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Declassified E.O. 12356 Section 3.3/NND No.

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ACC

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RIGHT OF
OCT. 1944

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RIGHT OF ALLIES TO CONTROL APPOINTMENTS OF COMMISSARI
OCT. 1944 - FEB. 1945

FILE CLOSED 15 February 1945

HEADQUARTERS ALLIED COMMISSION
FINANCE SUB-COMMISSION
APO 394

Legal

3A

16 FEB 1945

13177/F

15th February 1945

Subject : Appointment of Commissioners for Social Security
Funds etc.

To : Civil Affairs Section. ✓

1. Several issues of the Gazzetta Ufficiale submitted to this Sub-Commission recently have contained provisions which it has been necessary for us to request to have excluded from implementation in Military Government Territory.

2. We have in mind particularly the following :

a) G.U.n.88 p.592 Decree of the Minister of Finance appointing Comm.Dott.Francesco De Gaetano as Commissario of the Fondo di Previdenza per il personale provinciale della Amministrazione del catasto e dei servizi tecnici erariali.

b) G.U.n.89 p.593 Decree of the Minister of War appointing Ugo Butta as Commissario of the Fondo di Previdenza Sottufficiali del Regio Esercito.

c) G.U.n.95 p.646 Decree of the President of the Council of Ministers appointing Comm.Dott.Carmine Maredei as Commissario of the Cassa Nazionale di Previdenza e Mutualità fra personale provinciale delle imposte dirette.

d) G.U. n.13 p.105 Decree by the President of the Council of the Ministers appointing Comm.Dott.Salvatore Marino as Commissario of the Cassa di Previdenza e Mutualità tra il personale provinciale delle tasse e delle imposte indirette sugli affari.

(2)

3. The receipt of the issue of the Gazzetta Ufficiale containing the names of the persons nominated has been the first intimation received by this Sub-Commission of any proposal to make the respective appointments, and since we also had no knowledge whatever of the individuals either, it was clearly not possible to approve the extension of their authority to Military Government Territory.

4. We are most desirous of assuring to Government appointed Commissioners the widest scope for their authority and functioning in Military Government Territory. While we neither can nor would wish to oppose appointments made by the Italian Government in respect of territory under their jurisdiction, nevertheless, we feel that we have a very definite responsibility for any appointments which affect Military Government Territory.

5. With a view, therefore, to ensuring the fullest cooperation with the Government in these appointments, we ask if it would not be possible for future nominations of Commissioners for social insurance institutions (which seem to be made by various ministries) to be submitted to this Sub-Commission before publication. We could then be given an opportunity of meeting the nominees, with a view to ascertaining their technical competence and whether their political background renders them acceptable in Military Government Territory.

6. Such arrangement would be mutually advantageous and obviate the necessity for excluding from implementation in Military Government Territory such appointments as the Italian Government may wish to make.

7. In the commercial insurance field CCS definitely visualize the removal of politically undesirable elements and it is therefore reasonable to assume that they will not want similar elements to be appointed in the social insurance field.

LEGAL SUB-COMMISSION

CEO

DCLIO

Chief Counsel

C999 to Labour Sub-Commission

Italian Service

10 FEB 1941

A.P. Grassby Smith

Brig.

JOINT DIRECTOR

Finance Sub-Commission

NA. spoke to Brig. Grassby Smith

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4055/1

QUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

Legal (2A)

10 Jan 45

Not held at legal

DF/5.1/CA

Your Excellency,

I refer to your letter of the 19 Dec 44 dealing with the appointment of Commissioners. The Allied Commission has not the same understanding of the legal position as that set out in para 5 of your letter. So far as this Commission understands the position, it is that if there is a mistake in law, or any want of, or act in excess of, jurisdiction the Council of State could "correct" the Government; but, that the Council of State has no power to enter into any question of fact. If this is correct and the appropriate Government body states that it has in fact a particular opinion, no question of law or jurisdiction arises and those concerned in the fortunes of the company are without legal redress against a possibly repressive action on the part of the Executive.

This Commission draws this matter to your attention as you may feel that the rights of the individual are not properly protected by the draft as it at present stands and feels that you may desire to omit the words "a giudizio dell'autorita' governativa" in the proposed amendment or that the wording of Art 9 in the earlier draft should be restored.

It is however felt that the matter is one domestic to the Italian people and that the interests of the Allies are not directly concerned. It is therefore entirely for the Council of Ministers to decide how they will deal with the question; the Allied Commission can only tender advice.

Believe me, Your Excellency,
Yours truly

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LEGAL SUB-COMMISSION

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H E The President of the Council of Ministers
Italian Government
R O M E

CIO

Section

CLARKS

G. R. U. J. O. H. Prig.
VP CA Section
DCOS AC

10 JAN 1945

What does this refer to & mean?

✓

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

Secret

(1A)

ACC/4055/1/L.

EJG/ap.
17 October 1944.

SUBJECT : Commissari.

TO : Deputy Chief of Staff, C.A. Sec.

1. In my opinion (ACC ^{4175/L} ~~4055/1/L~~ Folio 19A) I concluded that the Italian Government could be required by appropriate legislation to appoint as commissario of A.G.I.P. persons from time to time constituting the managing committee of C.I.P.

2. I based this opinion upon the conclusion that in circumstances where the power to control resided in the United Nations, there was ample authority for the exercise thereof through such means and mechanisms as the United Nations elected to utilize.

3. Thus it could be required of the Italian Government in appropriate cases to appoint commissari and to dictate the personnel thereof.

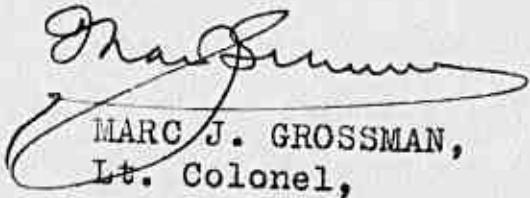
4. In my opinion to the V.P. Adm Section 4 October 1944 (See 5A/CA - Folio 9A) I concluded that there was ample authority for Allied Control Commission affirmatively to dictate the price and wage structure of the vital phases of the Italian economy or negatively to prevent the Italian Government from making vital changes therein contrary to the interests of the United Nations.

5. Para 30 of the Long Terms requires the Italian Government to comply with such directions as the United Nations may give for the abolition of Fascist Institutions, the dismissal of Fascist personnel, the control of Fascist funds, the suppression of Fascist Ideology and teaching.

6. It follows that the powers of control vested in the United Nations whether their object be oil properties, the general economy or Fascist institutions, may be exercised by and through commissari composed of personnel chosen, if desired by the United Nations.

7. The power to control includes the power to exclude the control of others. With respect to those objects the control of which is reserved to the United Nations all powers of control by the Italian Government may be eliminated or restricted at the will of the United Nations. Among the powers of the Italian Government which may be thus wholly interdicted or partially restrained is the power to appoint Commissari. It must follow that with respect to the aforesaid objects the United Nations at their pleasure may either entirely prevent the appointment of Commissari or may permit their appointment only on such terms and conditions as the United Nations may prescribe.

8. I therefore conclude that the Italian Government may be required to secure from the Allied Control Commission prior approval of any proposed decree appointing Commissari and of all personnel intended to be appointed thereunder, subject only to the condition that the decree affects objects, things or matters reserved to the control of the United Nations.


MARC J. GROSSMAN,
Lt. Colonel,
Chief Counsel,
for Chief Legal Advisor.

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