Culture		1. Listing of cultural heritages according to international legislation (e.g. under special and/or enhanced protection regime according to the 1954 Hague Convention and its Protocols); 2. Databases for criminal offences and administrative violations	Secondary legislation
	Law on Protection		1. Translate local,	Secondary

passports for immovable historical and cultural monuments; c. Designating buffer zones of immovable historical and cultural monuments; d. Establishment of database on the protection of the immovable historical and cultural monuments, creating a database system conforming modern requirements, applying multimedia and electronic observation systems; e. State purchase of the immovable historical and cultural monuments that are under private ownership or located in the territories of historical and cultural reserves; f. Adjusting normative documents on restoration-conservation works of the immovable historical and cultural monuments (including project estimate documents and state expertise) according to the international standards; g. issuing passports ; h. Drawing up maps ; k. Defining standards and guidelines for loans and lease of cultural properties ; i. Defining standards and guidelines for conditions authorizing the sale of cultural properties ; l. Criteria removal of the status of historic-cultural monuments ; m. Standards and procedures for definition of the budget ; n. Standards for safeguard and preventive conservation measures in case of interventions ; o. Definition of standards for the conservation of works on historic- cultural monuments ; p. Standards and guidelines for energy efficiency within public historic-cultural monuments ; q. Standards and guidelines for seismic rehabilitation of historic-cultural monuments; (ii) The external procedures relevant for private and public entities owning protected properties: a. Authorization for works on protected historic-cultural monuments ; b. Authorization for lease of cultural properties within the limits of the law ; c. Authorization of sale of cultural properties within the limits of the law ; d. Definition of the level of cultural significance ; e. Authorization for removal of cultural properties from the register/ list of protected monuments ; f. Procedures to impose conservation works to owners that do not carry out their conservation duties ; g. Procedures and standards for preventive and rescue archaeology ; h. Procedures and standards for authorization /denial of export of works of art ; k. Procedures for the circulation of cultural properties ; i. Procedures for the authorization of excavations and archaeological research ; l. Definition of procedure for permitting research on architectural monuments ; m. Procedures for the establishment of special reserves ; n. Procedures for authorization of works within protection zones.

¹⁸⁰ See, notes 157 and 162.

¹⁸¹ See, Notes 157 and 162. The main problem seems to be connected to the overlapping/not clear division of the competences, especially between the Ministry of Ecology and the MCT. There should be, therefore, a law on public procedures establishing the possibility to issue authorization for works/activities to be carried out on cultural/natural properties within the so-called conference of services, which is a collegial body formed by the representatives of the competent bodies that are called to provide their authorization or advice on certain works or activities.

	of Historical and Cultural Monuments		regional and national inventories into digital databases ; 2. Allow access through a single online portal	legislation
	Law on Protection and Development of Carpet		Listing and databases	Secondary legislation
	Decree of the President of Azerbaijan Republic on the Application of the Law about Library Work		National and Regional Portal websites and organization of minor libraries	Secondary legislation
	Law on Museum		Full inventories and databases ¹⁸²	Secondary legislation

¹⁸² Through secondary normative tools, there should be the reinforcing of the existing legislation, that is mostly the Law on Culture (Articles 14.2.9, 26.1, 26.2, 26.3, 26.4, 29.3, 33.3, 41.1 and 41.2), the Law on Protection of Historical and Cultural Monuments (Articles 8 and 15.2), the Law on Protection and Development of Carpet (Articles 4.1.2 and 5), and the Law on Museum (Article 1.8). In particular, the competent authority should establish that inventories are to be comprehensive and coordinated, including all publicly and private owned cultural properties. In case of private collections and properties, an authorization by the owner should be obtained and incentives could be granted (e.g. via fiscal incentives). In addition, the competent administrations should take all possible measures in order to adopt a common international standard for inventorying cultural properties, so as to facilitate the spreading and circulation of information. The inventorying process should be completed through a cataloguing system and an electronic database for listed properties. In brief, it is of utmost importance: (i) To enact unified national inventory (even consolidating existing registers and catalogues), or to implement and interconnect existing inventories -both public and private- in a coordinated network of national databases; (ii) To establish a common infrastructure, which would allow access through a single online portal to all national and international inventories and databases of cultural property; (iii) To establish and develop databases concerning criminal offences and administrative violations against cultural property, by detailing objects and people engaged in illegal activities. Three levels of detail should be envisaged: (i) Inventory fiche, containing basic information, such as address, location, definition, name; (ii) Pre-catalogue fiche, with some more information that could be collected by direct observation; and (iii) Catalogue fiche, which requires also bibliographic and archival research. From this database, other ones should be developed, containing different and more detailed data that could be useful to monitor the state of conservation of the properties or to orient intervention priorities. A process of progressive implementation of the assessment of seismic vulnerabilities of cultural properties in public use should also be initiated. Competent administrative bodies should then promptly consider the ad-hoc provisions of the international Conventions and their specific guidelines for the registration of natural/cultural and tangible/intangible heritage.

1.5 Modernization of the museum branch

Within the Twinning project, it is considered appropriate to envisage a model of competences of the Azerbaijan museums network, based on the indications of Presidential Decree No. 273/2014 approving a "Culture Concept of the Republic of Azerbaijan" and on the European approach to museum management. Following these indications and approach, the Azerbaijani museum system is called to operate a macro division of State Museums having a direct autonomy and Regional Museums which should be gathered within an autonomous regional network, under the Directorate-General of the Department for Cultural Institutions and Folk Art of the Ministry of Culture and Tourism (MCT).

Both State Museums Network and Regional Museums Networks should be characterized by scientific and administrative autonomy.

As far as the targets, it is opportune to consider the following activities:

A) In the short term: (i) The preservation of museum collections, issuance of passports for all artworks, conservation and restoration and improved compilation of museum collections; (ii) Improvement of the contents of museum exhibitions, organization of conceptual presentations and exhibitions devoted to various topics; (iii) Pay more attention to people with disabilities; (iv) Improve protective and security systems in museums; (v) Set up consortiums of museums with shared publicity and costs; (vi) Foster communication between the country's museums and join forces between thematical museums; (vii) Discover new ways of earning money (fund-raising, sponsorships, lotteries, grants etc); (viii) Allow museums to retain their earned income and raise the VAT threshold; (ix) Exempt museums from paying taxes for grants and donations received; (x) Create tax credit to encourage donations for supporting culture;

B) In the medium term: (i) Recruit new skills to the workforce and/or provide to the re-skilling of part of existing museum staff; (ii) Provide integration of museums in the touristic routes; (iii) Elaborate educational and interactive programs; (iv) Develop of museum marketing; compilation of tourist-oriented catalogues, calendars, brochures and souvenirs; (v) Set up partnerships between national and regional museums; (vi) Provide for digitalization of museum data; (vi) Provide for online access to museum materials making them available for free via online; (vii) Link museum collections and make them available to users; (viii) Use digital content in a dynamic and different number of ways.

C) In the long term: (i) Recognize a greater autonomy to museums and establish State archaeological parks; (ii) Introduce an active acquisitions policy; (iii) Establish a database of museum statistics; (iv) Raise standards for collection care, both professional and voluntary; (v) Develop international relationships; (vi) Create a State Museum of contemporary Azeri art; (vii) Ease the foundation and ploriferation of municipal museums.

For modernizing its museums and realizing the suggested reforms, Azerbaijan legal system should introduce opportune amendments at least to: (i) The Law of Azerbaijan Republic on Museums; (ii) The Law on Culture of the Republic of Azerbaijan; (iii) The Law of Azerbaijan Republic on Grant; (iv) The Tax Code.

For being fully implemented, the amended legal framework should, then, be supported by more detailed regulations, with the intention of avoiding rigidity. The secondary legislation so far enacted should be reviewed and amendments introduced in: (i) The Ministry of Culture and Tourism, Guidelines on Records and Preservation of the Museum Items and Museum Collections in the Republic of Azerbaijan 2008; (ii) The Presidential Decree No. 273/2014 Culture Concept of the Republic of Azerbaijan; (iii) The Decision 1 Ministry of Culture and Tourism, April 27, 2015 Statue on Department of Cultural Institutions and Folk Art of Ministry of Culture and Tourism of the Republic of Azerbaijan; (iv) The Rules on Awarding Cultural Organizations with Special Status confirmed by the Cabin of Ministers, October 5, 2016; (v) The Rules on duplicating cultural items, producing souvenirs and printed works confirmed by the Cabin of Ministers, September 23, 2016; (vi) The Statute of History-Local Lore Museums confirmed by MCT; (vii) The Statute of National Art Museum confirmed by MCT; (viii) The Statute of Procurement Committees of Museums confirmed by MCT; (ix) The Statute of Museum of Natural History confirmed by the Cabin of Ministers, July 10, 2015; (x) The Statute of Scientific Council of National Art Museum.

5° Table of concordance

	Legal instrument	Present text	Changes recommended	New article to be introduced
Modernization of the museum branch				
	Law on Museums	Article 2	1.Autonomy museums ¹⁸³ ; to 2.partnership and consortium of museums ¹⁸⁴ ; 3.Acquisitions policies; 4.Improvement of exhibitions ; 5.Protective and security systems in museums ¹⁸⁵ ; 6. Create a State Museum of contemporary Azeri	Articles 2bis and 2 ter. Primary and secondary legislation

¹⁸³ Article 2 bis . **General principles on autonomy of museum activities**

2bis. 1 Scientific and administrative autonomy of museums activities is central to the Government policies and is assured through the following:

- (i) State Museums and Regional Museums shall be financed by state budget, extra-budgetary incomes and other resources not prohibited by law. In accordance with legislation, they may engage in economic activity and launch public fundraising campaigns of cultural interest. Income of business and other activities remain at the disposal of museums and are exempted by taxes;
- (ii) The governing bodies of State Museums and Regional Museums shall regulate and promote access to structures, drawing up guidelines on opening hours, ticketing and policies for admission prices to museums, taking care of coordination among regions, public authorities and private organisations, offering technical and administrative support at national level and promoting the formation of local museum centres for the integrated management of the activities of museums and cultural places;
- (iii) State Museums and Regional Museums shall take care of cultural projects, promoting agreements and facilitating the exchange of works at international level, establishing the criteria for the loan of assets and declaring the relevant cultural or scientific interest of exhibitions, events and displays;
- (iv) State Museums and Regional Museums shall monitor quality, constantly updating the service charter, drawing up qualitative parameters;
- (v) State Museums and Regional Museums shall encourage active participation, drawing up and publishing an annual report on the management of museum services, promoting and managing awareness projects.

2bis. 2 Sub-laws shall be enacted to grantee appropriate financing and to establish bodies and competences of State Museums and Regional Museums.

¹⁸⁴ **Article 2ter Integrated museum system, consortiums of museums and partnership**

2 ter.1In the Republic of Azerbaijan, Museums can pool resources and share training, publicity, education programs, and departments handling and technical skills. State encourages the creation of integrated museums systems implying partnership and/or consortium with groups of museums, all acting equally to share collections and resources.

2 ter.2 Partnership and consortium can be grouped around a collection with a similar theme sharing publicity and making the best use of resources. They can add more impact to funding, publicity, shared websites, or shared events.

2 ter.3 Partnership/consortium should have a signed agreement to make it clear as to what each party has committed to and what are the benefits.

¹⁸⁵ Guidelines should be enacted following the ICOM principles as set up in this field.

			art; 7.Ease the foundation of municipal museums ¹⁸⁶	
	Law on Culture		1.Preservation of museum collections (conservation and restoration, issuance of passports) ; 2. Establish State archaeological/natural parks ¹⁸⁷ ; 3. International relationships ¹⁸⁸	Primary and secondary legislation
	Law on Grant		New funding ways ¹⁸⁹	Primary and secondary legislation
	Tax Code		Tax incentives and credits ¹⁹⁰	Primary and secondary legislation
	The Ministry of Culture and Tourism, Guidelines on Records and Preservation of the Museum Items and Museum Collections, 2008		Statistics Training	Secondary legislation
	Decision 1 Ministry of Culture and Tourism, April 27, 2015 Statue on Department of Cultural Institutions and Folk Art of Ministry of Culture and Tourism		1.Provide integration of museums in touristic routes 2.Voluntaries 3.People with disabilities involvement	Secondary legislation
	Rules on duplicating cultural items, producing souvenirs and printed works confirmed by the Cabin of Ministers, September 23, 2016		Museum marketing	Secondary legislation
	Statute of National Art Museum confirmed by MCT		Provide for digitalization and online free access and	Secondary legislation

¹⁸⁶ Themes indicated in points 3,4,6 and 7 are to be ruled by secondary legislation.

¹⁸⁷ Article 20.1.3 of the Law on Culture should be amended as it follows: “preservation, promotion and stimulation of the historical and cultural monuments as well as of archaeological and natural parks;”. This amendment should be accompanied by secondary legislation establishing rules and guidelines.

¹⁸⁸ The international cooperation should be developed and every effort should be made to create confidence in international loans: Secondary legislation and guidelines on this topic are to be enacted urgently.

¹⁸⁹ See, the second table of concordance.

¹⁹⁰ See, the second table of concordance.

			link collections	museum	
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1.6 Modernization of libraries and related information supply

Azerbaijan legal system should fully consider the principles governing the European digital library Europeana, and those set by the European Union in the Resolution of the European Parliament: “Towards an integrated approach to cultural heritage for Europe” and by the Directive 2003/98/EC on the re-use of public sector information, as amended by the Directive 2013/37/EU.

The major text to be amended is the Law about Library and this legal framework should be supported by more detailed regulations. Accordingly, a new set of guidelines and statute should accompany the secondary legislation so far enacted and amendments introduced in: (i) The Regulation of the National Library of Azerbaijan; and (ii) The Presidential Decree Upgrading organizational structure of the Ministry of Culture and Tourism of the Republic of Azerbaijan” of the 29 March 2016.

In particular, Azerbaijan legal system should enact appropriate provisions for modernizing its libraries on:

A) The National Library that should: (i) Become an autonomous institution with scientific, financial, administrative and accounting autonomy; (ii) Become the nationwide scientific authority in library field; (iii) Increase provision of foreign literature in original language; (iv) Realize a strong collaboration, both on digitization and conservation programs with the Institute of Manuscripts of the Azerbaijan Academy of Sciences; integrating its initiatives also with the Youth Library, the Children’s Library, and the Library for blind people.

B) A system of 15 Regional Libraries (to be connected with the ALISA System) that should be created. These Regional Libraries are called to: (i) Verify in every single Regional System the existing collective resources of its libraries, designing both the nature and the procedures of the services to be delivered, realizing 15 Regional Portal websites; (ii) Connect every single Portal with others Regional Systems, and the National Library; (iii) Design and carry out digital services; (iv) Organize minor libraries as local loan points. The provisions to be enacted should: a. Identify the territorial areas of interest of the 15 Regional Library Systems, based on the Presidential Decree “Upgrading organizational structure of the Ministry of Culture and Tourism of the Republic of Azerbaijan” of the 29 March 2016; b. Establish the 15 Regional Library Systems and other local points of reference, identifying their mission statement and the legal form (convention, consortium, etc.) better fitting it.

C) The information system that should be required to provide the following: (i) Make digital copy available on the web, while respecting property rights issues; (ii) Design and manage the whole life-cycle of digitization, from selection of documents to long-term preservation; (iii) Adopt technical standards to ensure interoperability ; (iv) Implement accurate reflection on DRM (Digital Rights Management) policy. In the absence of norms on the subject, it is necessary to enact a regulation on the re-use of documents containing public data in public authorities availability. A model is the Directive 2003/98/EC on the re-use of public sector information, (as amended by the Directive 2013/37/EU).

6° Table of concordance

	Legal instrument	Present text	Changes recommended	New article to be introduced
Modernization of libraries				
	Law about Library	Article 7	A. National Library: as autonomous institution with nationwide scientific authority; B. 15 Regional Libraries ; C. Digitalization of the system. Digital Rights Management and re-use of documents ¹⁹¹ .	Via primary legislation -to be accompanied by secondary legislation- competences, digitalization and financial provisions of national and regional libraries.

¹⁹¹ The Law about Library should be amended as it follows:

Article 7. National Library

7.1 National Library is the national culture treasure and state book holder which executing state policy in library field and protecting national publications, plays published in foreign countries and plays of Azerbaijani writers, world importance publications, as well as precious information in foreign languages and other information resources.

7.2 National Library follows functions as leading institution for scientific-research works in fields of librarianship and bibliography, methodical center for all libraries of country, complex library-bibliography for users, interlibrary subscription, internal and international depository center.

7.3 National Library acts in accordance of regulation approved by relevant executive authority (Cabinet of Ministers of Azerbaijan Republic).

7.4 Fund and property of National Library are protected by state as national value and special object.

7.5 Appropriate additions determined to wages of employees of National Library.

7.6 To eliminate or to change property type of National Library prohibited.

7.7 Land area determined by law may be issued to National Library for free of charge and indefinitely use.

7.8 *The governing body of the National Library shall register all the libraries and assess the existing collective resources of the libraries, designing both the nature and the procedures of the services to be delivered, and shall realize a National Portal website aimed to become the main, single access points to the networks and their services*

Article 7 bis. National and Regional Libraries

7bis. 1 Scientific and administrative autonomy of the National and Regional Libraries activities is central to the Government policies and is assured through the following:

- (i) National and Regional Libraries shall be financed by state budget, extra-budgetary incomes and other resources not prohibited by law. In accordance with legislation, they may engage in economic activity and launch public fundraising campaigns of cultural interest. Income of business and other activities remain at the disposal of the libraries and are exempted by taxes;
- (ii) The Governing bodies of National and Regional Libraries regulate and promote access to structures, drawing up guidelines on opening hours, policies for admission, taking care of coordination among regions, public authorities and private organisations, offering technical and administrative, promoting the formation of local libraries;
- (iii) National and Regional Libraries shall take care of cultural projects, promoting agreements and facilitating international, inter-regional and inter-departmental co-operation between libraries.
- (iv) National and Regional Libraries shall monitor quality, constantly updating the service charter, drawing up qualitative parameters;
- (v) National and Regional Libraries shall encourage active participation, drawing up and publishing an annual report on the management of library services, promoting and managing awareness projects.

7bis. 2 Sub-laws shall be enacted to grantee appropriate financing and to establish bodies and competences of National and Regional Libraries.

Article 7. ter Regional Library

	Regulation of the National Library of Azerbaijan		1. Increase provision of foreign literature ; 2. Digitization and conservation programs : a. Make digital copies available on the web ; b.long-term preservation ; c.interoperability ¹⁹²	Secondary legislation
	Presidential Decree Upgrading organizational structure of the Ministry of Culture and Tourism of the Republic of Azerbaijan” of the 29 March 2016		Regional Portal websites and organization of minor libraries ¹⁹³	Secondary legislation

7ter.1 The governing body of Regional library shall realize a Regional Library System or network that includes local libraries, in order to manage all the competent regional services through automated procedures. All the other libraries in its competence shall be connected to the Regional Library System using standard automated procedures and with the assistance of the regional one.

7ter.2 The governing body of Regional Library shall assess the existing collective resources of the libraries, designing both the nature and the procedures of the services to be delivered, realizing a Regional Portal website aimed to become the main, single access points to the networks and their services. Every single Portal shall be connected to the Portals of others Regional Systems, and to the National Library.

7ter.3 Regional Library shall design and carry out the required range of digital services, organizing minor libraries as local loan points.

7ter.4 Sub-laws shall be enacted to establish the territorial areas of competence of each Regional Library, identifying their legal form.

Article 7 quarter. National and Regional Libraries collaboration

7quater. 1 National and Regional Libraries shall realize a strong collaboration, both on digitization and conservation programs, making digital copy available on the web, while respecting property rights issues.

7quater. 2 National and Regional Libraries shall design and manage the whole life-cycle of digitization, from selection of documents to long-term preservation, adopting suitable technical standards to ensure interoperability, implementing accurate various access control technologies.

7quater. 3 National and Regional Libraries shall realize a strong collaboration with the Institute of Manuscripts of the Azerbaijan Academy of Sciences, integrating their initiatives with the Youth Library, the Children’s Library, and the Library for blind people.

7quater. 4 Sub-laws shall be enacted to grantee appropriate digitations criteria, procedures and standards.

Article 15. Provision of libraries with free of charge necessary publications

15.1 National Library, libraries of legislation and relevant executive authorities (Libraries of Executive Office of the President of Azerbaijan Republic and libraries of Cabinet of Ministers of Azerbaijan Republic), republican scientific-branch libraries and library of Baku State University entitled to receive necessary copies of publications by procedures of relevant executive authority (Cabinet of Ministers of Azerbaijan Republic).

15.2 Two necessary free of charge copies of publishing products produced by governmental and non-governmental publishing houses, printing firms performed publishing activity and other legal persons should be sent to National Library.

¹⁹² See, the recommended amendments to the Law about Library.

¹⁹³ See, the recommended amendments to the Law about Library.

1.7 Protection of immaterial cultural heritage

The 2003 Law On Legal Protection of Azerbaijani Folklore Expressions as well Law on Culture, Rules of permission for commercial use of folklore outside the territory of the Republic of Azerbaijan by legal and natural persons of other states (confirmed by Cabin of Ministers order, nr.172- 20.10.2011), Law on Copyright and Related Rights, Code of Administrative Offences, Criminal Code, the principles established by “Azerbaijan 2020: Look into the future” Concept of Development and the Presidential Order N2031, 12.03.2007 are at the present taking care of the Azerbaijan immaterial cultural heritage. These provisions should be amended to abide the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.

To address this target a draft has been prepared; but, as established in the transitional and final provision (see, Article 15), the Ministry of Culture and Tourism is called to develop and approve detailed regulations. In particular, what should be created is a comprehensive set of provisions addressed to:

- (i) Update inventories and the relevant information therefrom, providing opportune digitalization of their data and creating a national single portal (dedicated to tangible -cultural/natural- and intangible heritage) that should consider three main aspects: a. A database of tangible and intangible objects, including examples of best practices in preservation and promotion with all relevant references; b. Funding opportunities for heritage, as well as data on the state of Azerbaijan heritage and data of importance with regard to conservation and details of projects already carried out; and c. News and links concerning heritage-related policy developments, actions and events; ensuring opportune interconnection between data on tangible (natural and cultural) and intangible heritage fostering their information and common enjoyment;
- (ii) Face the lack of professionalism among many operators, the poorly structured nature of the chain, the absence of specialized vocations, and the strong prevalence of an informal market;
- (iii) Create a system of planning, implementation and monitoring procedures;
- (iv) Enhance educational, awareness-raising and information programmes;
- (v) Enhance international cooperation;
- (vi) Involve groups and relevant non-governmental organizations;
- (vi) Ensure the involvement of the available personnel at city (district) culture clubs and municipalities;
- (vii) Replace public funding, mainly by private funding sources, enhancing sponsorship, PPP and other forms of business involvement in this sector;
- (viii) Establish new preferential tax policies to be implemented via amendments to the Tax Code;
- (ix) Ensure -even through incentives- that the huge amounts of material of major historical and cultural importance that are in private collections are collected into the above recommended centralized data-base;
- (x) Enact provisions for copyrights protection for intangible cultural heritage considering the World Intellectual Property Organization (WIPO) rules.

7° Table of concordance

	Legal instrument	Present text	Changes recommended	New article to be introduced
Protection of immaterial cultural heritage				
	Law On Legal Protection of Azerbaijani Folklore Expressions		1.Training of operators ; 2.Planning and monitoring; 3.Awareness-raising and information programmes; 4.International cooperation ¹⁹⁴ .	Draft of the Law of the Republic of Azerbaijan on Protection of Intangible Cultural Monuments ¹⁹⁵

¹⁹⁴ Themes indicated in points 1,2,3 and 4 are to be ruled by secondary legislation.

¹⁹⁵ **Draft of the Law of the Republic of Azerbaijan on Protection of Intangible Cultural Monuments**

CHAPTER I GENERAL PROVISIONS

Article 1. Purpose of the Law

The purpose of the present Law is to identify and protect Azerbaijani intangible cultural monuments, facilitate its transfer from generation to generation and dissemination and regulate legal relations arising in this field.

The Legislation of the Republic of Azerbaijan on protection of intangible cultural monuments consists of the Constitution of the Republic of Azerbaijan, the present Law, other normative-legal acts and international agreements to which the Republic of Azerbaijan is a party.

If contradiction arises between this Law and international agreements to which the Republic of Azerbaijan is a party, those international agreements shall be applied.

Article 2. Scope of Application of the Law.

The present Law applies to the entire intangible cultural monuments on the territory of Azerbaijan.

The Law defines the rules and main criteria of uncovering and protection of intangible cultural monuments, persons/bodies responsible for protection of intangible cultural monuments, their competence, the rights and obligations of the persons, associations of persons and other public units participating in the field.

Azerbaijan takes care of its intangible cultural monuments abroad.

Article 3. Terms used in the Law

For the purposes of the present Law, the terms used in the present Law are defined in the following way:

(i) Intangible cultural monuments (hereinafter referred to as ICM) -traditions, practice, beliefs and forms of expression, related knowledge and skills, as well as instruments, technologies, objects, artifacts and cultural areas associated with them, which are recognized by communities, groups and in certain cases, by individuals, as part of their cultural heritage, which are permanently renewed by communities and groups in accordance with the environmental conditions, nature and their history, which forms the feeling of identity and continuity, thus facilitating respect of diversity of cultures and human creativity;

(ii) Fields of ICM - Fields in which ICM is reflected, in particular: b. a) Traditions of oral lore and forms of expression, including language as the instrument of ICM practicing; b. b) Performing arts; b. c) Social practices, rituals and festive events; b. d) Knowledge and practices related to nature and the universe; b. e) Traditional fields of craftsmanship.

(iii) ICM element - ICM sample;

(iv) Carrier of ICM -a person possessing knowledge and/or skills related to ICM element. Tradition of ICM is an integral part of its everyday life and cultural identity;

(v) Cultural area - geographic area related to ICM practicing which represents an environment necessary for existence of ICM;

(vi) Community - historically formed unity of carriers of ICM having common interests and cultural identity.

(vii) Monument - ICM element which is granted a status of ICM monument/ICM monument of national importance in an established manner.

(viii) Safeguarding - measures aimed at ensuring the viability of the intangible cultural monuments, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

Article 4. ICM Protection Bodies

State protection of ICM shall be exercised by the Ministry of Culture and Tourism of the Republic of Azerbaijan (hereinafter referred to as the Ministry), local self-governing entities, as well as state bodies, and legal entities of public and private law within the authority prescribed by the legislation of Azerbaijan.

Article 5. Competences of the Ministry in the field of ICM

Within the competences prescribed by the legislation of Azerbaijan, the Ministry shall: (i) Elaborate and implement the state policy for cultural heritage protection and development, ensure the supervision of ICM; (ii) Elaborate and issue normative and independent legal acts in the field of ICM protection defined by the legislation; (iii) Lead and coordinate the uncovering, protection and promotion of ICM on the entire territory of Azerbaijan as well as among the groups residing beyond borders of Azerbaijan, and monitoring of the condition thereof; (iv) Ensure uncovering, study and state registration of ICM, establish the ICM uncovering and registration procedures, the registration document form and content; (v) In case of need, prepare proposals for definition of protected cultural areas of ICM, regulation of activities carried out within their limits, draft respective normative acts and submit them to competent state bodies for approval as prescribed by the legislation of Azerbaijan; (vi) Create a unified repertory of the ICM and set a IT database to ensure security, publicity and availability of information; (vii) Develop and implement task-oriented and state programs aiming to uncover, protect and promote ICM, and conduct state procurement; (viii) Cooperate with other state bodies, legal entities and individuals to reveal, react and prevent administrative violations relating to ICM protection; (ix) Ensure the ICM protection during military actions or states of emergency in compliance with international legal regulations; (x) Train in the management of the intangible cultural heritage;

An advisory body -Intangible Cultural Monuments Board (hereinafter referred to as the Board)- is set up at the Ministry. The Board shall be staffed with experts of the field. The procedure of operation and the competences of the Board shall be defined under the decree of the Board approved by the Minister.

The Board shall consider the issued relating to: (i) Matters related to definition of state policy of ICM protection; (ii) Matters related to granting and cancelling, defining and amending a status of a monument (including a monument of national importance); (iii) Scientific-methodological matters of ICM uncovering, protection and promotion; (iv) Nominations of the Minister to the Cabinet of Ministers on granting and cancelling the status of "Living Human Treasure"; (v) State projects and programs to be implemented in the field of ICM; (vi) Other matters assigned to the Board's competence by the Minister, under Regulations of the Board and the legislation of Azerbaijan in the field of ICM; (vii) Composition of the Board, other matters assigned to its competence, the procedure of its calling, consideration of matters, making and executing a decision are defined by the Regulations of the Board approved by the Minister.

The decisions adopted by the Board shall have a power of recommendation to the Minister and the reason for non-consideration of the Board decision by the Minister must be justified by the respective legal act of the Minister.

The Minister is authorized to accept the applications as prescribed by the present Law, issue decisions and issue information by electronic means of management. A legal act issued by electronic means of management shall enter into force upon its publication on the official website of the Ministry.

The procedure and conditions of use of electronic means of management shall be defined in the Instructions.

Article 6. Competences of local self-government institutes in the field of protection of intangible monuments

Within the competence prescribed under the legislation of Azerbaijan, local self-governing entities shall: (i) Ensure the uncovering, description of ICM of the persons/communities residing on their territory, care about its maintenance, practicing, study, revitalization and regular monitoring of its condition in accordance with the procedures prescribed by the present Law; (ii) Notify the Ministry about the discovery and uncovering of intangible cultural monuments and its condition, submit proposals for granting and cancelling a status of a monument to ICM (including a monument of national importance), as well as definition of the protected cultural area, respective protection regime; (iii) With the aim of providing information and technical support in the field of ICM, cooperate with the Ministry, other state bodies and legal entities of public and private law; (iv) Implement other activities in the field of ICM as prescribed by the legislation of Azerbaijan.

Article 7. Rights and Obligations of Individuals and Legal Entities in the Field of ICM

Protection

Any person is authorized to be a carrier of ICM, use it in everyday life, become acquainted, keep, teach or study ICM traditions, participate in any events related to ICM in any form if this does not contradict the universally accepted standards of conduct, does not materially infringe on legal interests of other persons/groups, or does not contravene the Azerbaijan legislation.

Any community, group or individual which are carriers of ICM are authorized to request carrying out of ICM protection measures as prescribed by the present Law and the Azerbaijani legislation from respective persons/organizations.

Other rights and obligations of individuals and legal entities in the field of ICM protection shall be defined by the legislation of Azerbaijan.

CHAPTER II UNCOVERING AND REGISTRATION OF INTANGIBLE CULTURAL MONUMENTS

Article 8. ICM register, granting a status and registration

A state register of ICM is created for registration of ICM which is subject to permanent update and shall be maintained by the Ministry and the Azerbaijan government within their competence. The Minister shall make decisions to grant the

status of a monument as prescribed by the present Law on his own initiative, on the basis of nomination of local self-governing entities and Autonomous Republics or applications of concerned persons.

The ICM element identified as prescribed by the present Law which is granted a status of a monument shall be inscribed on the ICM register. Granting a status of a monument to ICM element automatically implies its inscription on the ICM register.

ICM element shall be granted a status of a monument if: (i) It represents a sample of oral lore, traditions and forms of expression, performing arts, customs, knowledge and skills related to nature and the universe of traditional craftsmanship; (ii) It is recognized by communities, groups and in certain cases, by individuals, as part of their cultural heritage, is transferred from generation to generation and represents an attribute of originality and identity; (iii) It is identified in the established manner, is used in practice and a living carrier of its existence.

ICM element shall be granted a status of a monument on the basis of the respective opinion of the Board, by decision of the Minister.

Under decree of the Azerbaijani government, the status of ICM monument of national importance may be granted to ICM element/monument if it has an outstanding importance in the cultural heritage of Azerbaijan, plays a particular role in maintaining and development of historically formed cultural identity, facilitates cultural diversity and self-expression at a general national level.

Decision on granting/cancelling a status of ICM monument of national importance is made by the Azerbaijan Cabinet of Ministries upon the recommendation of the Ministry, based on the opinion of the Board.

If it is established by respective studies, that the monument has lost features for which it had been granted a status of a monument, or it contradicts the current legislation, on the basis of a relevant opinion of the Board, the status of a monument shall be cancelled and it will be removed from the register of ICM by resolution of the Minister/Azerbaijani government.

The status of ICM monument of national importance will be cancelled, if the conditions for which it had been granted a status of a monument of national importance are changed or in case stipulated by paragraph 7 of this Article. In case of cancellation of the status of ICM monument of national importance, ICM will maintain the status of ICM monument except the case when this status was cancelled on the ground stipulated by paragraph 7 of this Article.

ICM monument of national importance shall be nominated to UNESCO for inscription on the lists defined by the Convention for the Safeguarding of the Intangible Cultural Heritage, if it demonstrates the cultural identity of the country, its role in the diversity of the world culture and meets the criteria stipulated by the Convention in the best way.

ICM monument of national importance shall be nominated to the organization specified in paragraph 9 upon proposal by Board.

Article 9. Submission of application for granting a status of a monument

An application for granting a status of ICM monument/ICM monument of national importance shall be submitted to the Minister. Any resident/citizen of Azerbaijan is authorized to submit the application.

The application for granting a status of a monument to ICM element shall be enclosed by: (i) Detailed description of ICM element, information on the procedure and intensity of its use in everyday life, related instruments, objects, artifacts and technologies; (ii) Information on carriers of ICM element (community, groups, persons), their estimated number, their traditional and current settlement area; (iii) Information on ICM element dissemination area, their varieties by areas; (iv) Information on the cultural area related to ICM element; (v) Substantiation of its consideration as ICM element and granting a status of a monument/monument of national importance to it.

In case of request to grant a status of a monument to ICM element by a concerned person, if respective grounds exist, the Minister shall make decisions to grant a status of a monument to ICM element or reject to grant a status of a monument to ICM element.

CHAPTER III ICM PROTECTION

Article 10. ICM Protection Measures

Legal measures of ICM protection are as follows: (i) Granting a status of a monument to ICM; (ii) Inscribing ICM on the List of Monuments in Danger; (iii) Granting a status of a "Living Human Treasure" to a carrier of ICM.

In addition to the measures stipulated by paragraph one of this Article, ICM protection also implies taking measures to ensure viability of the intangible cultural monuments, as well as measures for their uncovering, documentation, study, promotion, development, maintaining, transfer from generation to generation by means of formal and informal education and other methods, its practical use or measures stimulating recovering of its practicing.

Article 11. List of the Monuments in Danger

For the purpose of additional protection of ICM in danger of disappearance, the monument shall be inscribed on the List of the Monuments in Danger.

For the purposes of the present Law, danger of disappearance shall mean such danger of preventing the ICM from transfer from generation to generation, terminating/reducing its practicing and reproduction, which may lead to complete termination of practical use of ICM.

The List of the Monuments in Danger is maintained by the Ministry and the procedures established for making decision on granting a status of ICM monument shall be applied to the decision to inscribe the monument on the List of the Monuments in Danger or remove it from this List.

	Law on Culture and Law on Protection of Historical and Cultural Monuments		a. A national single portal for cultural and natural heritage ¹⁹⁶ ; b. Personnel at city (district) culture clubs and municipalities ¹⁹⁷ ; c. Enhancing sponsorship and PPP ¹⁹⁸	Primary and secondary legislation
	Tax Code		Tax policies ¹⁹⁹	
	Law on Copyright and Related Rights ²⁰⁰		Copyrights protection for intangible cultural heritage	

The State takes particular care of the ICM inscribed on the List of the Monuments in Danger.

Article 12. "Living Human Treasure"

A carrier of ICM may be granted a status of "Living Human Treasure" on the basis of the opinion of the Board, upon the recommendation of the Minister, under decree of the Azerbaijani Cabinet of Ministers, if it possesses outstanding knowledge and skills in the respective field and guards, transfers traditions and contributes to cultural diversity and self-expression in the best way.

The status of "Living Human Treasure" may be granted only to the citizen of Azerbaijan, in case of his/her consent.

A person's status of "Living Human Treasure" will be automatically cancelled, if the respective monument's status is cancelled and the monument is removed from the register of ICM.

The person holding the status of "Living Human Treasure" shall maintain the status if the monument is removed from the List of Monuments in Danger.

CHAPTER IV FINANCING ICM PROTECTION

Article 14. Financing ICM Protection

ICM Protection is financed: a) From the state budget; b) From the budget of the local self-governing entity; c) Grants provided by international organizations; e) Donations.

CHAPTER V TRANSITIONAL AND FINAL PROVISIONS

Article 15. Normative acts related to entry of the Law into force (to be issued)

The Ministry of Culture and Tourism shall develop and approve: (i) Instructions "On the Procedure of Keeping ICM Registration Records"; (ii) Regulations of the ICM Board.

The Ministry shall be instructed to develop the 5-year further development strategy of the field and the annual action plan within 2 years upon entry of the present Law into force, draft and submit respective normative acts to the government for review and end approval.

¹⁹⁶ See, 4° table of concordance.

¹⁹⁷ Secondary legislation should rule on municipalities and districts competences and equip them with local cultural infrastructure and spaces. These local self-government bodies should be actively involved in the planning phase as well in its management. Local awareness arising campaigns, territorial controls and volunteers recruiting activities could also be entrusted to those bodies.

¹⁹⁸ See, 2° table of concordance.

¹⁹⁹ See, 2° table of concordance.

²⁰⁰ A new draft for copyrights protection of intangible cultural heritage is hereby proposed. This draft could be amended when the provisions of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore will be adopted. The proposed draft should be coordinated with the Law on Copyright and Related Rights, the Law On Legal Protection of Azerbaijani Folklore Expressions and other legal instruments such as the administrative code.

Draft articles for: The Protection of Traditional Knowledge and Expressions of Folklore

Article 1 Beneficiaries or Right holders

1.1 The owners of the rights shall be the holders of traditional knowledge, namely the local and traditional communities, and recognized individuals within such communities, who create, preserve and transmit knowledge in a traditional and intergenerational context.

1.2 The owners of the rights in expressions of folklore shall be the local and traditional communities:

(a) to whom the custody and protection of the expressions of folklore are entrusted in accordance with the customary laws and practices of those communities; and

(b) who maintain and use the expressions of folklore as a characteristic of their traditional cultural heritage.

Article 2 Rights conferred to holders of traditional knowledge

2.1 The owners of rights shall have the exclusive right to authorize the exploitation of their traditional knowledge. In addition, owners shall have the right to prevent anyone from exploiting their traditional knowledge without their prior informed consent.

2.2 For the purposes of this Article, the term "exploitation" with reference to traditional knowledge shall refer to any of the following acts:

(a) Where the traditional knowledge is a product:

(i) manufacturing, importing, exporting, offering for sale, selling or using beyond the traditional context the product;
(ii) being in possession of the product for the purposes of offering it for sale, selling it or using it beyond the traditional context;

(b) Where the traditional knowledge is a process:

(i) making use of the process beyond the traditional context;
(ii) carrying out the acts referred to under paragraph (a) of this article with respect to a product that is a direct result of the use of the process.

Article 3 Protection of expressions of folklore against unlawful acts

3.1 Expressions of folklore shall be protected against all acts of misappropriation, misuse and unlawful exploitation.

3.2 In respect of expressions of folklore of particular cultural or spiritual value or significance to a community, the State provide adequate and effective legal and practical measures to ensure that the relevant community can prevent the following acts from taking place without its free and prior informed consent:

(a) in respect of such expressions of folklore other than words, signs, names and symbols:

(i) the reproduction, publication, adaptation, broadcasting, public performance, communication to the public, distribution, rental, making available to the public and fixation (including by still photography) of the expressions of folklore or derivatives thereof;

(ii) any use of the expressions of folklore or adaptation thereof which does not acknowledge in an appropriate way the community as the source of the expressions of folklore;

(iii) any distortion, mutilation or other modification of, or other derogatory action, in relation to the expressions of folklore; and

(iv) the acquisition or exercise of intellectual property rights over the expressions of folklore or adaptations thereof;

(b) in respect of words, signs, names and symbols which are such expressions of folklore, any use of the expressions of folklore or derivatives thereof, or the acquisition or exercise of intellectual property rights over the expressions of folklore or derivatives thereof, which disparages, offends or falsely suggests a connection with the community concerned, or brings the community into contempt or disrepute.

3.3 In respect of the use and exploitation of other expressions of folklore, the State provide adequate and effective legal and practical measures to ensure that:

(a) the relevant community is identified as the source of any work or other production adapted from the expressions of folklore;

(b) any distortion, mutilation or other modification of, or other derogatory action in relation to expressions of folklore can be prevented and/or is subject to civil or criminal sanctions;

(c) any false, confusing or misleading indications or allegations which, in relation to goods or services that refer to, draw upon or evoke the expressions of folklore of a community or suggest any endorsement by or linkage with that community, can be prevented and/or is subject to civil or criminal sanctions; and

(d) where the use or exploitation is for gainful intent, there should be equitable remuneration or benefit-sharing on terms determined by the national competent authority in consultation with the relevant community.

3.4 The State provide adequate and effective legal and practical measures to ensure that communities have the means to prevent the unauthorized disclosure, subsequent use of and acquisition and exercise of intellectual property rights over expressions of folklore that are held secret.

Article 4 Legislative, administrative and/or policy measures

4.1 The State takes legislative, administrative and/or policy measures, as appropriate, with the aim of ensuring that:

i. Beneficiaries receive a fair and equitable share of benefits arising from the use of their traditional knowledge and expression of folklore; and

ii. Beneficiaries have the inalienable, indivisible and imprescriptible moral right of attribution and the right to the use of their traditional knowledge and expression of folklore in a manner that respects the integrity of such traditional knowledge and folklore.

4.2 The State shall develop the following national databases to which beneficiaries may voluntarily contribute:

(i) Publicly accessible national databases for the purpose of transparency, certainty, conservation, and trans-boundary cooperation, and to facilitate and encourage, as appropriate, the creation, exchange and dissemination of, and access to traditional knowledge and expressions of folklore;

(ii) National databases accessible only by intellectual property offices for the purpose of prevention of the erroneous grant of intellectual property rights. Intellectual property offices should seek to ensure that such information is

maintained in confidence, except where the information is cited during the examination of an application for intellectual property protection;

(iii) Non-public national databases for the purpose of codifying and conserving traditional knowledge and expressions of folklore within local communities. Non-public national databases shall only be accessible by beneficiaries in accordance with their respective customary laws and established practices that govern the access or use of such traditional knowledge.

4.3 The MCT Department of Cultural Institutions and Folk Art is the competent authority. It shall establish databases granting minimum standards to harmonize the structure and content of such databases, and shall encourage the development and use of voluntary codes of conduct. It shall discourage information lawfully within the beneficiaries' control from being disclosed, acquired by or used by others without the beneficiaries' consent, in a manner contrary to fair commercial practices.

Article 5 Sanctions and remedies

5.1 Appropriate and adequate criminal, civil or administrative sanctions, dispute resolution, enforcement procedures or mechanisms are applicable according to the civil, criminal and administrative codes against the willful or negligent harm to the economic and/or moral interest infringement of the protection provided to traditional knowledge or expressions of folklore. These procedures shall also provide safeguards for legitimate third party interests and the public interest.

5.2 Where the intentional wide diffusion of traditional knowledge or expressions of folklore beyond a recognizable community of practice has been determined to be the result of an act of misappropriation/misuse/unauthorized use/unfair and inequitable uses or other violation of national law, the beneficiaries shall be however entitled to fair and equitable compensation/royalties.

Article 6. Disclosure requirement

6.1 Where required by national law, the users of traditional knowledge or of expressions of folklore shall comply with requirements concerning the disclosure of source and/or origin of traditional knowledge and expressions of folklore. Disclosure requirements shall not include a mandatory disclosure requirement unless such disclosure is material to the patentability criteria of novelty, inventive step or enablement.

Article 7 Extraordinary exceptions and limitations

7.1 The MCT Department of Cultural Institutions and Folk Art may adopt extraordinary exceptions and limitations in the case of a national emergency or other circumstances of extreme urgency, to protect public interest, health or the environment.

7.2 Such exceptions and limitations shall consider the interests of beneficiaries, and whenever suitable shall be adopted with the prior informed consent or approval and/or involvement of the beneficiaries.

Article 8 Ordinary exceptions and limitations applicable to protection of traditional knowledge

8.1 The protection of traditional knowledge shall not be prejudicial to the continued availability of traditional knowledge for the practice, exchange, use and transmission of the knowledge by its holders within the traditional context.

Article 9 Ordinary exceptions and limitations applicable to protection of expressions of folklore

9.1. Measures for the protection of expressions of folklore shall:

(a) be such as not to restrict or hinder the normal use, development, exchange, dissemination and transmission of expressions of folklore within the traditional or customary context by members of the community concerned, as determined by customary laws and practices;

(b) extend only to uses of expressions of folklore taking place outside their traditional or customary context, whether or not for commercial gain;

(c) be subject to exceptions in order to address the needs of non-commercial use, such as teaching and research, personal or private use, criticism or review, reporting of current events, use in the course of legal proceedings, the making of recordings and reproductions of expressions of folklore for inclusion in an archive or inventory exclusively for the purposes of safeguarding cultural heritage, and incidental uses.

9.2 Provided that in each case, such uses are compatible with fair practice, the relevant community is acknowledged as the source of the expressions of folklore where practicable and possible, and such uses would not be offensive to the relevant community.

9.3 The measures put in place for the protection of expressions of folklore may make special provision for their use by the nationals of the country concerned.

Article 10 Term of Protection/rights

10.1 The term of protection/rights of traditional knowledge and expressions of folklore shall last as long as the traditional knowledge and the expressions of folklore satisfies the criteria of eligibility for protection as established by the MCT Department of Culture Institutions and Folk Art in its guidelines.

Article 11 International cooperation

11.1. International cooperation in traditional knowledge and expressions of folklore is state policy priority of the Republic of Azerbaijan.

	Code of Administrative Offences		Too lenient offences ²⁰¹	
	Criminal Code		Sanctions also for natural/cultural heritage exposed to risk ²⁰²	

1.8 Illegal trafficking and cultural/natural heritage penal protection

Criminal protection of cultural/natural heritage and reaction to its trafficking/destruction 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 Azerbaijan 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: a. Introducing limits of age and value; b. Defining cultural goods by categories; c. State ownership for undiscovered archaeological items; d. Protection of underwater cultural heritage.

To address these targets, the Azerbaijan legal framework should be improved. In particular, the Law on Culture, the Code on Administrative Violations, the Criminal Code and the Code of Criminal Procedure should be amended, considering the principles as established by the International Guidelines elaborated in Vienna and the Operational Guidelines to the 1970 UNESCO Convention.

The work to be done on the primary legislation should also address the following: (i) Providing for a coherent and comprehensive organization of the competent authorities in their central and peripheral branches and related supporting agencies; and (ii) Creating a regulatory framework.

11.2. Collaboration with international organizations and intergovernmental cooperation in this field are conducted in accordance with bilateral international contracts with the Republic of Azerbaijan.

11.3 International cooperation is realized on the basis of principles to stimulate exchange of people's knowledge and skills, experiences and achievements in international level.

11.4 Eligible foreign beneficiaries shall enjoy the same rights and benefits as enjoyed by beneficiaries who are nationals of the Republic of Azerbaijan, as well as the rights and benefits specifically granted by the international provisions.

Article 12 Transitional measures

12.1 These provisions shall apply to all traditional knowledge and expressions of folklore which fulfills the criteria set out in the MCT Department of Culture Institutions and Folk Art guidelines.

12.2 Notwithstanding Paragraph 1, anyone who, before the date of entry into force of this instrument, has commenced utilization of traditional knowledge or expressions of folklore which was legally accessed, may continue such utilization. Such right of utilization shall also, on similar conditions, be enjoyed by anyone who has made substantial preparations to utilize the traditional knowledge or the expressions of folklore.

²⁰¹ See, 8^o table of concordance.

²⁰² See, 8^o table of concordance.

8° Table of concordance

	Legal instrument	Present text	Changes recommended	New article to be introduced
Cultural/natural heritage penal protection				
	Law on Culture, Law on Protection of Historical and Cultural Monuments (4,5 and 20) and Criminal Code		1.Specialized law enforcement bodies or units ²⁰³ ; 2.Inventories, databases and statistics on trafficked cultural property ; 3.Codes of ethics and registration procedure for dealers ²⁰⁴ ; 4.Trafficking in cultural property via	Primary and secondary legislation. Review of the Ministry of Culture and Tourism and of the Ministry of Ecology competences. Involvement of Universities and categories.

²⁰³ A specific legislation, accompanied by secondary normative tools should be enacted to create these investigative bodies. Recently, many countries have established their own art/ecological police, and it would definitely be an advantage if these special investigative units were placed functionally under the Ministry of Culture and under the Ministry of Ecology. This in order to enable more efficient performance of their myriad functions and to use continuously and with greater facility the contribution (often indispensable during the phases of the corroboration operations) of officials and technicians of said Ministries, whose competencies and professional capacities can immeasurably support the investigations. It is also highly advisable for rules and regulations to be drawn up to ensure that in the national context these units could act as a centre of information and analysis and of immediate support for the judicial authorities and court system. Personnel should be selected on a voluntary basis from those who have at least four or five years' experience of "ordinary" investigations, as many of the investigative skills is cross-relevant. Factors of motivation of the individual officer to perform this specific type of work and knowledge of foreign languages must be given due consideration. Properly calibrated selection interviews should be conducted. As soon as the staffing components have been formed, the individual members must be provided with and allowed to participate in training activities on an ongoing basis. These training activities are targeted at: (i) Increasing their juridical and technical-professional preparation; (ii) Providing information on the variegated cultural/natural heritage; and (iii) Illustrating the detailed background necessary for them to become properly oriented in these particular sectors. There is no doubt that the investigations of units specialized in protection of cultural and natural heritage can often lead to developments even outside of national borders. Particular care should be reserved for this aspect. Personnel of the unit should be encouraged to participate more frequently and with greater facility in meetings periodically organized for members of the various specialized units operating abroad. It is furthermore hoped that the specialized units could establish an easily accessible and publicly promoted web. It is also fundamental to modify the organization of the Judiciary with the creation of specialized groups of public prosecutors, and a pool of experts at national level should be also established along with provisions that rule on a fully functioning data gathering and documentation system. Through the creation of various work pools (groups of public prosecutors, of investigating police operators and of experts) effective results can be achieved. This is especially true with regard to understanding of criminal methodology and techniques in the cultural and natural heritage phenomena.

²⁰⁴ Article 5 of the 1970 UNESCO Convention requires heritage staff of each Member State to establish rules "in conformity with the ethical principles set forth in this Convention" for "curators, collectors, antique dealers, etc."; and in November 1999, the UNESCO adopted the International Code of Ethics for Dealers in Cultural Property. This code as well as the ICOM code (enacted for museums staff) could be useful in-put for the drafting of the required codes. Secondary and detailed legislation should also rule on the register procedure of dealers and on their license system.

			Internet and via auction houses ²⁰⁵	
	Criminal Code		1. Definition of movable and immovable cultural property ²⁰⁶ ; 2 State ownership of undiscovered archaeological objects ²⁰⁷ ; 3. Underwater cultural heritage ²⁰⁸ ; 4. Criminal sanctions for not listed items ²⁰⁹ ; 5. Serious penal sanctioning for violations to urban plans or landscape monuments (not only damage crimes) ²¹⁰ ; 6. Aggravating circumstance for handling ²¹¹ ; 7. Counterfeiting of cultural goods ²¹² ; 8. Exclusion of	Add primary legislation

²⁰⁵ Points 2 and 4 should be ruled by secondary legislation and through the involvement of Universities and professional categories. Review of the Ministry of Culture and Tourism and of the Ministry of Ecology competences is also required.

²⁰⁶ Azerbaijan criminal system should consider better defining movable and immovable cultural property, in order to create certainty in the interpretation of the criminal law and avoid that cultural goods are transferred abroad without legal consequences. This should be done on one hand by defining cultural goods by categories ; and on the other hand by introducing limits of age and value for each category.

²⁰⁷ Primary legislation could follow the “Model Provisions”, as adopted at the ICPRCP at its 17th session in 2011.

²⁰⁸ The legal framework of the Convention on the Protection of the Underwater Cultural Heritage, adopted by UNESCO in November 2001 should be translated in the Law on Culture amending articles 1.0.16 and 34.

²⁰⁹ Article 206 of the criminal code should be completely reviewed as it sanctions only the illegal exportation for listed cultural goods. Firstly, it seems that an all comprehensive register for cultural goods does not exist. In addition, not listed objects are neglected by this article. This is, obviously, not proper considering that archaeological objects are not registered when they come from clandestine excavations. Moreover, the confiscation of the object is not mandatory. These lacunae could be improved by a more detailed definition of cultural property as suggested in the previous note, and sanctioning in the same article listed and not listed cultural property whenever they are illegally exported. Mandatory confiscation should then follow such serious violation of law.

²¹⁰ According to the Azerbaijan criminal system, destroying or damaging cultural goods is the only punishable conduct (see, article 246 of the criminal codes). When such events occur, the cultural goods is however partially or totally lost. It seems then opportune to react to those conducts that violating precise normative instruments put at risk the cultural goods integrity, without really causing damage or destruction. This is an advanced protection of the object, i.e. criminal punishment (included ancillary sanctions such as confiscation of the profits) is inflicted even when a risk of damage is ascertained. In this respect, there should not be any constitutional problems as the criminal sanction is linked to a violation of the urban plan or other similar legal instrument.

²¹¹ Too lenient punishment is inflicted for the handling of cultural goods, which is instead a recurrent phenomenon in the illegal trafficking of such items. Paradoxically, it would be better for a criminal to pose him/her as a fence, avoiding to be punished as a thief.

²¹² The Azerbaijan legal system should also consider to autonomously punish the counterfeiting of cultural goods. Article 313 of the Criminal Code concerns, in fact, only the forgery of documents by public officials; not considering neither the forgery of cultural goods nor any penalties for the intentional expertise or authentication of cultural goods counterfeited.

			responsibility for whistleblowers ²¹³ ; 9. Obligation to report ²¹⁴ ; 10.Statute of limitations ²¹⁵	
	Code on Administrative Violations	36, 239,240 and 398	1.Too lenient sanctions; 2. New administrative offences : confiscation, voidness of contracts, no electricity supply ²¹⁶ ; 3. Administrative arrest; 4.Time limit of 1 year; 5.Violation of commercial rules at markets and fairs and violation of the electronic commerce ²¹⁷	Primary and secondary legislation
	Criminal Procedure Code		1.Partial shift of the onus probandi ²¹⁸ ; 2. Confiscation also in case of praescriptio ²¹⁹ ; 3. Longer time limit	Primary legislation

²¹³ When investigations involve cultural goods, there should be exclusion of responsibility, whenever one gives himself up and confesses, taking active actions on the disclosing of a crime, on the exposure of other accomplices of a crime and on the search and detection of the property obtained as a result of a crime. In this respect, article 40 bis -to coordinate with articles 59, 72 and 73 of the Criminal Code- could be inserted.

²¹⁴ Azerbaijan legal system should consider introducing in its legislation a crime for the violation of the obligation to report discovery and detention of cultural items. This obligation could ease the registration process of cultural items, the investigations and the scientific knowledge of the Azerbaijan cultural heritage. Legal base of this obligation could be Article 40.2 of the Constitution and Article 38 of the Law on Culture that states: “Everybody is obliged to protect national historical, natural and cultural heritage objects including historical, natural and cultural monuments in the Republic of Azerbaijan”. Therefore, Article 307 of the Criminal Code (“Not informing about crimes and concealment of crimes”) could be extended to information about the detention and illegal dealings of cultural goods.

²¹⁵ Crimes in the cultural field should be not subject to time limitation and should be considered of a permanent nature. Alternatively, the statute of limitations should not run until the authorities become aware of the offence committed, and Azerbaijan should establish a long statute of limitations period in which to commence proceedings for many of the offences against cultural goods and natural environment. Damages brought about by criminals in cultural and natural sectors are often permanent in their effects and only after the re-contextualization of the object or the reduction in pristine of the natural area the victim can have a sort of relief. With these adjustment, the public prosecutor would be exonerated from a burden of proof which is often diabolical with its frequently merely circumstantial answers. Impunity caused by time limits follows too often for serious acts of delinquency.

²¹⁶ Specific administrative sanctions such as electricity bar and voidness of contracts should be imposed. This could refrain citizens and entrepreneurs by violating urban instruments as the illegal building they have constructed would not receive electricity or would be not sellable at all. This new sanctioning system could well be envisaged considering, for example, article 180, comma 2, of the Azerbaijan civil code.

²¹⁷ Secondary legislation should take into consideration what stressed about codes of ethics, internet trafficking and the dealers’ register system.

²¹⁸ Azerbaijan, if consistent with its legal system, is invited to allow cultural property to be seized when those in possession of the property cannot prove the licit provenance of the objects or when they do not have a reasonable belief in the licit provenance of the objects.

²¹⁹ It will be useful to foresee the possibility of confiscating cultural objects even in the case of statute of limitation barring prosecution; obviously, without prejudice to the rights of persons extraneous to the crime who can demonstrate that they are in good faith.

			for the prae-trial phase ²²⁰ ; 4. Special investigative powers to be improved: a. Simulated acquisitions or sales; b. Delaying the police intervention and controlled deliveries; c. Undercover officers; d. Cross border surveillance e. Joint investigation teams	
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²²⁰ As the time limit of the pre-trial phase is no longer than eighteen months, this period seems too short, especially considering the international dimension of crimes involving cultural goods, to investigate abroad through rogatory letters.