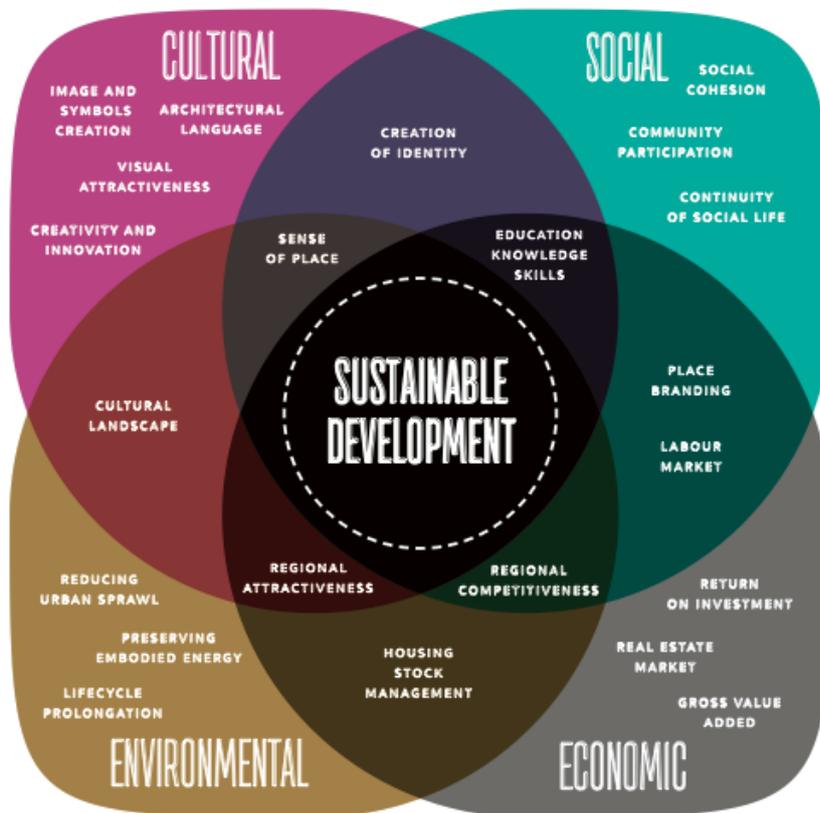




Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

ENCOURAGING PRIVATE SUPPORT TO CULTURAL HERITAGE



© EU funded Project Cultural Heritage counts for Europe



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

TABLE OF CONTENTS

Executive summary.....	3
Introduction	4
Why developing special measures to attract.....	6
Private Funding in Moldova	6
State of the art in Moldova	6
Main actors involved	6
An overview of the legal framework in Moldova.....	7
EU Fiscal Policy for Cultural Heritage.....	9
Incentives for encouraging private investments: selected countries.....	10
Sectoral incentives in Italy, France and the United Kingdom	11
Italy.....	11
France	13
United Kingdom	14
Main features of Foundations: selected Countries.....	16
Foundations in Italy, France and the United Kingdom	16
Italy.....	16
France	17
The United Kingdom.....	18
Possible improvements in Moldova	18

Author of the report: Elisa Petrucci



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

EXECUTIVE SUMMARY

The document has been drafted by analysing information gathered through desk analysis of relevant laws and documents, as well as through interviews carried out with employees from the Ministry of Finance. The document intends to provide:

- The state of the art of fiscal incentives and philanthropic activities, with particular reference to foundations. It describes the main actors and laws related to the field and how the improvement of fiscal incentives is connected to the main strategic documents of the Country.
- A short overview of EU policy related to the field. It underlines that the EU perceives the multi-funding principle of arts and culture as a model of financial sustainability.
- A presentation of the main incentives for encouraging private investments and of the main features of foundations in Italy, France and the United Kingdom. The comparison of their administrative settings and indirect interventions in the cultural sector highlights a relevant distinction between countries with a centralised organization, such as Italy and France, and those with a more decentralised one, the United Kingdom.
- Description of possible actions to improve the sector on the basis of the main criticalities that emerged from the analysis of the above-mentioned picture. The proposed actions appear to be feasible in the short/medium period and therefore they could be supported by the ongoing Twinning Project.

Coming to the main criticalities and suggested actions, it appears that there is a strong need to improve the legislative framework with regard to incentives. Indeed, current legislation does not contain the provisions (or they are ambiguous and not expressly connected to cultural heritage) required to set up a national co-ordinated and integrated regulatory system able to strengthening the funds available to support the cultural heritage sector: this integrated system should include tax reduction (e.g. VAT reduced for maintenance and conservation works of protected heritage objects or for a specific list of materials necessary for conservation, including those that have to be imported), tax deduction and other on fiscal incentives targeted for cultural heritage preservation and promotion.

The possibility of benefitting from fiscal incentives could be introduced in various laws, including the draft law on the protection of historic monuments, the draft law “Monuments of history and culture. The way and principles of designing the restoration of constructions”, which at the moment are being elaborated. The subsequent step should be to amend the Tax Code. It is suggested to introduce only general issues in the Code and to specify the functioning of different incentives in specific regulations.

Referring to the suggested types of incentives, from a first survey, it appears that it would be welcomed the introduction of 1) financial incentives granted to owners and managers of built cultural heritage assets, 2) VAT relief on building materials related to restoration of listed buildings and 3) other types of incentives.



Twining Project MD 13 ENPI OT 01 16 (MD/26)
 Support to promote cultural heritage in the Republic of Moldova
 through its preservation and protection

INTRODUCTION

The multi-funding principle of arts and culture is generally perceived as a model of financial sustainability and is therefore one of the central topics of discussion in cultural policy.

Below a table summarising the most common forms of financial supports for cultural heritage and cultural sectors is presented.

Type of incentive	Description
<i>fiscal instrument meant to generate funds targeted to specific objectives</i>	
<i>Earmarked tax</i>	An earmarked tax is a tax collected whose revenues (by law) are used for a specific purpose.
<i>Lottery-based private funding</i>	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.
<i>Percentage legislation</i>	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
<i>Tax relief for individual donations (Art Bonus - Mecenat)</i>	Donations can be made in cash or in kind for specific activities identified by the law.
<i>Tax relief for corporate donations (art Bonus - Mecenat)</i>	These donations can be made in cash or in kind for specific activities identified by the law.
<i>Tax relief for sponsorship</i>	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 "mécenat") 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.
<i>Digital approach (Crowd funding)</i>	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.



Twining Project MD 13 ENPI OT 01 16 (MD/26)
 Support to promote cultural heritage in the Republic of Moldova
 through its preservation and protection

<i>Vouchers</i>	New tool to stimulate 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
<i>Indirect (the instrument does not generate direct fund rather stimulate the private expenditure on cultural heritage or culture)</i>	
<i>Banking schemes:</i>	Banking plans can include loan schemes that give a preferable interest rate to cultural activities.
<i>Venture Philanthropy</i>	Cultural sector businesses still make very limited use of equity finance. An emerging form of private investment in the cultural 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.
<i>Arts and business forums</i>	The establishment of specialized agencies, which encourage engagement between business companies and cultural organizations.
<i>Tax incentives on the consumption of culture</i>	measures in which a subject of taxation is any form of cultural consumption (e.g. buying music, paintings, sculpture). More 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 represent one of the main implicit subsidies for cultural industries

They have been successfully experimented in the Italian system, and the proposal is to foresee similar mechanisms also for the Moldavian culture sector.

While different policies can be implemented to support the supply of cultural heritage funds, this document is dedicated to the so called “**indirect support**”, when it is the private sector to allocate funds, but the government stimulates donations via tax incentives. Moreover, a particular focus is devoted to the role of **Foundations**.

The improvement of fiscal incentives measures in Moldova has been considered relevant since they are increasingly used in Europe to support cultural heritage. Indeed, tax policy can be considered the backbone of the encouragement of private investment in the cultural sector and, among the different tax measures, tax incentives are specifically aimed at the encouragement of desirable behaviour towards the arts and culture. The focus on Foundations is pivotal to valorise one of the instrument that already exists and working in the Country.



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

WHY DEVELOPING SPECIAL MEASURES TO ATTRACT PRIVATE FUNDING IN MOLDOVA

Notwithstanding the central role played by the State in the field of cultural heritage, which is considered as primarily or exclusively a public task, the intrinsic importance of preserving its social and economic significance calls for a wider development of special measures to attract **Private Funding**.

Yet, from a 2013 study by the Regional Monitoring and Capacity Building Unit of the Eastern Partnership Culture Programme emerges that both public and private culture actors operating in Moldova mentioned the **introduction of tax incentives and appropriate state policy to encourage investments in culture among the main needs and priorities for reforming the cultural sector** (Analytical Base-Line Report on the Culture Sector and Cultural Policy of the Republic of Moldova).

The implementation of innovative funding mechanisms is also one of the issues identified in the Culture Strategy 2020, which highlights the need of an **efficient reform of the cultural sector in terms of funding**, management, protection of culture heritage as well as in terms of the decentralization of culture institutions and expansion of the market for cultural products. Moreover, the Strategy sets as a priority the **identification of mechanisms to increase the number of partnerships with private business**.

Lastly, The Action Programme of the Government for 2016-2018 underlines the strategic relevance of:

- promoting cultural heritage and to integrate it in the system of European values;
- implementing models of competitive financing in order to support cultural policies and culture people.

STATE OF THE ART IN MOLDOVA

MAIN ACTORS INVOLVED

The main actors involved in the public finance management devoted to cultural heritage are:

- **The Ministry of Finance**, by means of its subdivisions and subordinate institutions, ensures the performance of the Public Finance Management functions: overall coordination of the budgetary process, development and coordination of the budgetary and fiscal policy, development and coordination of Medium-Term Budgetary planning, management of the component budgets of the National Public Budget, State budget management, and the monitoring of the execution of other component budgets of the National Public Budget. In addition, it manages other processes or systems, like the Treasury System (State Treasury), the Fiscal Administration System (Main State Tax Inspectorate), the Public Procurement System (Public Procurement Agency), the Customs Administration System (Custom Service), the Public Internal Financial Control System, and the audit function (Financial Inspection).



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

- **The Ministry of Education, Culture and Research** is in charge of budgetary planning based on policy documents and of the development of mid-term sector expenditure strategies within the Medium-Term Budgetary Framework, of the annual budgets development, execution and reporting according to the law.
- **Ministry of Economy and Infrastructure**, which is the main responsible for the construction sector.
- **The Local Public Authorities** develop, approve and manage the local budgets in line with the principles and rules established by the law.

AN OVERVIEW OF THE LEGAL FRAMEWORK IN MOLDOVA

Moldova is a very centralised country and the highest source of financing for culture in is the state budget with the main document of budgetary policy of the Ministry of Culture, the Medium-Term Budget Framework (MTBF). The main expenses in the field are salaries and maintenance of the infrastructure, while the protection of the national culture heritage only receives a fraction of the necessary funding (National Strategy for the Development of Culture of the Republic of Moldova / Culture 2020).

Below are described the main laws on 1) fiscal incentives for private funding in the cultural sector and 2) Foundations.

1. Tax Code 1163/1997.

Article 6 of the Tax Code describes the “**taxes and fees and their types**”.

- state taxes include:
income tax; value added tax; excise duties; private tax; customs duty; road taxes, wealth tax.

It is worth specifying that the income tax is presented in the Annual Budget and that the value added tax is approved through Government Decision.

- local taxes and fees shall include:
real estate tax; private tax, fees on natural resources; land-use tax, fee for organization of auctions and lotteries on the territory of administrative-territorial unit; fee for placement of advertisements; fee for use of local symbol; fee for commercial units and/or social service provision; market fee; accommodation fee; resort fee; fee for provision of passenger road transport services on municipal, city and village (commune) routes; parking fee; fee charged to dog owners; parking lot fee; waste disposal fee; fee for advertising devices.

Referring to potential **changes to the existing taxes**, it is specified that it can be done by amending the Tax Code along with the introduction of the appropriate amendments to the state budget and budgets of administrative-territorial units (article 7).

Coming to **tax deduction**, resident economic agent is entitled to deduct any donations made by him during the tax period for philanthropic or sponsorship purposes, but not more than 5% of the taxable income. (art 36, other deductions). This does not apply to companies (art. 60).



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

It is worth mentioning that the Code foresees an instrument that is similar to the Italian 8%, i.e. the percentage of the income tax on physical persons that each individual is allowed to decide to devolve to specific subjects.

At the moment, the Fiscal Code does not mention other specific tax incentives specifically connected to private funding in the culture sector.

2. Law on Philanthropy and Sponsorship 1420/2002.

The law regulates philanthropic and sponsorship activities including the establishment and operation of philanthropic organizations, state guarantees for philanthropic and sponsorship activities, and determines forms of support and incentives ensured by central and local public authorities.

Interestingly, while the purposes of the sponsorship activities expressly mention the financing of programmes and actions in the field of culture sector (article 3), **the purposes of philanthropic activities do not include any action related to the cultural field** (article 2).

Referring to the establishment and operation of philanthropic organizations, the law also defines the legal form of **Foundations** (article 8). Foundations are philanthropic organization whose heritage is constituted by the financial or other assets of the founders and carries out activities in the interest of the entire society or certain categories of persons, but not in the interest of its founders or its governing body.

Lastly, the law specifies that persons carrying out philanthropy or sponsorship activities documentary confirmed shall benefit from the **fiscal facilities** provided by the tax legislation in force (article 21) that are set in the Tax Code (article 22).

BOX 1. Examples of cultural activities supported by Foundations in Moldova

A small number of **Foundations** have constantly supported and invested in developing the cultural sector.

One example is the Soros Foundation-Moldova (SFM)¹, which has invested in several projects, such as the project TRIO - Hub for Rural Cultural Development 2011-2013. The project ran from November 2011 to December 2013 with the financial support of the European Cultural Foundation, the Open Society Foundation and Soros Foundation-Moldova (FSM). The goal was to create models for the reorganisation of houses of culture in centres that provide cultural services for the population on the basis of partnership and cooperation between cultural institutions, organisations representing the civic sector and public administration institutions. Another successful project of the Soros Foundation-Moldova in 2012 was TANDEM project, implemented in partnership with the European Cultural Foundation (Amsterdam), MitOst (Berlin), European Cultural Action (Brussels) and the Centre for Cultural Management (Lviv). The project activities were implemented with the financial support of the European Commission and the Robert Bosch Stiftung Foundation. The organisers intended to provide a breeding ground for cultural cooperation with the European Union countries, also to combat stereotypes that exist on both sides of the border, and facilitate implementation of artistic cooperation projects. Likewise, professionals from the cultural field from the European Union countries and from the Republic of Moldova and Ukraine had the opportunity to create new networks and collaborative partnerships.

In 2013 "Edelweiss" Foundation supported and promoted talented persons from the Republic of Moldova through sponsorship of six cultural projects.



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

Broadly speaking, it can be said that partnerships and relationships between business and the cultural sector are weakly developed and the legal framework and tax benefits are still not sufficiently incentive for serious investment in this sector.

Even if the Republic of Moldova has shown a growing interest in private support to culture, as witnessed by the programmes lead by the Government is the Public-Private Partnership (PPP), there are very limited cases of public-private partnerships connected to build cultural heritage, which can be cited as examples of good practice (COMUS, 2015).

In the Republic of Moldova the matter is regulated by Public-Private Partnership Law 179-XVI of 10 July 2008, recently complemented by the Government Decision 245/2012 on National Council for Public-Private Partnership and Government Decision 476/2012 on private partner selection. Concessions are governed by the Concessions Law 534/1995. In addition, the Law on Administration and Privatisation of Public Property 121/2007.

Moreover, the current legislation does not provide the possibility for financial support from budgetary sources or other public funds to NGOs and private owners of built cultural heritage and, respectively, for any interventions on their built cultural heritage (COMUS, 2015).

Indeed, current legislation do not contain the provisions (or they are ambiguous and not expressly connected to cultural heritage) required to set up a national co-ordinated and integrated regulatory system to introduce fiscal incentives for cultural heritage preservation. It has also emerged that national legislation in the field of culture is fragmented and tends to include procedures in the body of the laws instead of relying on specific regulations.

EU FISCAL POLICY FOR CULTURAL HERITAGE

At the EU level, several documents underline the importance of encouraging private investments in culture. In 1986 already, the potentials of a combination of public and private support to cultural activities were discussed within the Council (86/C320/02). In their view, culture can benefit from a strengthened support from a plurality of sources, including different forms of both private and corporate sponsorship.

The 2015-18 Work Plan for Culture, adopted by EU Culture Ministers in December 2014¹ envisages the objective of “Focus on the financial ecosystem for the cultural and creative sectors. Examination of financial instruments, such as loans and equities. Overview and analysis of alternative financing, such as public-private funds, business angels, venture capital, crowdfunding, sponsorship, donations and philanthropy”.

¹ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XG1223\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XG1223(02)&from=EN)



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

Again in 2014, the European Parliament has expressly called the Commission, in its resolution “towards an integrated approach to cultural heritage for Europe”² to strengthen the newly established principle of multi-funding and encourage public-private partnerships.

Indeed, the general orientation of EU institutions is that funding of cultural heritage should be flexible and adaptable. Even though the complete privatization of the sector is definitely undesirable, financing cultural heritage exclusively through public funding risks to jeopardize sustainability and to reduce accessibility of heritage.

INCENTIVES FOR ENCOURAGING PRIVATE INVESTMENTS. SELECTED COUNTRIES

In order to offer practical examples of different patterns aimed fostering private support to the cultural heritage sector, an overview of possible incentive mechanisms that have been successfully experimented in other countries is illustrated.

It has been decided to analyse more in depth three Countries that are emblematic of three different systems of managing cultural policies: **Italy, France** and the **United Kingdom**.

The comparison of their administrative settings and indirect interventions in the cultural sector highlights a relevant distinction between countries with a centralised organization, such as Italy and France, and those with a more decentralised one, the United Kingdom.

Italy, is a hybrid system that is experimenting a process towards a more decentralised mechanisms to involve the private sector. The Italian case shows that, while the state plays a central role in supporting culture, there is a wide array of initiatives, incentives and systems for encouraging private support of culture.

More in details, **France** is characterised by a top-down and state-driven system, in which also private funding of cultural sector are influenced by the state.

The **United Kingdom** is considered to be a ‘tripod economy’ whereby each source of income (public, private, earned) accounts equally for the total income. In the UK, autonomous bodies that enjoy a degree of independence from political distribute funds among various projects and applicants. The “arm’s length principle” regulates the way these bodies operate, their organisation and their interaction with the government. The idea behind the principle is to prevent political interference in decision making.

² http://ec.europa.eu/assets/eac/culture/library/publications/2014-heritage-communication_en.pdf



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

SECTORAL INCENTIVES IN ITALY, FRANCE AND THE UNITED KINGDOM

This paragraph describes the main types of fiscal incentives for private investments in cultural heritage in Italy, France, and United Kingdom. The list of incentives presented below does not intend to be exhaustive, since other incentives could be specifically designed for the Moldavian system.

ITALY

In Italy, there is in place a mix of administrative, economic and arm's-length models. The responsibilities for culture are split between various bodies on four levels: state, regional, provincial and municipal.

Referring to the **sponsorship** activities and donations, fiscal incentives become the object of tax reduction in two ways:

- Tax credit: when the donated amount can be directly subtracted from the amount due (applies only to physical persons up to 19% and for a small amount - 2000 euros);
- Tax deduction: when the donated amount can be subtracted from the income amount to reduce the overall income sum on which income tax regimes apply (it applies to physical and legal entities) (Law 342/2000).

For donations to no –profit sector, donations could be financial or in kind (that is goods, which need to be detailed in description and value) and are the object of deduction from the overall income. There is a limit in the Italian legislation: 10% deduction or no more than 70.000 euros for physical persons and 2% of the enterprise income (according to DL 14/3/2005). Moreover, advertisement expenses and representation costs totally deductible from company income (Law DPR 917/1986—TUIR).

There are obligations for the donors and the beneficiaries in terms of how the donations are documented and accounted, in order to ensure the traceability of these funds. In particular, for donations for cultural heritage, physical donors are requested to stipulate agreements with the beneficiaries, complying with obligations pertaining protection of cultural properties. For enterprises, a project proposal for the cultural activities that is meant to be funded must be submitted for approval to the Ministry of Culture.

Other important fiscal facilitations concern the **owners of immovable properties** that are protected according to the law, which are related to:

Renovation and maintenance of cultural heritage. In particular, it is foreseen that:

- Costs accrued in the renovation of buildings under monument protection can be deducted from the taxable incomes of the building owners. (article 37 of the Code of Cultural Heritage and Landscape).
- Investments in the renovation and maintenance of cultural heritage can be deducted from the annual taxation due.

The entry of properties into the register that are considered relevant to cultural heritage:



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

- lower taxes for entries of buildings that are proclaimed cultural heritage sites, if the new owner, who is obliged to pay taxes on the building, accepts the duty of the maintenance of the building value (article 10 D.Lgs. n. 23/2011 and article 26 del D.L. n. 104/2013).

Moreover, it is possible to have the reduction of taxes on the income obtained from the use of immovable protected properties and the complete exemption if these are used as museums or publicly accessible (article 38 of the Code of Cultural Heritage and Landscape); reduction of taxes for cadastral, ownership or mortgage registration, reduction of inheritance tax (now it has been abolished for all immovable up to a certain amount), reduction of municipality tax on immovable properties. Fiscal facilitation on works conducted on protected monuments need to be certified by the competent body of the Ministry of Culture (soprintendenza), which also has to authorize the works and certifies the successful and respectful implementation of the works (article 31 of the Code of Cultural Heritage and Landscape).

- **Transfer of art in lieu of tax payment:** this system acts as a tax credit system. It is possible to cede cultural goods as well as works of living authors not older than 50 years to the state instead of paying taxes (Decree of the President of the Republic No. 603/73). A special measure is providing the favourable tax treatment of old (listed) buildings.
- **Percentage legislation in favour of the arts:** citizens can decide about the destination and use of a small fraction of their income tax, without implying donations: these instruments are known as “otto per mille” or 8‰ - eight per thousand and “cinque per mille” or 5‰ – five per thousand.
- **European funding sources,** including the Community structural funds through which multi-annual Community grants are allocated; the framework programs dedicated to culture; loans from the European Investment Bank, granted to public and private entities.
- **Sponsorship of cultural heritage:** "any form of contribution in goods or services by private individuals
- **Deductions from business income:** allows companies to deduct from the taxable income so-called social utility charges, including donations for cultural purposes.
- **Lower taxes on heritage and gifts:** 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 NPOs that execute social activities (D.Lgs. 31/10/990 n. 346). Cultural goods as **testamentary gifts** are not subject to tax payment or tax reductions.
- **Tourist tax:** D.L. 23/2011 establishes that resources from tourist tax shall be used for tourism and cultural projects.
- **VAT relief on the selling of immovable properties:** The transfer of immovable properties of historical, artistic and archaeological interest is taxed at a 3% rate (lower than the ordinary 7%). As far as the Value Added Tax is concerned, even though transfers of immovable properties subject to historical and artistic constraints are taxed according to the ordinary 20% rate, services typical of libraries, discos, museums, galleries, picture-galleries, monuments, villas, palaces, parks and botanic and zoological gardens are exempted from taxation (sect. 10, D.P.R. 633/1972).



Twining Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

- **National lottery:** Law 662/1996 establishes that resources from lottery funds to cultural purposes (up to EUR 155 million annually). This sum represents a fixed ceiling amount. The funds are allocated to the Ministry of Heritage and Cultural Activities for the restoration and preservation of cultural, archaeological, artistic, archival and library goods, based on triennial plans.

The Art Bonus

Among the measures adopted at national level in Italy, the so-called Art Bonus deserves a specific mention. The Art Bonus is a set of emergency measures contained in article 1 of the Decree Law 83 of May 31, 2014²⁷. The objective is to favour cultural patronage by setting a tax credit equal to 65% for all private entities that wish to support projects of maintenance, protection and restoration of public cultural heritage; public museums, archaeological sites, archives and libraries; public theatres and lyric foundations.

It works through a simple mechanism: beneficiaries register on a website (www.artbonus.gov.it) 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.

Below are indicated the most important pieces of legislation related to Art Bonus:

- Art Bonus Law (+ Regulation by Fiscal Agency)
- Act on guidelines for cultural sponsorships (march, 2013), MiBACT.
- Regional Law n.21/2010, Tuscany Region.
- Regional Law n. 45/2012, Tuscany Region.

It is particularly interesting because it aims at facilitating the meeting between demand for funding and potential offers from donors. It is also a way to stimulate project capacity in the public administrations, as they need to set out clearly the financial needs for any intervention they propose on the platform for obtaining the donations.

FRANCE

The French law - namely the Law on the development of sponsoring (1987) and the Law on the Development of Sponsorship, Mécénat Law (2003) - envisages fiscal facilitations devoted to incentivise **sponsorship** activities. Sponsor companies may deduct from their taxable earnings value of gifts of a cultural nature to charities or organisations of general interest, up to a maximum of 0.225% (or, under certain conditions, 0.325%) of their turnover.

In France, the sector that receive the most important part of the cultural sponsoring budget are build and landscape heritage conservation, music and museums/ exhibitions. The main motivation to engage in cultural sponsorship is to contribute to the attractiveness of a territory/place (40%). Other important incentives are advocacy for culture inside the company (22%) and development of public relations (20%), (Compendium Report - France, 2016).



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

Other important fiscal incentives concern the enhancement of **renovation and maintenance of cultural heritage**. In particular, it is foreseen that:

- private individuals who own old buildings can deduct maintenance expenses incurred in respect of such property from their taxable income (art 199 of the General Tax Code). Different rules apply according to the building's classification.
- Investments in the renovation and maintenance of cultural heritage can be deducted from the annual taxation due.

Fiscal incentives to support owner-occupiers of listed properties.

It is possible to deduct expenses relating to the property (their share of the cost of any subsidised work, loan interest, property tax, etc.) from taxable income within the following limits:

- 100% for properties listed or registered as historic monuments, provided these are open to the public;
- 50% for such properties not open to the public;
- 50% for properties granted ministerial approval, by definition open to the public.

A third group of incentives are related to taxes reliefs on **inheritance and gift**.

- Heirs or beneficiaries can benefit from tax deductions if the protected building or artwork will be at least partially open for public or used to benefit cultural heritage (same as in United Kingdom).
- Possibility of tax payment on inheritance in the form of gifts of inherited artworks to museums and galleries that are open to the public.

Lastly, facilitation and reductions also apply to **VAT**. In particular, a special VAT scheme 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.

UNITED KINGDOM

The UK cultural sector is usually regarded as the archetypal "arm's-length" model, as governmental funds for culture are administered by non-departmental public bodies that distribute money to the final beneficiaries.

Fiscal incentives are foreseen only for **sponsorship** given to a registered charity, as many arts organisations are.

Referring to **renovation and maintenance of cultural heritage**, the UK zero VAT rate is foreseen for certain types of construction expenditure. For instance, occupants of qualified listed property who carry out 'approved alterations' can benefit from the zero rate. The register of goods and services that benefit



Twining Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

from the zero VAT rate in the UK could not be widened due to restrictions in European VAT legislation. With the implementation of BREXIT, things might change in this regard in the future.

Coming to the **taxes on heritage and gifts**, the system is similar to the one described for France. Tax reliefs under the condition that the protected building or artwork will in some other way be used to benefit cultural heritage.

Other important incentives in the UK are:

- **Payroll Giving** allows anyone who pays income tax to give regularly and on a tax-free basis to the charities and good causes of their choice. Payroll Giving donations are deducted before tax.
- **Income tax relief for donation of shares, land and buildings to a charity** or to sell them to a charity at a price lower than their market value. The advantage of this scheme is that neither the donor nor the arts charity receiving the assets is liable for any Capital Gains Tax and, furthermore, the donor can claim income tax relief. Businesses are also encouraged to donate money, land, building and shares. Donations of money should be paid in gross and are then deductible from the total profits of businesses when calculating Corporation Tax.
- **Tax measures for buying and selling protected properties:** relief from VAT payment is offered for selling, or renting out for an extended period of time, the protected building if the building was reconstructed or renovated with money from the seller or renter.
- **Transfer of art in lieu of tax payment:** allows people to offer items of specific cultural and historical importance to the State in full or part payment of their inheritance tax, capital transfer tax or estate duty. Cultural objects are in this way acquired for public ownership and distributed to museums, galleries, etc. in the UK. **National Lottery** - For every GBP 1 spent on Lottery tickets, 28 pence goes to the Lottery's good causes: arts, charities and voluntary groups, heritage, health, education, environment and sports. The money is allocated to funders who then redistribute said funds for specific projects. The UK Government is committed to increasing the shares of the National Lottery Distribution Fund to 20% for each of the good causes of sport, heritage and the arts as a way of compensation for some of the cuts to the arts sector budgets. During 2009-2010 the Museum, Libraries and Archives Council (MLA), responsible for administering the scheme on behalf of the government, dealt with a total of 33 cases for a value of GBP 15.7 million, resulting in a tax settlement of GBP 10.8 million (Museum, Libraries and Archives Council, 2010)



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
 Support to promote cultural heritage in the Republic of Moldova
 through its preservation and protection

MAIN FEATURES OF FOUNDATIONS: SELECTED COUNTRIES

In most countries, the fund and foundation sector has been booming for the last two to three decades, a sign that the philanthropic culture is continuing to make progress and the result of changes to legal and fiscal frameworks³.

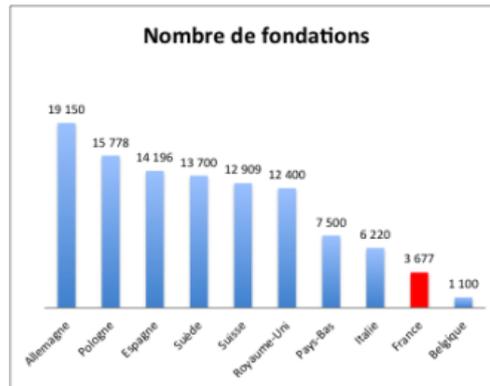


Figure 1 Number of Foundation in Europe. Source CERPhi – April 2015.

FOUNDATIONS IN ITALY, FRANCE AND THE UNITED KINGDOM

ITALY

In Italy, between 1995 and 2005, the number of foundations grew by 133% (Observatoire de la Fondation de France / CERPhi – April 2015, An overview of philanthropy in Europe) and art and culture is the priority of private foundation support (European Parliament, Financing the arts and culture in the European Union culture and education).

The Civil Code set the basic condition to set up a foundation. It is possible for individuals as well as legal entities but in all cases an endowment proportionate to the foundation's purposes is required. According to Decree n. 361/2000, a foundation reached legal personality by enrolling in a legal entity register.

Foundations fall under the supervision of prefectures or regional administrations depending on the type of foundation. Foundations established before autumn 2000, however, fall under the supervision of the competent Ministry (the Ministry of Interior or, in some cases, the Ministry of Education) and there is special supervision of foundations that pursue cultural purposes (see Decree no. 368/1998). Foundations of banking origin fall under the supervision of the Ministry of Economy until all of them divest controlling shareholdings in banks (see Art. 52 of Decree no. 78 of 2010 and State Council (Consiglio di Stato) no. 5118/2011).

Foundations can pursue both public and private benefit purposes, however **fiscal reliefs are only provided for some kinds of foundations which pursue public benefit.**



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

The Italian law provides significant tax benefits for foundations, including:

- Total exemption from tax and regional tax only in what concerns the institutional activities and related (non-business) activities.
- VAT exemption for hospital services, nursing, education and training, and social and health services in general.
- Exemption from stamp duty and the obligation to issue receipts (only for institutional activities).
- Simplification of accounting.
- Exemptions and concessions from various municipal taxes, and provincial, regional and capital income.

FRANCE

According to the French law, “a foundation is the deed by which one or several persons decide to assign irrevocably some goods, rights, or resources to the fulfilment of a public interest and not-for-profit purpose.” (July 23, 1987 Development of Philanthropy Act, as modified by the July 4, 1990 Corporate Foundations Act)⁴.

Foundations must have their own patrimony. This attribute distinguishes them from associations, which are simply groupings of individuals or legal entities with a common goal. Since all foundations must serve a public benefit purpose, private interest foundations are not permitted.

There are three main types of foundations: public utility foundations; sheltered foundations; corporate foundations.

All foundations, except for corporate foundations, are entitled to tax credits for their donations to NPOs with general interest or public utility status. Legal entities may receive tax credits worth up to 0.5 percent of their annual income for donations, while individuals may receive tax credits worth up to 20 percent of their annual taxable income for donations.

In 2008, it has been introduced the endowment fund (Law No. 2008-776 of August 4, 2008). This fund is characterised by its administrative flexibility with initially no start-up capital requirement, now amended to a low minimum threshold, and has led to the creation of more than 600 funds in the two years since the act modernising the French economy introduced this new type of foundation. In France, 4% of the total expenditures of foundations is spent on arts and culture.

Lastly, it is worth mentioning three legal developments – the January 4, 2002 Act on the Museums of France; the August 1, 2003 Act on Philanthropy, Associations, and Foundations; and the *Conseil d’Etat’s* implementation of standard by-laws for public utility foundations – have all contributed to a more flexible process for creating and administering foundations.

⁴ <https://www.cof.org/content/france>



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

THE UNITED KINGDOM

In the UK foundations are not a special form of charity: all registered charities, whether called “foundations” or “trusts” and whatever their funding source or activities, have the same character in law. Charitable status in the UK is not achieved through the adoption of a particular legal constitution or form but through compliance with “charitable purposes” as set out by the charitable regulators, namely – the Charity Commission for England and Wales, Office of the Scottish Charity Regulator (OSCR) and Charity Commission for Northern Ireland. The charitable purpose was defined in the 1601 Act, modified and widened in the Charities Act 2006, now superseded by the Charities Act 2011.

In the UK, the support of the grant-making charitable trust to the arts and culture was 9% of their total budget in 2002. For the period 2001-2004, funding increased by an average of 30%, and then decreased almost by 15% in 2004-2005. The largest share (up to 78%) goes to London art organisations.

POSSIBLE IMPROVEMENTS IN MOLDOVA

The main challenge that emerged is that current legislation does not contain provisions (or they are ambiguous and not expressly connected to cultural heritage) required to set up a national co-ordinated and integrated regulatory system to introduce fiscal incentives for cultural heritage preservation. It has also emerged that national legislation in the field of culture is fragmented and tends to include procedures in the body of the laws instead of relying on specific regulations.

However, according to what emerged from the desk analysis and from the interviews, it appears that the introduction of fiscal incentives is envisaged by strategical documents and it is welcomed by institutional and non-institutional actors.

The introduction of fiscal incentives requires first of all the improvement of the current **legal framework**. This will require to:

1. Involve the relevant actors:
 - a) The Ministry of Education, Culture and Research, the Ministry of Finance and Ministry of Economy and Infrastructure should cooperate in order to amend/introduce the relevant laws and bylaws. It is suggested to **create an interministerial “task force” to set up the regulatory system in the field.**
2. Create the regulatory framework:
 - b) The possibility of benefitting from fiscal incentives could be **inserted in the draft law “Monuments of history and culture. The way and principles of designing the restoration of constructions”, which at the moment is being elaborated.**
 - c) The subsequent step should be to amend the Tax Code. **It is suggested to introduce only general issues in the Code and to specify the functioning of different incentives in specific regulations.**
 - d) Identify the most interesting incentives to be introduced in Moldova.



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

From the preliminary survey conducted to compile this report, it appears that it would be welcomed the introduction of:

- financial incentives granted to **owners and managers of built cultural heritage assets**
- **VAT relief on building materials and specific categories of works** related to conservation/restoration of listed buildings.
- **National Lottery related incentives**
- **Stimulating the creation of bank foundations** through appropriate fiscal incentives and facilitations, given the high number of banks present in Moldova
 - The Tax Code describes “taxes and fees and their types” (Article 6). It is necessary to identify the type of taxes that can be reduced. *From a first survey, it appears that facilitation and reductions could be applied to **income tax and to VAT.***

A strategy for the diversification of the sources of funding needs to be made up of different coordinated measures and, to be effective, needs to be accompanied by a promotion campaign.

The analysis of the existing laws has shown some criticalities.

- At the moment, the Tax Code includes:
 - a. tax deductions for philanthropic and sponsorship activities (article 36). *However, the purposes of philanthropic activities do not include any action related to the cultural field (article 2).*
 - b. an instrument that is similar to the Italian 8‰, i.e. the percentage of the income tax on physical persons that each individual is allowed to decide to devolve to specific subjects (Law 2%). *It is not specified that it can be devolved to cultural activities.*

As a first preparatory step, it is suggested in that respect to:

- *Amend the Tax Code to expressly insert that tax deductions and earmarked percentages of income taxes can be related to the cultural field, in order to facilitate donations for cultural heritage without too many changes in the legislation.*

Bibliographic references:

1. Analytical Base-Line Report on the Culture Sector and Cultural Policy of the Republic of Moldova
2. National Strategy for the Development of Culture of the Republic of Moldova / Culture 2020
3. Tax Code of the Republic of Moldova nr. 1163 of 24.04.1997
4. Law on Philanthropy and Sponsorship nr. 1420 of 31.10. 2002
5. COMUS, 2015
6. Public-Private Partnership Law of the Republic of Moldova 179-XVI of 10.07 2008
7. RM Government Decision 245/2012 on National Council for Public-Private Partnership
8. RM Government Decision 476/2012 on private partner selection
9. Concessions Law of the Republic of Moldova 534 of 13.07.1995
10. Law on Administration and Privatisation of Public Property 121/2007
11. 2015-18 Work Plan for Culture, EU Culture Ministers (December 2014)



Twinning Project MD 13 ENPI OT 01 16 (MD/26)
Support to promote cultural heritage in the Republic of Moldova
through its preservation and protection

12. Report towards an integrated approach to cultural heritage for Europe, 24.06.2015
13. Law 342/2000: deduction of donations and sponsorship (Italy)
14. Law DPR 917/1986—TUIR
15. Code of Cultural Heritage and Landscape (Legislative Decree No. 42 of 22 January 2004, Italy)
16. D.Lgs. n. 23/2011 and article 26 del D.L. n. 104/2013, article 10, Italy
17. Decree of the President of the Republic No. 603/73, Italy
18. D.Lgs. 31/10/990 n. 346, Italy
19. D.L. 23/2011, Italy
20. D.P.R. 633/1972, sect. 10, Italy
21. Law 662/1996, Italy
22. Law on the development of sponsoring (1987), France
23. Law on the Development of Sponsorship, Mécénat Law (2003), France
24. Compendium Report - France, 2016
25. General Tax Code, art 199, France
26. Observatoire de la Fondation de France / CERPhi – April 2015, “An overview of philanthropy in Europe”
27. Decree no. 78 of 2010, art. 52, Italy
28. Corporate Foundations Act, July 4, 1990, France
29. Law No. 2008-776 of August 4, 2008, France
30. Act on the Museums of France, January 4, 2002;
31. Act on Philanthropy, Associations, and Foundations, August 1, 2003, France