

**DECISION no. 1420 of the 4th of December 2003 on the approval of the
Norms regarding the movable cultural goods trade**

On the basis of article 108 of the Romanian Constitution, codified, and of the article 77 paragraphs (1) and (3) of Law no. 182/2000 on the protection of the movable national cultural heritage,

The Romanian Government passes the present decision.

Unique article

The Norms regarding the movable cultural goods trade, as stipulated in the appendix included in the present decision, are approved.

PRIME-MINISTER

ADRIAN NĂSTASE

Countersigns

The Minister of Culture and Religious Affairs,

Laurențiu Tănase

The Minister of Public Finances,

Gheorghe Gheorghina

State Secretary

APPENDIX:

Published in the Romanian Official Journal no. 900 of the 16th of December 2003

NORMS of the 4th of December 2003 regarding the movable cultural goods trade

CHAPTER I: General Dispositions

Art. 1

- (1) In order to commercialize movable cultural goods held in private property, the economic agents must first obtain the functioning license issued by the Ministry of Culture and Religious Affairs on the basis of the endorsement of the National Commission of Museums and Collections.
- (2) The commerce with movable cultural goods as well as the functioning license issuing procedure, mentioned in paragraph (1), must comply with the stipulations of Law no. 182/2000 on the protection of movable national cultural heritage and of the present norms.
- (3) The plastic and photographic works of art, the decorating or cult works of art, the ethnographic works of art belonging to folklore artisans as well as other works created by living artists are not subject to classification, according to the stipulations of art. 81 paragraph (1) of Law no. 182/2000, and therefore, the commerce with these objects does not fall under the scope of the present norms.

CHAPTER II: The functioning license issuing procedure

Art. 2

- (1) In order to obtain the functioning license, the economic agent will submit to the specialized department of the Ministry of Culture and Religious Affairs the following documents, if the case may be:
 - a) standard application, filled in according to the model here included in appendix no. 1;
 - b) the synthetic documentary of the activity, with the main indicators registered at the date the economic agent was established, filled in according to the model here included in appendix no. 2;
 - c) certified true copy of the articles of incorporation of the economic agent;
 - d) copy of the closure concerning the registration of the tradesman, pronounced by the assigned judge at the Registry of Commerce, regarding the registration of the solicitant economic agent;
 - e) certified true copy of the registration certificate, with the VAT registration

- no. of the solicitant economic agent;
 - f) certified true copy of the studies certificates of the specialized councillors;
 - g) criminal record of the specialized councillor and of the applicant's partners.
- (2) The functioning license is issued on condition that a specialized councillor is hired and that the necessary requirements for the conservation of the classified movable cultural goods are complied with, in conformity with the law.
- (3) For the purpose of the present norms, specialized councillor shall be taken to mean the university degree person having at least 5 years experience in the field of arts or the expert accredited by the Ministry of Culture and Religious Affaires, having as main responsibility to evaluate and authenticate the objects to be commercialized.

Art. 3

- (1) In order to obtain the functioning license, the applicant must satisfy the minimal licensing criteria, as follows:
- a) the economic agent has the articles of incorporation;
 - b) the articles of incorporation must specify the movable cultural goods trade as the economic agent's field of activity;
 - c) the commercializing office must be exclusively used for the movable cultural goods trade;
 - d) the auction house, the art gallery or shop must street post the name of the economic agent and its field of activity;
 - e) the commercializing office must be equipped with alarm system or it must have concluded a service provider contract with a security guard company or it must be permanently guarded by specialized staff;
 - f) the norms regarding the movable cultural goods trade must be visibly displayed;
 - g) the legal representative of the holder of the functioning license must not have criminal record.
- (2) By order of the minister of culture and religious affaires a technical commission of evaluation shall be constituted, whose attributions are to verify, on the spot, too, that the solicitant fulfils the minimal licensing criteria;
- (3) The technical commission of evaluation comprises specialists of The Ministry of Culture and Religious Affaires and of the county and Bucharest offices for culture, cults and the national cultural heritage.
- (4) The technical commission of evaluation elaborates a report on the way the minimal licensing criteria are fulfilled, which he/she submits to the National Commission of Museums and Collections in order to be endorsed.

Art. 4

- (1) The license or, if the case may be, the motivated refusal to grant the license shall, be conveyed within 30 days after the documentation stated in art. 2 paragraph (1) was submitted. The license shall be issued in conformity with the model here included in appendix no. 3.
- (2) The license or, if the case may be, the motivated refusal to grant the license

shall, be conveyed to the applicant within 24 hours after it was issued, respectively formulated.

- (3) In case of refusal, the applicant may appeal to the Ministry of Culture and Religious Affairs within 30 days after acknowledging the refusal; if the applicant is not satisfied with the result, he/she may appeal to the Administrative Contentious Court, in conformity with the law.

Art. 5

Any modification concerning the headquarters, the specialized councillor or the field of activity for which the license was issued must be communicated within 15 days after it occurred, in view of proceeding to the modifications in the data base of the specialized department of the Ministry of Culture and Religious Affairs.

Art. 6

If any classified movable cultural object, that are to be commercialized, is missing or is destroyed, the authorized economic agents that commercialize or organize auctions with cultural goods are compelled to notify immediately the police forces and the Ministry of culture and Religious Affairs in view of including them in the Destroyed, Stolen, Missing or Illegally Exported Cultural Objects Register.

Art. 7

- (1) The functioning license may be suspended, for an indeterminate period, by order of the minister of culture and religious affairs, in the following cases:
- a) the economic agent's partners or, if the case may be, its employees infringe upon the stipulations of Law no. 182/2000 and of the present norms;
 - b) the economic agent's employees commit professional errors that lead to the destruction or damage of the movable cultural objects.
- (2) The suspension stated in paragraph (1) may cease, by order of the minister of culture and religious affairs, only if the economic agent proves that the causes that led to the infringement of Law no. 182/2000 and of the present norms or, if the case may be, the professional errors that led to the destruction or damage of the movable cultural objects have been removed.
- (3) The functioning license may be annulled by order of the minister of culture and religious affairs if the manager of the economic agent is definitively sentenced for one of the following offences: theft, robbery, false pretences, fraud, forgery, abuse of office against the state, concealment, abetment of a crime concerning the national cultural heritage, destruction of movable cultural goods classified as thesaurus, larceny, impersonation, embezzlement, bribe-taking and -giving, false declarations, the infractions stipulated by art. 65-76 of Law no. 182/2000, with the subsequent modifications and completions, the tax evasion stipulated by Law no. 87/1994 for the rebuttal of tax evasion, codified, the offences stipulated by art. 24 and 25 of Law no. 178/1934 for the regulations of the consignment contract.

CHAPTER III: Rules for the movable cultural objects trade

Art. 8

- (1) Public sale of the movable cultural goods held in private property or the mediation of the sale is done only through licensed economic agents, in compliance with the provisions of Law no. 182/2000 and of the present norms.
- (2) The economic agents licensed to commercialize movable cultural goods are compelled to keep a numbered and stamped register, in which they mention, correctly and completely, the name and address of the bidder, the description and price of each and every object. The description of the respective object shall comprise the name author and the title of the work or, if the case is, what the respective work represents, signed/unsigned, as well as the place of the signature and its colour; it shall also comprise the material and the technique used, its size, inscriptions, as well as other data that could be necessary to identify a movable cultural object. The information comprised in the registered is confidential and only the employees whose work contracts stipulate confidentiality clauses have access to them.
- (3) The register mentioned under paragraph (2) shall be registered at the county and Bucharest offices for culture, cults and the national cultural heritage that record these documents, individually, for each licensed economic agent.
- (4) The police forces or the courts of justice have access to the register mentioned under paragraph (2) any time it is necessary to verify or investigate a case.

Art. 9

- (1) The economic agents licensed to commercialize movable cultural goods are compelled to notify in writing the county and Bucharest offices for culture, cults and the national cultural heritage, within 5 days after the offer, about the existence of the goods likely to be classified.
- (2) The notification mentioned under paragraph (1) shall be filled in according to the application here included in appendix no. 4 and table no. 4a).
- (3) The economic agents licensed to commercialize movable cultural goods are compelled to notify in writing the owner of the object, within 5 days, about the possibility that the classification procedure is initiated.
- (4) If, as a result of the expertise of the goods subject to the notification stated in paragraph (1), it was established that the respective goods do not belong to the thesaurus category, the county and Bucharest offices for culture, cults and the national cultural heritage notifies the owner and the respective economic agent, according to the model here included in appendix no. 5 and table no. 5.

Art. 10

- (1) The economic agents licensed to commercialize movable cultural goods are compelled to notify in writing the county and Bucharest offices for culture, cults and the national cultural heritage that covers their headquarters, within 3 days after the registration of the classified goods, about putting them on sale.
- (2) The movable cultural goods mentioned under paragraph (1) can be subject to public sale only after the Romanian State, through the Ministry of Culture and Religious Affairs, exerted its pre-emption right.

- (3) The county offices for culture, cults and the national cultural heritage are compelled to forward to the Ministry of Culture and Religious Affairs, within 3 days after acknowledging the written notice of the authorised economic agent, the following documents:
- a) the registration regarding the sale of movable cultural object classified as thesaurus;
 - b) the offer of the licensed economic agent regarding movable cultural object classified as thesaurus;
 - c) the documentation concerning the acquisition of the respective object, elaborated in conformity with the legal stipulations relative to the public acquisitions;
 - d) colour photographs of the object, whole view and details;
 - e) expertise reports elaborated the moment the respective object was classified.
- (4) The deadline for the Romanian State to exert its pre-emption right is maximum 30 days after the notification mentioned in paragraph (3), and the acquisition value is the one negotiated with the dealer or the economic agent or the one resulted from public auction.
- (5) The Ministry of Culture and Religious Affairs notifies the economic agent the intention to buy the object classified as thesaurus, within the delay stated in paragraph (4).
- (6) If the stipulations of paragraph (2) are not complied with, the sale becomes null.

Art. 11

- (1) The Ministry of Culture and Religious Affairs establishes annually, by order of the minister of culture and religious affairs, the Acquisition Commission, as a consequence of the exertion of the pre-emption right. It is made up of specialists recognised in the field.
- (2) Within 10 days after the documents mentioned in art. 10, paragraph (3) are submitted, the commission mentioned in paragraph (1) analyses the offer relative to the classified movable cultural object and elaborates a justifying note relative to the acquisition of the respective object using the acquisition procedure by negotiating with a single source or, if the case may be, a rejection note and forwards it to the minister of culture and religious affairs for approval. If the acquisition of the cultural object is proposed, the commission is entitled to negotiate the price and have the obligation to establish whether he/she accepts the price proposed by the seller or, if the case may be, to decide the maximal price that can be offered in case of auction.

Art. 12

Appendixes no. 1-5a) are part and parcel of the present norms.

APPENDIX No. 1: APPLICATION for the endorsement of the Ministry of Culture and Religious Affaires relative to licensing the economic agents that commercialises cultural goods

The National Commission of Museums and Collections

We positively endorse

The undersigned, residing at(full address), in the county of....., telephone no., I.D. series..... No....., issued by....., at, Personal Identification Number, on the basis of the information provided in the synthetic document, in conformity with the competences of the Ministry of Culture and Religious Affaires and of the National Commission of Museums and Collections, I request the endorsement of the functioning, in compliance with the legal stipulations and regulations in force, also acknowledging the fact that I have to deliver, at shortest notice, the necessary data of national and international interest to the concerned institutions.

| Name of the company | Type of activities for which the endorsement is solicited | The field of activity | Number of employees and their main specialisations | Headquarters of the company, address, telephone no., fax |
|---------------------|---|-----------------------|--|--|
| | | | | |
| | | | | |

Date.....

Holder's signature

.....

APPENDIX No. 2: SYNTHETIC DOCUMENTARY

Name of the economic agent

1. Field of activity

2. Functioning status:

Without partner.....with partners.....no. of partners.....

| No. | Name and surname of the holder and of his/her partners | Studies | Workplace and position, for the persons employed in other companies | Observations |
|-----|--|---------|---|--------------|
| | | | | |
| | | | | |

1. Number of employees....., of which employees of other state-owned or private institutions

2. The holder is specialised in the field.....

Studies.....

He/she provides other professional services for other state owned company (the company/companies)

The position/positions

Provides services for private companies (the company/companies), status....., he/she is retired.....

3. The person/persons in charge with the probity of the company (the holder shall communicate in writing to the Ministry of Culture and Religious Affaires any change of the persons in charge of ensuring the professional probity of the services provided by the company)

| No. | Name and surname | Type of responsibility | Studies | Workplace and position is he/she is employed |
|-----|------------------|------------------------|---------|--|
| | | | | |
| | | | | |

4. He/she acknowledged the legal dispositions regulating the activity of the private companies, including the legal regulations directly concerning the

company's field of activity

5. Data regarding the headquarters:

- a) it is the holder's / partner's property.....
- b) it is state-owned property.....
- c) it is rented from a private body.....
- d) address: locality....., zip code....., street
....., no., phone no., fax.
.....

6. Functioning license no., issued (date).....

Date
.....

Holder's signature

APPENDIX No. 3: THE FUNCTIONING LICENSE

ROMANIA

NO

THE MINISTRY OF CULTURE AND RELIGIOUS AFFAIRES

DATE

The Ministry of Culture and Religious Affaires, on the basis of the decision of the National Commission of Museums and Collections, positively endorses Mr/Mrs' application, residing at(full address), in the county of....., telephone no., I.D. series..... No....., issued by....., at, relative to the functioning of..... .

The functioning license exclusively refers to the cultural aspects of the private activity of the applicant performed on the basis of license no., issued by

The economic agent's specialised councillor is Mr/Mrs, born in (year), (month), (day), in(locality), county, I.D. series..... No....., issued by....., at, authorised by the National Commission of Museums and Collections on the basis of the documents submitted; he/she may practice on a lucrative private basis, the above mentioned speciality, as company holder, partner or employee.

This certificate is one of the documents that condition and maintain the validity of the functioning license, on the name of the company's holder responsible for the quality of the services provided and the compliance with the regulations in force, relative to the field of activity for which the present functioning license was issued.

The specialised councillor may perform his/her activity with the economic agent mentioned in the functioning license, only for operations concerning its field.

In case of transfer, withdrawal or dismissal of the specialised councillor, the validity of the license ceases until a new councillor authorised by the Ministry of Culture and Religious Affaires is hired.

The holder of the functioning license and the specialised councillor shall comply with the stipulations of Law no. 182/2000 on the protection of the movable cultural heritage.

The National Commission of Museums and Collections

President,

The endorsement holder

.....

.....

The Museums and Historical Monuments Department Manager,

Specialised councillor

.....

.....

APPENDIX No. 4: NOTIFICATION on the sale of movable cultural objects

Name of the economic agent

The economic agent, from
.....(full address), zip code,
county....., telephone no., fax, notifies
the county / Bucharest offices for culture, cults and the national cultural heritage that
starting with (date) the movable cultural objects included in the annexed
table will be put to sale; the goods have been expertised in view of classification, in
conformity with the stipulations of Law no. 182/2000 on the protection of the movable
cultural heritage.

Date

The economic agent's representative,

.....

APPENDIX Nr. 4a): CULTURAL OBJECTS LIKELY TO BE CLASSIFIED, PUT TO SALE AT

Name of the economic agent.....

TABLE

| No. | Name of the cultural object | Material | Title (if the case may be) | Author | Date of creation | Value | No. of items | Owner |
|-----|-----------------------------|----------|----------------------------|--------|------------------|-------|--------------|-------|
| | | | | | | | | |
| | | | | | | | | |

Date

The economic agent's representative,

.....

NOTE:

The table will be enclosed to the movable cultural goods sale notification and it will be included in the files elaborated by the territorial offices for the classification of the movable cultural goods subject to public auctions or to art gallery sale.

APPENDIX No. 5:

THE MINISTRY OF CULTURE AND RELIGIOUS AFFAIRES

The county / Bucharest office for culture, cults and the national cultural heritage

No. /date

To

.....

As a result of the notification no., of, addressed to the county / Bucharest office for culture, cults and the national cultural heritage we inform you that the movable cultural objects included in the annexed table do not satisfy the necessary conditions to be classified, as stipulated by the legislation in force. Consequently, they have not been forwarded for approval to the National Commission of Museums and Collections.

The county / Bucharest office for culture, cults and the national cultural heritage

Manager,

.....

APPENDIX No. 5a: TABLE with the movable cultural objects whose classification was rejected

To the economic agent

| No. | Name of the cultural object | Material | Title (if the case may be) | Author | Date of creation | Value | No. of items | Owner |
|-----|-----------------------------|----------|----------------------------|--------|------------------|-------|--------------|-------|
| | | | | | | | | |
| | | | | | | | | |

NOTE:

The table will be enclosed to the appendix no. 5 meant to notify the economic agent, in view of putting to sale the movable cultural goods through public auctions or through the intermediary of a licensed agent.

Published in the Romanian Official Journal no. 900 of the 16th of December 2003.