

Annex 1 - Legal background

to the Background document for the re-drafting of the proposed Protocol on Carpathian Cultural Heritage and Traditional Knowledge to the Framework Convention on the Protection and Sustainable Development of the Carpathians

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Secretariat explanatory note on the synergy of the Carpathian Convention (incl. Protocols), other international agreements, and the proposed protocol.

The Parties to the Carpathian Convention are simultaneously Parties to many other international (multi- and bilateral) agreements. In the Convention preamble its Parties note (in fourth paragraph) other “*relevant global, regional and subregional environmental legal instruments, strategies and programmes*”, and explain (in the next subsequent paragraph), that by adopting the Convention the Parties aim at “*ensuring a more effective implementation of such already existing instruments*”. The above also relates to all thematic Protocols adopted to the Framework Carpathian Convention.

But, none of these global or regional (European) conventions refers to, or considers the specific values of the cultural heritage of the Carpathians. Hence, the objective of the proposed protocol is “*ensuring a more effective implementation of such already existing instruments*”, with the special consideration of, and particular focus on the cultural heritage of the Carpathian region.

Therefore, the fact that Article 11 of the Convention contains issues relevant also for other international agreements concerning the cultural heritage does not mean that implementation of Article 11 cannot further be enhanced in the Carpathian region by adopting and implementing an auxiliary agreement (thematic protocol), translating the general principles constituted in Article 11 into more specific substantive obligations.

From the legal point of view - the binding force of all Articles of the Convention is equal. Hence, once the Parties decided on enhancing the implementation of several other Articles of the Convention by adopting corresponding thematic Protocols (on biological and landscape diversity, on sustainable forestry, tourism, transport, agriculture and rural development), the implementation of Article 11 on cultural heritage deserves the same methodological and legislative approach as for other Articles.

To summarize, even though the substantive scope of the Carpathian Convention includes numerous fields of work relevant for other international agreements, and might contain similar provisions, it should neither be perceived as an overlap with other international agreements, nor as an obstacle for the adoption of new thematic protocols to the Convention. For example, biodiversity issues are dealt with by e.g. the CBD, CMS, CITES, Ramsar, and Bern Conventions, further enhanced by adopting the “CC Biodiversity Protocol”, already ratified by, and in force for all Parties to the Convention. The same approach seems to be appropriate in case of the proposed protocol, concerning cultural heritage.

Excerpts of relevant provisions of existing instruments of the international law, and strategic documents, useful for drafting the proposed protocol concerning the cultural heritage

Convention concerning the Protection of the World Cultural and Natural Heritage (Paris, 1972)

<http://whc.unesco.org/en/conventiontext/>

Article 1

*For the purpose of this Convention, the following shall be considered as "**cultural heritage**":*

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

Article 4

*Each State Party to this Convention recognizes that the duty of ensuring the **identification, protection, conservation, presentation and transmission** to future generations **of the cultural and natural heritage** referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, **where appropriate, with any international assistance and co-operation**, in particular, financial, artistic, scientific and technical, which it may be able to obtain.*

Article 6

*1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such **heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.***

Convention for the Safeguarding of the Intangible Cultural Heritage (Paris, 2003)

<https://ich.unesco.org/en/convention>

<http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>

Article 11 – Role of States Parties

Each State Party shall:

*(a) **take the necessary measures to ensure the safeguarding of the intangible cultural heritage** present in its territory;*

*(b) among the safeguarding measures referred to in Article 2, paragraph 3, **identify and define the various elements of the intangible cultural heritage** present in its territory, with the participation of communities, groups and relevant nongovernmental organizations.*

Article 12 – Inventories

1. To ensure identification with a view to safeguarding, each State Party shall draw up, in a manner geared to its own situation, **one or more inventories of the intangible cultural heritage** present in its territory. These inventories shall be regularly updated.

Article 19 – Cooperation

1. For the purposes of this Convention, international cooperation includes, inter alia, the **exchange of information and experience**, joint initiatives, and the establishment of a mechanism of assistance to States Parties in their efforts to safeguard the intangible cultural heritage.

2. Without prejudice to the provisions of their national legislation and customary law and practices, the States Parties recognize that the safeguarding of intangible cultural heritage is of general interest to humanity, and to that end **undertake to cooperate at the bilateral, subregional, regional and international levels**.

Convention for the Protection of the Architectural Heritage of Europe (Granada, 1985)

<https://rm.coe.int/168007a087>

Article 2

For the purpose of precise **identification of the monuments, groups of buildings and sites** to be protected, each Party undertakes to **maintain inventories** and in the event of threats to the properties concerned, to prepare appropriate documentation at the earliest opportunity.

Article 3

Each Party undertakes:

1. to take statutory measures to **protect the architectural heritage**;
2. within the framework of such measures and by means specific to each State or region, to make provision for the **protection of monuments, groups of buildings and sites**.

Article 16

Each Party undertakes to promote **training in the various occupations and craft trades involved in the conservation of the architectural heritage**.

Article 18

The Parties undertake to afford, whenever necessary, **mutual technical assistance in the form of exchanges of experience and of experts in the conservation of the architectural heritage**.

United Nations Resolution 70/1. Transforming our world: the 2030 Agenda for Sustainable Development

adopted by the General Assembly on 25 September 2015

http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1

SDG Target 11.4 Strengthen efforts to **protect and safeguard the world's cultural and natural heritage** (under Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable)

Convention on Biological Diversity (Rio de Janeiro, 1992)

<https://www.cbd.int/convention/text/default.shtml>

Article 10.

Sustainable Use of Components of Biological Diversity

Each Contracting Party shall, as far as possible and as appropriate:

*(c) Protect and encourage **customary use of biological resources in accordance with traditional cultural practices** that are compatible with conservation or sustainable use requirements;*

Framework Convention on the Protection and Sustainable Development of the Carpathians (Kyiv, 2003)

<http://www.ecolex.org/details/treaty/framework-convention-on-the-protection-and-sustainable-development-of-the-carpathians-tre-001374/>

http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/04%20Publications%20-%20Press%20-%20Gallery/Documents%20and%20Publications/4.1.1%20CarpathianConvention.pdf

Article 2

General objectives and principles

*1. The Parties shall pursue a comprehensive policy and cooperate for the protection and sustainable development of the Carpathians with a view to inter alia improving quality of life, strengthening local economies and communities, and **conservation of natural values and cultural heritage.***

Article 11

Cultural heritage and traditional knowledge

*The Parties shall pursue policies aiming at **preservation and promotion of the cultural heritage and of traditional knowledge of the local people, crafting and marketing of local goods, arts and handicrafts.** The Parties shall aim at **preserving the traditional architecture, land-use patterns, local breeds of domestic animals and cultivated plant varieties, and sustainable use of wild plants in the Carpathians.***

Protocol on Conservation and Sustainable Use of Biological and Landscape Diversity (Bucharest, 2008)

to the Framework Convention on the Protection and Sustainable Development of the Carpathians

http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/01%20The%20Convention/1.1.2.1%20BiodiversityProtocolFinalsigned.pdf

Article 23

Traditional knowledge and practices

*When implementing this Protocol, the Parties shall take measures for the **preservation and promotion of the traditional knowledge, in particular the sustainable land-use patterns, land resource management practices, local breeds of domestic animals and cultivated plant varieties, and sustainable use of wild plants.***

Protocol on Sustainable Forest Management (Bratislava, 2011)

to the Framework Convention on the Protection and Sustainable Development of the Carpathians

http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/01%20The%20Convention/1.1.2.2%20ProtocolonSustainableForestManagementsigned27may2011.pdf

Article 15

Social function of forests

3. Each Party shall consider promoting **cultural heritage and traditional knowledge practices related to forest management**, including education at all levels.

Protocol on Sustainable Tourism (Bratislava, 2011)

to the Framework Convention on the Protection and Sustainable Development of the Carpathians

http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/01%20The%20Convention/1.1.2.3%20ProtocolonSustainableTourismsigned27may2011.pdf

Article 8

Promotion of the Carpathian region as the destination for sustainable tourism

1. Each Party shall take measures with the objective to promote the Carpathian region as the destination for **sustainable tourism based on the unique common natural, cultural, traditional and historical heritage of the Carpathians**.

Article 11

Enhancing the contribution of tourism to the sustainable development of the local economy in the Carpathians

2. The Parties shall cooperate on developing, adopting and implementing the common Carpathian policy for the **promotion, labeling and certification of local products and local producers' networks, in particular of traditional arts and handicrafts, and local goods including agricultural products utilizing local breeds of domestic animals and cultivated plant varieties**.

Article 17

*Enhancing the **contribution of tourism to the preservation and promotion of the cultural heritage and of traditional knowledge** of the local communities in the Carpathians*

1. The Parties, in accordance with Article 11 of the Carpathian Convention, shall cooperate on developing, adopting and implementing the common principles of sustainable tourism development in the Carpathians, fostering **preservation and promotion of the cultural heritage and traditional knowledge of the local communities**, enhancing and respecting their socio-cultural authenticity in the Carpathians, and **conserving their built and living cultural heritage and traditional values**.

2. Each Party shall take measures with the objective to promote and support the development of sustainable tourism activities fostering preservation and promotion of the cultural heritage and traditional knowledge of the local communities in the Carpathians, in particular initiatives and projects towards sustainable tourism development in the Carpathians which provide sound **economic incentives for the preservation of the traditional architecture objects, local breeds of domestic animals and cultivated plant varieties**, as well as the continuation of **traditional land-use patterns and practices, crafting and marketing of local goods, arts and handicrafts**.

3. Each Party shall take measures in its national territory with the objective to encourage **channeling part of the tourism revenues towards supporting the preservation and promotion of the cultural heritage and traditional knowledge** of the local communities in the Carpathians, in particular for the **preservation and revitalization of traditional architecture objects, traditional handicraft, land-use patterns, local breeds of domestic animals and cultivated plant varieties**.

Article 18

Enhancing the contribution of tourism to public education and awareness on sustainability issues

2. The Parties shall cooperate on developing the common Carpathian environmental education, nature and **cultural heritage interpretation** and other awareness raising **programmes**, associated to sustainable tourism development in the Carpathians, with the objectives to:

d. increase **knowledge of and respect for the cultural heritage and the traditional knowledge** of the local communities in the Carpathians,

Protocol on Sustainable Agriculture and Rural Development (Lillafüred, 2017)

to the Framework Convention on the Protection and Sustainable Development of the Carpathians

http://www.carpathianconvention.org/tl_files/carpathiancon/Downloads/01%20The%20Convention/SARD%20Protocol_FINAL_ADOPTED_signed.pdf

Article 8

Implementation of site-specific rural development strategies

2. Each Party shall facilitate coordination and cooperation among all relevant stakeholders aiming at creating and enabling socio-economic environment for rural innovation and added value networks, in particular between the agricultural sector and other economically relevant sectors in rural areas, like the **handicraft**, trade, industry, infrastructure and tourist sectors, to capitalize endogenous potentials with an integrated territorial approach.

Article 9

Protection and management of traditional cultural landscapes

1. The Parties shall take measures for the protection and management of **traditional cultural landscapes of the Carpathians** with outstanding traditional features and of high ecological quality, including the presence of valuable mountain ecosystems, natural and/or valuable semi-natural habitats, in particular grasslands, agro-biodiversity, genetic resources, cultivated plant varieties **and the related traditional ecological knowledge**.

2. The Parties shall support the maintenance and application of **traditional**, low-intensity agricultural practices and forms of **management of cultural landscapes**, traditional ruminants grazing.

Article 12

Traditional knowledge and practices

The Parties shall take measures for the preservation and promotion of **traditional farming practices**, small agricultural holdings, **cultural landscapes**, **traditional ecological and agricultural knowledge**, **local breeds of domestic animals and cultivated plant varieties**, **sustainable use of wild plants and animals**, which represent significant economic and social features of the **rural cultural patrimony of the Carpathians**.

Article 13

Marketing of typical agricultural and rural products and services

1. The Parties shall adopt measures in their territories and also cooperate at international level to improve the local and European-wide marketing and advertising of **agricultural and rural products and services, which are typical for the Carpathian region** considering the objectives in accordance with Article 11 paragraphs 1 and 2 of the Tourism Protocol.

Article 17

Coordinated scientific research and trans-boundary exchange of information and experience

3. The Parties shall promote **coordinated regional inventories of agricultural practices and cultural landscapes as well as rural cultural traditions and products in the Carpathians**.

Decision (EU) 2017/864 of the European Parliament and of the Council of 17 May 2017 on a European Year of Cultural Heritage (2018)

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017D0864>

Whereas:

(14) Policies for the maintenance, restoration, conservation, reuse, accessibility and promotion of cultural heritage and related services are primarily national, regional or local responsibilities. Nevertheless, **cultural heritage has a clear European dimension which is addressed, in addition to cultural policy, through other Union policies such as education, agriculture and rural development, regional development, social cohesion, maritime affairs, environment, tourism, the digital agenda, research and innovation, and communication**.

(16) In order to realise fully the potential of cultural heritage for European societies and economies, the **safeguarding, enhancement and management of cultural heritage require effective participatory** (i.e. multi-level and multi-stakeholder) **governance and enhanced cross-sectoral cooperation**, as stated by the Council in its conclusions of 25 November 2014 (1). Such governance and cooperation involve all stakeholders, including public authorities, the cultural heritage sector, private actors and civil society organisations, such as NGOs and organisations in the voluntary sector.

(20) Declaring a European Year of Cultural Heritage is an effective way of raising public awareness, disseminating information on good practices, promoting policy debate, research and innovation and improving the collection and analysis of qualitative evidence and quantitative data, including statistics, on the social and economic impact of cultural heritage. **By creating an environment for promoting those objectives simultaneously at Union, national, regional and local levels, a greater synergy and a better use of resources can be achieved**. In that regard, the Commission should provide timely information to and closely cooperate with the European Parliament, the Council and the Member States, the Committee of the Regions and the bodies and associations active in the field of cultural heritage at Union level. **In order to ensure that activities developed for the European Year of Cultural Heritage have a European dimension, Member States are also encouraged to collaborate with each other**.

*(22) **Candidate and potential candidate countries should be closely associated with actions under the European Year of Cultural Heritage.** The involvement of countries falling within the scope of the European Neighbourhood Policy and other partner countries should also be sought, as appropriate. **Such involvement can be pursued under the relevant frameworks for cooperation and dialogue,** particularly in the context of the civil society dialogue between the Union and those countries.*

Article 1 Subject matter

*1. **The year 2018 shall be designated as the ‘European Year of Cultural Heritage’** (‘European Year’).*

*2. The purpose of the European Year shall be to **encourage the sharing and appreciation of Europe's cultural heritage as a shared resource,** to raise awareness of common history and values, and to reinforce a sense of belonging to a common European space.*

Article 2 Objectives

*1. The general objectives of the European Year **shall be to encourage and support the efforts of the Union, the Member States and regional and local authorities,** in cooperation with the cultural heritage sector and broader civil society, **to protect, safeguard, reuse, enhance, valorise and promote Europe's cultural heritage.** In particular, the European Year shall:*

*(a) contribute to promoting the role of Europe's cultural heritage as a pivotal component of cultural diversity and intercultural dialogue. While fully respecting the competences of the Member States, it shall highlight the best means to **ensure the conservation and safeguarding of Europe's cultural heritage** as well as the enjoyment thereof by a wider and more diversified audience, including through audience-development measures and heritage education, thereby promoting social inclusion and integration;*

*(b) **enhance the contribution of Europe's cultural heritage to society and the economy,** through its direct and indirect economic potential, which includes the capacity to underpin the cultural and creative sectors, including small and medium-sized enterprises, and to inspire creation and innovation, to promote sustainable development and tourism, to enhance social cohesion and to generate long-term employment;*

*(c) contribute to **promoting cultural heritage as an important element of the relations between the Union and third countries,** building on the interest and needs in partner countries and on Europe's expertise in cultural heritage.*

Conclusions on cultural heritage as a strategic resource for a sustainable Europe

adopted by the Council of the European Union (Brussels, 20 May 2014)

https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/142705.pdf

THE COUNCIL OF THE EUROPEAN UNION, RECOGNISING THAT

1. the Treaty stipulates that the Union shall ensure that Europe's cultural heritage is safeguarded and enhanced;

*2. cultural heritage consists of the resources inherited from the past in all forms and aspects - tangible, intangible and digital (born digital and digitized), including **monuments, sites, landscapes, skills, practices, knowledge and expressions of human creativity, as well as collections** conserved and managed by public and private bodies such as museums, libraries and archives. It originates from the interaction between people and places through time and it is constantly evolving. These resources are of great value to society*

from a cultural, environmental, social and economic point of view and thus their sustainable management constitutes a strategic choice for the 21st century;

3. cultural heritage is a major asset for Europe and an important component of the European project;

4. cultural heritage as a non-renewable resource that is unique, non-replaceable or noninterchangeable is currently confronted with important challenges related to cultural, environmental, social, economic and technological transformations that affect all aspects of contemporary life.

EMPHASISING THAT

5. cultural heritage plays an important role in creating and enhancing social capital because it has the capacity to:

a) inspire and foster citizens' participation in public life;

b) enhance the quality of life and the well-being of individuals and their communities;

*c) **promote diversity and intercultural dialogue** by contributing to a stronger sense of “belonging” to a wider community and a better understanding and respect between peoples;*

d) help to reduce social disparities, facilitate social inclusion, cultural and social participation and promote intergenerational dialogue and social cohesion;

e) offer possibilities to develop skills, knowledge, creativity and innovation;

f) be an effective educational tool for formal, non-formal and informal education, life-long learning and training.

6. cultural heritage has an important economic impact, including as an integral part of the cultural and creative sectors, because, among other things, it:

*a) **constitutes a powerful driving force of inclusive local and regional development** and creates considerable externalities, in particular through the enhancement of **sustainable cultural tourism**;*

b) supports sustainable rural and urban development and regeneration as illustrated by initiatives by many European regions and cities;

c) generates diverse types of employment.

7. cultural heritage plays a specific role in achieving the Europe 2020 strategy goals for a “smart, sustainable and inclusive growth” because it **has social and economic impact and contributes to environmental sustainability**;

8. cultural heritage cuts across several public policies beyond the cultural, such as those related to regional development, social cohesion, agriculture, maritime affairs, environment, tourism, education, the digital agenda, research and innovation. These policies have a direct or indirect impact on cultural heritage and at the same time cultural heritage offers a strong potential for the achievement of their objectives. Therefore, this potential should be fully recognised and developed.

CALLS ON MEMBER STATES AND THE COMMISSION, WITHIN THEIR RESPECTIVE SPHERES OF COMPETENCE AND WITH DUE REGARD TO THE PRINCIPLE OF SUBSIDIARITY, TO:

9. recognise the intrinsic value of cultural heritage and deploy the potential of culture and cultural heritage as a shared strategic resource for developing a society based on democratic, ethical, aesthetic and ecological values, in particular in a moment of crisis;

10. reinforce dialogue with the cultural heritage stakeholders to identify and **implement coordinated policies and actions for the sustainable management and development of cultural heritage, as well as promote collaboration with international and intergovernmental organisations, in particular with the Council of Europe**;

11. mobilise available resources for supporting, enhancing and promoting cultural heritage via an integrated, holistic approach, while taking into account its cultural, economic, social, environmental and scientific components;
12. contribute to the mainstreaming of cultural heritage in national and European policies;
13. **identify and build on the synergies created between the EU and national public policies beyond cultural policy, such as regional development, cohesion, agriculture, maritime affairs, environment, energy and climate change, tourism, education, research and innovation with a view to creating added value;**
14. where possible, improve access to funding, make full use of available programmes for the public and private sector, and **encourage investment in cultural heritage as a part of integrated strategies for sustainable local and regional development** within available national and EU programmes, as well as within the EU Structural Funds in accordance with partnership agreements;
15. continue to support the EU action for the European Heritage Label;
16. continue to promote education on cultural heritage, **raise public awareness on the potential of cultural heritage for sustainable development** and to encourage public participation, especially of children and young people, in cooperation with civil society;
17. **improve the collection and analysis of qualitative evidence and quantitative data, including statistics, on cultural heritage;**
18. encourage the funding, development and dissemination of digital cultural content as well as the availability of innovative heritage-related services of cultural and educational value to citizens, and **promote public access to those digital heritage resources and services, including via Europeana.**

CALLS ON MEMBER STATES TO

19. promote long-term heritage policy models that are evidence-based and society- and citizen-driven;
20. enhance the role of cultural heritage in sustainable development, focusing on urban and rural planning, redevelopment and rehabilitation projects;
21. **encourage networking and partnerships between cultural heritage and other policy fields, between public and private actors in all relevant domains and on different levels of governance;**
22. consider including cultural heritage in the framework of the next Council Work Plan for Culture which will be implemented from 2015 onwards;
23. **enhance cross-border, interregional and transnational cooperation on cultural heritage issues with relevant stakeholders,**
24. **foster traditional knowledge and skills that are necessary to the safeguarding, sustainable management and development of cultural heritage** and that should be handed down to future generations, so as to improve human capital and ensure the continuous protection of and access to Europe's cultural assets;
25. further cooperate on a research agenda for cultural heritage and strengthen support for cultural heritage research initiatives within the EU framework programme for research and innovation Horizon 2020 such as the Joint Programming Initiative on Cultural Heritage and Global Change.