

DECREE ON THE CONDITIONS AND MANNER OF SALE OF CUSTOMS GOODS AND OTHER PROCEDURES WITH CUSTOMS GOODS

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Date of last check: 18 June 2025

Pursuant to Article 295 of the Customs Law ("Official Gazette of the Republic of Montenegro", no. 7/02, 38/02 and 72/02) and Article 12 paragraph 1 of the Decree of the Government of Montenegro ("Official Gazette of the Republic of Montenegro", no. 15/94 and 4/97), the Government of the Republic of Montenegro, at the session held on April 3, 2003, adopted the

DECREE ON THE CONDITIONS AND MANNER OF SALE OF CUSTOMS GOODS AND OTHER PROCEDURES WITH CUSTOMS GOODS ¹

I. GENERAL PROVISIONS

Article 1

- (1) This Decree shall prescribe the manner and conditions for sale of:
- customs goods, which were seized on the basis of the Customs Law;
 - customs goods that have been ceded to the state;
 - other customs goods, which are sold by customs authorities, if they are authorized to sell these goods based on a special Decree.
- (2) This Decree shall also prescribe the conditions for other procedures related to goods referred to in paragraph 1 of this Article, assignment, destruction of goods, etc.

Article 2

- (1) If the customs authority finds goods whose owner is unknown, and it can be reasonably concluded that they are customs goods, the customs authority shall publish a list with a description of these goods on its notice board for a period of 30 days.
- (2) The goods referred to in paragraph 1 of this Article shall be kept for 30 days from the day of publication on the bulletin board. If the owner does not report within this period, does not regulate the customs status of the goods, does not take over the goods, and does not pay the costs related to the storage and transportation of the goods, the goods shall be handled in accordance with this Decree.

Article 3

- (1) Goods referred to in Article 1 of this Decree shall be sold by the customs office.
- (2) The Director of the Customs Administration of Montenegro may select and authorize persons outside the customs service to perform individual services (transportation,

¹ (Official Gazette of the Republic of Montenegro, no. 022/03 of 04.04.2003, 062/04 of 11.10.2004)

storage, sale, etc.) in connection with the goods referred to in Article 1 of this Decree (hereinafter referred to as "the authorized contractor").

- (3) If the services related to the goods are performed by an authorized contractor, then the contract between this contractor and the Customs Administration of Montenegro shall determine the mutual rights and obligations arising from the procedure with the goods in accordance with this Decree, as well as the customs authority responsible for supervision over the performance of services, performed by an authorized contractor.
- (4) The contract referred to in paragraph 3 of this Article shall define the content of the document, with which the authorized contractor shall record the taken goods, as well as the document, with which the party confirms the taking over of the goods.

II VERIFICATION OF CONDITIONS AND PREPARATION OF GOODS FOR SALE

Article 4

The customs office that takes over the goods referred to in Article 1 of this Decree shall inspect the goods and make a record of this in two copies. The record shall contain, first of all, data on the type and quantity of goods, as well as a description of the condition of the goods that have been taken over.

Article 5

- (1) The customs authority shall establish the Commission for the assessment of the value of goods (hereinafter referred to as "the Commission"), which consists of the president and two members, in order to determine the conditions for the sale of goods.
- (2) The tasks of the Commission shall be:
 - assessment of the value of goods;
 - checking whether there are conditions for sale;
 - checking whether the import of goods into the Republic of Montenegro is prohibited;
 - checking whether the goods meet phyto-veterinary-sanitary and market conditions;
 - determination of the method of selling goods;
 - creation of lists of goods for sale;
 - preparation of minutes on their work.
- (3) The Commission shall check whether the goods on the list of goods for sale correspond to the data from the records on the receipt of goods referred to in Article 4 paragraph 1 of this Decree.
- (4) After assessing the value of the goods, the Commission shall supplement the list of goods for sale with data on the estimated value.
- (5) If the Commission states that the type, quantity and condition of the goods do not agree with the data from the record on the receipt of goods referred to in Article 4 paragraph 1 of this Decree, it shall state this in the minutes of its work.

Article 6

The customs office shall sell only those goods for which it was previously established it is not prohibited to import to the Republic of Montenegro and that the goods meet phyto-veterinary-sanitary and market conditions. Goods that do not meet the specified conditions shall be removed from the customs area, that is, shall be destroyed.

Article 7

- (1) The customs office may, until the announcement of the public sale, authorize the person to whom the transport document is addressed or the owner of the goods, except

for goods seized in misdemeanour proceedings, to take the goods for customs clearance or return abroad.

- (2) If the goods are not sold at the first public sale, the customs office may approve the removal of the goods, for the purpose of paragraph 1 of this Article, until the publication of the next public sale.
- (3) In cases referred to in paragraphs 1 and 2 of this Article, the person who takes the goods shall be obliged to pay all costs related to the sale of the goods.
- (4) The costs referred to in paragraph 3 of this Article shall be determined by the customs office by decision.

Article 8

All costs related to transportation, storage of goods, etc. which is returned to the party, shall be borne by the customs office, if the costs were not incurred by the party.

Article 9

In cases where the authority that conducts the procedure makes a decision to return the goods to the party, when taking over the goods, a record shall be drawn up stating the type, quantity, and description of the condition of the goods that the party takes over.

Article 10

- (1) The initial price of the goods for sale shall be the estimated value referred to in Article 5 paragraph 4 of this Decree. When determining the value of goods, the rules on determining the value of goods for customs purposes shall apply, taking into account possible technological obsolescence, fashion obsolescence and the fact that the goods are sold without a guarantee.
- (2) The public sale of goods shall be carried out at a public auction, through the collection of bids or through direct negotiation.

III PUBLIC AUCTION

Article 11

- (1) The goods, the value of which the Commission referred to in Article 5 of this Decree has estimated at an amount above 1000.00 EUR, shall be as a rule sold at a public auction.
- (2) The public auction of goods shall be carried out by the Commission for the sale of goods, appointed by the customs office. The Commission for the sale of goods shall have the president and two members.
- (3) The public auction shall be published in the daily press. The public auction advertisement shall state the bidding conditions, information on the type, quantity and condition of the goods, the starting price, the day, hour and place of the auction, the amount and method of depositing the deposit for participation in the auction, as well as the day and place, when and where goods for sale can be inspected.

Article 12

- (1) Legal entities and entrepreneurs with their headquarters in the territory of the Republic of Montenegro may participate in the public auction for goods referred to in Article 1 of this Decree, if they pay the prescribed deposit and if they are registered for trading with the goods that are auctioned, which they prove with an extract from register of the competent authority, which cannot be older than 60 days. Natural persons with permanent residence in the Republic of Montenegro can participate in the auction, if goods of a non-commercial nature are being sold.

- (2) Persons employed in the customs service, their spouses, as well as their family members with whom they are related by blood in the direct line or in the collateral line up to the fourth degree, may not participate as bidders in the public auction.
- (3) Before the start of the public auction, the bidders shall pay a deposit, amounting to 10% of the initial value of the goods they intend to bid, to the account designated by the customs office.
- (4) Only the bidder who shows a confirmation of the paid deposit shall participate in the public auction .

Article 13

- (1) The goods shall be put up for auction with a starting price, which is equal to the estimated value determined by the Commission referred to in Article 5 of this Decree.
- (2) The first auction can only be held if at least two bidders participate in it.
- (3) The bidding shall be considered successful if at least two bidders have offered a higher price than the starting price.
- (4) The goods at the auction shall be sold to the buyer who has offered the highest price.
- (5) If the first auction is unsuccessful, the second one shall be scheduled, which can be held if at least two bidders participate. The announcement of the second public auction must contain the same information as the first one, but the advertisement should additionally state that it is the second auction. With regard to the activities of the participants, the provisions of this Article shall be duly taken into account. The initial price of the goods from the first auction may be reduced by the corresponding percentage when the second auction is published, but at most up to half of the estimated value.
- (6) If the first public auction was unsuccessful because there were no bidders, the Commission for the sale of goods may, instead of determining a second public auction, conclude that the goods are sold through the collection of bids, that is, through direct negotiation if the goods were not sold through the collection of bids.
- (7) In the event that the second auction is conducted and it is also unsuccessful, the goods shall be sold based on the collection of bids or through direct negotiation.
- (8) If the goods are not sold in accordance with the provisions of this Article, they shall be destroyed or given away free of charge in accordance with this Decree.

Article 14

- (1) The Commission for the sale of goods shall prepare a minutes of the bidding process. All information about the goods, the starting price, the participants in the auction, the bids made, the sales price achieved and the buyer shall be recorded in the minutes.
- (2) The minutes of the public auction shall be signed by the President and members of the Committee for the sale of goods, the buyer and the bidders present.
- (3) The minutes of the public auction shall be posted on the notice board of the customs office within two days after the end of the sale and shall remain there for three days. Participants in the public auction can file an objection to the customs office, to the work and procedure of the Commission for the sale of goods, within three days after the publication of the minutes on the notice board, but only if they have announced the objection in writing to the Commission for the sale of goods, within one hour after the end bidding.
- (4) The customs office shall make a decision, upon complaint, within three days after its submission. The goods in relation to which a complaint has been filed may not be handed over to the customer until completion of the complaint procedure.

IV PAYMENT OF THE PURCHASE PRICE AND REGULATION OF THE CUSTOMS STATUS OF THE GOODS

Article 15

(Decree amending the Decree on the conditions and manner of sale of customs goods and other procedures with customs goods, Official Gazette of the Republic of Montenegro, No. 062/04 of 11.10.2004, Article 1)

- (1) Customs goods that have been ceded to the state or confiscated can be sold by the customs authority on the condition that the buyer completes the formalities for approving customs-approved treatment or use of the goods.
- (2) Customs goods that have been ceded to the state or confiscated can be sold by the customs service authority, provided that the purchase price of the goods includes the customs debt. When the customs debt is included in the purchase price of the goods, it is considered as if the goods were put into free circulation through the sale. The customs office shall calculate the customs debt itself.
- (3) The buyer shall pay the purchase price and the calculated customs duty and other taxes, which are charged during importation, if the goods were placed into free circulation by sale before taking over the goods immediately after the end of the procedure for objecting to the invoice, indicated by the customs office.
- (4) The deposit payment shall be included in the purchase price.
- (5) The buyer shall not take over the goods until they have paid the full purchase price and, in the case of placing the goods in free circulation, calculated customs and other duties, which are charged during importation.
- (6) The buyer shall be obliged to take over the goods within three days after payment of the purchase price and calculated customs and other duties, which are charged during importation, if the goods are placed into free circulation through sale.
- (7) If, upon completion of the sale, the buyer requests any other customs-approved use or utilisation, except for putting the goods into free circulation, the goods shall be transferred to them under the conditions referred to in paragraph 5 of this Article on the basis of the corresponding customs declaration.

Article 16

- (1) If the buyer does not pay the purchase price or, in the case of placing the goods into free circulation, the calculated customs and other duties, which are charged during importation, within the deadline referred to in Article 15, paragraph 1 of this Decree, they shall lose the right to refund the deposit, and the goods shall be returned to public auction.
- (2) If the buyer does not take over the goods within the period referred to in Article 15 paragraph 6 of this Decree, the goods shall be put up for public auction again. Upon their request, the amount of the paid purchase price shall be returned to the buyer, minus the costs of a new public auction and the costs of storing and transporting the goods, which occurred after the expiration of the deadline for taking over the goods until they are sold or destroyed.
- (3) Participants in the auction, who did not succeed in the auction, shall have their deposit returned no later than five days after the end of the auction.
- (4) The deposit shall not be returned to the participant in the auction, who leaves the auction before its end. The Commission shall record in the minutes abandonment of the auction.

Article 17

The incurred costs of transportation, storage and other costs incurred in connection with the sale of goods shall be settled from the charged purchase price for these goods.

V SALE OF GOODS ON THE BASIS OF COLLECTION OF OFFERS AND THROUGH DIRECT NEGOTIATION

Article 18

- (1) As a rule, goods shall be sold through the collection of bids, if the estimated value of goods of the same type, which the customs office takes over in an individual procedure, is less than 1000.00 EUR.
- (2) The Commission for the sale of goods referred to in Article 11, paragraph 2 of this Decree, shall publish a call for bids as a rule in the public media. The advertisement shall be published at least 15 days before the conclusion of the contract with the most favourable bidder. The advertisement shall state where and when the goods offered for sale can be inspected, as well as the last day for bidding.
- (3) The Commission for the sale of goods shall review the bids and select the most favourable bidder.

Article 19

The customs office can sell animals, perishable goods, goods whose preservation is associated with high costs, goods referred to in Article 6 of this Decree and goods whose sale at a public auction was unsuccessful or was not sold through bidding.

VI FREE ASSIGNMENT OF CUSTOMS GOODS AND OTHER PROCEDURES WITH CUSTOMS GOODS

Article 20

(Decree amending the Decree on the conditions and manner of sale of customs goods and other procedures with customs goods, Official Gazette of the Republic of Montenegro, No. 062/04 of 11.10.2004, Article 2)

- (1) The Government of the Republic of Montenegro (hereinafter referred to as "the Government") may transfer the goods referred to in Article 1 of this Decree free of charge to state bodies or humanitarian organizations and other users, if they need these goods for the performance of their activities.
- (2) In the case of objects of historical, archaeological, ethnographic, cultural, artistic, or scientific value, the Government shall make a decision on the transfer of these objects to the competent authority or institution without payment of the equivalent value.
- (3) The Government can make a decision that goods, which according to special regulations cannot go into free circulation (weapons, ammunition, radio stations, etc.) shall be transferred to state bodies and organizations, which need these goods for performance of their activities, without payment of the equivalent value.
- (4) The Government shall make a decision on the transfer of goods without payment of the equivalent value at the proposal of the applicant from para. 1, 2 and 3 of this Article and based on the previous opinion of the competent ministry.
- (5) By way of exception to paragraph 1 of this Article, the Director of the Customs Administration may transfer perishable goods and goods whose storage is associated with high costs, free of charge, to humanitarian organizations and other users, if they need these goods for performance of their activities.

Article 21

- (1) If the goods are not sold or given free of charge in accordance with Article 20 of this Decree, they shall be destroyed, in accordance with special regulations which regulate the manner and procedure of destruction of goods.
- (2) The customs office may destroy the goods in cases where the costs of storage, sale and other costs related to the goods would not be in proportion to the amount that would be obtained from the sale.

VII TRANSITIONAL AND FINAL PROVISIONS

Article 22

If the procedure for the sale of customs goods began before the entry into force of this Decree, then the sale of goods shall be completed according to regulations that were in force on the day when the sale procedure began.

Article 23

Contracts on storage and preservation, which were concluded with an authorized organization in accordance with regulations that were in force before the entry into force of this Decree, shall be valid until the expiration of the terms provided for in them.

Article 24

This Decree shall enter into force on the eighth day following that of its publication in the Official Gazette of the Republic of Montenegro.”