

ACC

10000/142/753

2/753

APPROVAL BY ACC OF ITALIAN DECREES
OCT. 1944

FILE CLOSED 12 October 1944

HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394
CIVIL AFFAIRS BRANCH

Ref: 9/17.3/CA

12 Oct '44.

SUBJECT: Approved by ACC of Italian Government decrees.

TO: ACC.

1. After discussion with the Directors of the Legal and Finance sub-commissions the following plan for securing that all decrees in which ACC is interested are approved by it before becoming law is submitted for your approval. The plan will of course have to be discussed in detail with the Italian Government before it can be put into effect.
2. At present there is no coordinated plan for supervising the issue of decrees; when a sub-commission is interested in certain legislation it takes the matter up with the appropriate Ministry and such sub-commission, if it desires, consults the Chief Legal Adviser on any legal points that may arise. All negotiations are carried on between the sub-commission and the Minister concerned, and the Chief Legal Adviser is not concerned therewith otherwise than as purely a legal adviser (see Directive dated 5th Mar '44 copy attached). While certainly not the universal practice, some of the Ministries have been cooperative in submitting in advance, to their opposite ACC sub-commission for approval, decrees they propose to submit to the Council of Ministers for enactment even when it is believed that ACC would not really be interested. This system has worked quite well in practice over many months and it is not desired to interfere in any way therewith (except to modify the Directive in a few minor particulars to bring it up to date) but to devise a system to ensure no decree escapes a preview by ACC.
3. All decrees when they have been passed by the Council of Ministers have to be registered with the Corte Dei Conti and published in the official Gazette before becoming law. An officer of the Finance sub-commission already sees all decrees when presented to the Corte Dei Conti for registration in order to see that they are financially acceptable. It is recommended that an officer of the Legal sub-commission should also be assigned to this work and should, with the officer from the Finance sub-

2. It is recommended that a sub-commission be interested in certain legislation if of decrees; when a sub-commission is interested in certain legislation it take the matter up with the appropriate Ministry and such sub-commission, if it desires, consults the Chief Legal Adviser on any legal points that may arise. All negotiations are carried on between the sub-commission and the Minister concerned, and the Chief Legal Adviser is not concerned therewith otherwise than as purely a legal adviser (See Directive dated 5th Mar '44 copy attached). While certainly not the universal practice, some of the Ministries have been cooperative in submitting in advance, to their opponents AOC sub-commission for approval, decrees they propose to submit to the Council of Ministers for enactment even when it is believed that AOC would not really be interested. This system has worked quite well in practice over many months and it is not desired to interfere in any way therewith (except to modify the Directive in a few minor particulars to bring it up to date) but to devise a system to ensure no decree escapes a preview by AOC.

3

5. All decrees when they have been passed by the Council of Ministers have to be registered with the Corte Dei Conti and published in the official Gazette before becoming law. An officer of the Finance sub-commission already sees all decrees when presented to the Corte Dei Conti for registration in order to see that they are financially acceptable. It is recommended that an officer of the legal sub-commission should also be assigned to this work and should, with the officer from the Finance sub-commission examine all decrees when presented for registration. It is not thought that, beyond any original legal advice referred to above, examination by the legal sub-commission at an earlier stage will be of much value owing to the last minute alterations which are almost invariably made in decrees. However, if the Secretary of the President of the Council has received any copy of a draft decree before it has been discussed it would expedite the examination of decrees if a copy was handed at the earliest possible moment to the legal sub-commission. If it is possible to persuade the Government to revert to the system whereby the Minister of Justice sees all decrees before submission to the Council of Ministers the task of the legal sub-commission will be even more simplified.

6. It will be the duty of the legal sub-commission to ensure an accurate transmission to be made of all decrees, and it will then be the duty of the Chief Legal Adviser to advise the Chief Commissioner whether any such decrees are of interest to AOC either:-

- a) as affecting the execution of the Armistice terms, or
- b) as affecting the war effort.

The exact principles on which the Chief Legal Adviser is to act in expressing his opinion as to whether or not a decree is of interest to AOC

A. J. P.

2

will have to be the subject of a careful directive to him.

5. If a decree contains nothing in which AOC is interested, then of course no further step is taken to stay its registration or publication. If, however, the decree is one in which the Chief Legal Adviser advises that AOC is interested, it will be the duty of the appropriate Deputy C.O.S. to report to the C.O.S. as to whether the principles and policy of the decree are in accordance with the principles and policy of AOC. If there is a divergence the matter will be taken up by the AOC with the Prime Minister. In practice of course in many instances these decrees will be cleared direct between the legal sub-commission and the sub-commission concerned without reference to higher authority as it will be the duty of the legal officer assigned to this duty to keep in close touch with the work of the sub-commissions in this respect.

6. If this outline plan is adopted it is estimated that one additional legal officer must be assigned to the legal sub-commission and the he will require the services of at least 2 Italian legal experts; for the work of translating is lengthy and arduous and the wearing and operation of the decrees can only be properly interpreted by Italian legal experts. If this additional staff, together with two extra typists and two typewriters, is not provided the plan will break down owing to the inevitable delays in translating and typing. The question of payment of these experts also arises and I propose to bring up the whole question at the next C.O.S. meeting.

G. E. W. W. W.
G. E. W. W. W. Brigadier.
VP CA Sec.
Don C. of S.

6. If this outline plan is adopted it is estimated that one additional legal officer must be assigned to the Legal sub-commission and the he will require the services of at least 2 Italian legal experts; for the work of translating is lengthy and arduous and the meaning and operation of the German can only be properly interpreted by Italian legal experts. If this additional staff, together with two extra typists and two typewriters, is not provided the plan will break down owing to the inevitable delays in translating and typing. The question of payment of these experts also arises and I propose to bring up the whole question at the next C.O.S. meeting.

G. R. Upjohn
G. R. UPJOHN Brigadier
VP QA Sec.
Dep C. of S.

Copy to Econ. Sec.
Finance sub-commission
Legal sub-commission. ✓

CHU/mba

LEGAL SUB-COMMISSION	✓
CL	✓
CL	✓
Chief Counsel	
CJO	
Italian Sec.	
CL RKS	

ATTENTION
LEGAL COUNSEL
Legal Sub-Commission
AND 354

100/111/1

15th March 1964

SUBJECT: Italian Legislation.

TO: Distribution Below.

1. In the course of meeting between Sub-Commission and their officials members in the Italian Government and Commission on matters of policy it frequently became necessary for Sub-Commission to consider the initiation and preparation of decrees laws by the Italian Government and this directive lays down the procedure to be followed.

2. The method of preparation of decrees by the Italian Government is as follows:

Under the present Italian system of administration all legislative proposals submitted from the several Ministries of State are drafted by the originating department (self for submission to the legal adviser to the Cabinet of Ministers as a preliminary to submission by that body. The draft bill or administrative decree when approved in principle by the Council of Ministers is submitted to the final legal check by the Minister of Justice before presentation to the King or Chief of Government for signature and publication in the official gazette.

3. When a Sub-Commission and a Ministry are agreed on a joint policy which necessitates a decree law it is the duty of the Ministry concerned to prepare the decree and not A.O. Then considering the terms of the draft decrees with the Ministry concerned the Sub-Commission should at this stage consult the legal Sub-Commission to see that the draft decrees in fact carry out what the Sub-Commission has in mind.

4. It is then the duty of the Italian Ministry concerned to carry through the draft in accordance with the procedure outlined above. If any changes are made in the draft at a later stage the Ministry concerned should be asked to inform the Sub-Commission accordingly and if any difficulty arises therein the latter should consult the legal Sub-Commission.

5. The decree only becomes effective in law on the date of its publication in the official gazette and if the decree is a territorial still controlled by

96

Under the present Italian system of administration all legislative proposals emanating from the several Ministries of State are drafted by the originating department itself for submission to the legal adviser in the Cabinet of Ministers as a preliminary to consideration by that body. The draft bill or administrative decree then appears in principle by the Council of Ministers is examined as to its final legal form by the Minister of Justice before presentation to the King or Chief of Government for signature and publication in the Official Gazette.

3. When a sub-commission and a Ministry are seized on a joint policy which necessitates a decree let it be the duty of the Ministry concerned to prepare the decree and not J.C. When considering the terms of the draft decree with the Ministry concerned the Sub-Commission should at this stage consult the legal sub-commission to see that the draft decree in fact carries out what the sub-commission has in mind.
4. It is then to the duty of the Italian Ministry concerned to carry through the draft in accordance with the procedure outlined above. If any changes are made in the draft at a later stage the Ministry concerned should be asked to inform the sub-commission concerned and if any difficulty arises therein the latter should consult the legal sub-commission.
5. The decree only becomes effective in law on the date of its publication in the Gazzetta Ufficiale and is not operative in territory still occupied by the Allied Forces. If the sub-commission concerned desire to make such decree operative in occupied territory the legal sub-commission should be so informed in writing before. If possible, the date of publication in the Gazzetta.
6. Apart from the foregoing the Italian Government may initiate and prepare decrees on their own and not as the result of a common or agreed policy. The relationship between sub-commission and Ministries should be such that Ministries will as a matter of course inform their opposite numbers of their intentions in this respect at the earliest stage so that any effects may be remedied and that any appropriate action may be taken thereon sooner rather than later.

...over

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

(1A)

ACC/4104/L.

RHW/pa. 120-14P
8 Oct 44.

9 OCT 1944

SUBJECT : Italian Legislation.

TO : V.P. Civil Affairs Section.

1. Commerce Sub-Commission a few days ago submitted to Legal Sub-Commission two drafts of two decrees to be promulgated by the Italian Government. They are being examined now. These drafts were handed to Commerce Sub-Commission without covering letter. Later covering letters were sent by the Minister of Industry Commerce and Labor upon the request of Commerce Sub-Commission.

2. The covering letter states :

" There is transmitted the attached draft of a legislative decree, which although it is strictly juridical in character and has no connection with the Armistice, is nevertheless submitted for the information of your Commission".

3. One of these decrees deals with the holding of joint stock company meetings, submission of balance sheets and appointment of commissars. The other deals with the dissolution of certain fascist syndicals. In the former we may or may not be interested; in the latter I would think we may find we are much interested.

4. Whether or not these decrees are of interest to ACC will have to be determined after they and their implications have been thoroughly considered. The main point now to be decided is one of policy :

- a. Is each proposed decree to be submitted to ACC before it may be promulgated ?
- b. If not is the Italian Government to be the sole arbiter as to whether or not it is of interest to us under the Armistice Terms?

Legal ✓

Richard H. Wilmer

RICHARD H. WILMER,
Colonel, C.A.C.,
Chief Legal Advisor.

Discussed at CAS

Meeting 10 Oct

CAS will prepare a draft

directive

g.p.s.

1

15 OCT 1944

7 Contradictions when a sub-commission is considering the submission to the Executive Commissioner of proposals which involve the operation of a new General or Regional Order, they should normally consult the Italian Government and ascertain their views so that continuity of policy may be established. This does not apply, of course, where the proposed Order is intended to deal only with a short term local situation in occupied territory and does not affect any question of overall or long term (post occupation policy).

8 In order that co-ordination of views and requirements of sub-commissions can be handled, sub-commissioners will, at the earliest practical time, advise the appropriate VP of any proposed decree. This advice may be initiated either by sub-commissions or by one of the Ministries of the Italian Government, the VP will then decide whether or not it is necessary for him to deal primarily with the appropriate Minister. The latter course will be adopted when a decree involves several sub-commissions and will avoid Italian Government being required to deal with several branches of the Control Commission over one decree.

By Command of Lieut General HASAN M. ALI.

M. M. LAM,
Brigadier,
Executive Commissioner.

MEMORANDUM : Vice President, Administrative Section (S)-for distribution
Vice President, Technical Section (M) to sub-commissions

Army Sub-Commission
Navy Sub-Commission
Air Force Sub-Commission
Telecommunications Sub-Commission
Air Materiel Sub-Commission
Displaced Persons Sub-Commission
Civil Affairs Branch
Italian Refugees Branch
Security Branch
Public Relations Branch
Political Section.

0 2 2 4