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REVIEW

OF THE

NEW LEGISLATION CONCERNING
ECONOMIC AGREEMENTS (CARTELS, etc.)
IN GERMANY AND HUNGARY

Prepared for the Economic Committee

by

Dr. Siegfried TSCHIER SCHKY

GENEVA, 1932

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Review of the Legal Aspects of Industrial Agreements. Prepared for the Economic Committee by M. Henri Décugis (France), Mr. Robert E. Olds (United States of America) and M. Siegfried Tschierschky (Germany). (Ser. L.o.N. P. 1930.II.11.) 95 pages 3/- \$0.75

This publication reproduces a general report by three eminent jurists specialising in industrial agreements on the legal forms assumed by cartels and trusts and the forms of State intervention *vis-à-vis* such industrial and commercial agreements.

The general survey is followed by special studies on the legislation and administrative measures governing these agreements in the principal countries.

Review of the Economic Aspects of Several International Industrial Agreements. Prepared for the Economic Committee by M. Antonio St. Benni (Italy), M. Clemens Lammers (Germany), M. Louis Marlio (France) and M. Aloys Meyer (Luxemburg). (Ser. L.o.N. P. 1930.II.41.) 76 pages 2/6 \$0.60

This review contains an analysis of a series of very important international agreements, which has been prepared by four industrial experts who are specialists on international cartels. It also deals, on the basis of very reliable data, with the organisation and working of those agreements.

General Report on the Economic Aspects of International Industrial Agreements. Prepared for the Economic Committee by M. Antonio St. Benni (Italy), M. Clemens Lammers (Germany), M. Louis Marlio (France) and M. Aloys Meyer (Luxemburg). (Ser. L.o.N. P. 1931.II.B.21.) 39 pages 1/- \$0.25

Four industrial experts of recognised authority, who were asked by the Economic Committee of the League of Nations to draw up a concise report on the influence of *international industrial agreements* on general economic policy, reproduce here the results of their studies and conversations on the subject. The memorandum deals, not only with the influence of international agreements on production and consumption, but also with the connection between this modern phenomenon, the organisation of production, and the position of labour and the authorities entrusted with the protection of the general interests of producers and consumers. The very acute problem of the relation between international agreements and *tariff policy* is also dealt with.

Section of Economic Relations

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Geneva, July 20th, 1932.

NOTE BY THE SECRETARIAT.

At the end of April 1930, the Economic and Financial Section published a *Review of the Legal Aspects of Industrial Agreements*, prepared for the Economic Committee by M. Henri DECUGIS (France), Mr. Robert E. OLDS (United States of America), and Dr. Siegfried TSCHIERSKY (Germany)—document E.529(1). The experts' general review was accompanied by special reviews of the legal position regarding industrial agreements in the principal countries.

During the second half of 1930, the legal provisions in force in *Germany*, and already analysed by Dr. Tschierschky in his report on this country appended to document E.529(1), were supplemented, owing to the prevailing economic distress, by a series of new provisions marking the most recent evolution in the relations between the State and economic agreements and the forms of its intervention. The chief object of these new provisions is to supervise and influence the policy of prices being fixed by industrial organisations. They strengthen Government control and provide for a large measure of intervention in private economic organisation, and also for the establishment of new compulsory cartels under State supervision.

Later, towards the end of 1931, as the economic situation was growing steadily worse, the German Government was forced to introduce further considerable restrictions upon economic freedom. These measures are designed to bring about a general reduction in the level of prices in all the important branches of economic life.

The legal position regarding economic agreements in *Hungary* prior to the promulgation of the new Law of October 15th, 1931, was explained by Dr. Tschierschky in a separate review also appended to document E.529(1).

The new Hungarian Law is to a large extent based on the fundamental principles of the German Decree on cartels of November 2nd, 1923, and constitutes one of the most up-to-date laws on the subject of economic agreements.

Dr. Tschierschky's new reviews represent the most recent contribution by a well-informed expert to the work of the Economic Committee on the general aspects of economic agreements.

The translation of the original German text has been made by the Secretariat.

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I. THE NEW GERMAN CARTEL LEGISLATION.

A. THE EMERGENCY DECREES (NOTVERORDNUNGEN) OF 1930 AND THE DECREE REGARDING THE COMPULSORY PRICES FOR GOODS BEARING A STANDARD MARK OF 1931.

I. PRELIMINARY OBSERVATIONS.

1. The official supervision of cartels, and to a smaller extent also of trusts, was introduced by the Cartel Decree of November 2nd, 1923. I gave full details of this Decree in the memorandum of the Economic and Financial Section entitled *Review of the Legal Aspects of Industrial Agreements*.¹ In the meantime, the Government of the Reich, under pressure of the economic crisis, thought it necessary to issue the following further decrees on this subject :

(1) Decree of the President of the Reich of July 26th, 1930, for removing financial, economic and social distress (*Reichsgesetzblatt* 1930, I, page 328). The part in question is the fifth chapter — "Prevention of Uneconomic Price Agreements". This Decree has become generally known as the "*Kartell-Notverordnung*" (Cartel Emergency Decree).

(2) In virtue of this Decree, an "Executory Decree regarding the Cancellation and Prohibition of Compulsory Prices" was issued on August 30th, 1930 (*Deutscher Reichsanzeiger*, No. 205, of September 3rd, 1930).

(3) On the same basis, the Decree regarding compulsory prices for goods bearing a standard mark was issued on January 16th, 1931 (*Deutscher Reichsanzeiger*, No. 14, of January 17th, 1931).

(4) Lastly, a second Emergency Decree was issued by the President of the Reich on December 1st, 1930, "to safeguard trade and finance" (*Reichsgesetzblatt* 1930, I, page 517).

Only the first of these four Decrees is of *general* importance; it supplements and extends or replaces the basic Decree of 1923, which still remains in force. The three other Decrees deal with *special subjects*. The Decree mentioned under No. 3 refers solely to the price policy respecting so-called marked goods, and that only respecting a restricted part of such goods. The Decree mentioned under No. 4 differs essentially from the measures hitherto mentioned, as it recognises the cartel idea by creating new compulsory cartels.

¹ Review prepared for the Economic Committee by M. Henri Decugis, Mr. Robert E. Olds and Dr. Siegfried Tschierschky: Geneva 1930 (document E.529(1), page 50).

2. It is unnecessary to go into the *economic and political origin* of these new Decrees. The Government itself, in its memorandum on the issue of the basic Decree mentioned in No. 1—*i.e.*, the Cartel Emergency Decree—stated that it was based on the necessity for a more rapid and complete adaptation of the prices fixed by the organisations to the general reduction in prices which had been rendered necessary by the severe economic depression. The administrative measures taken by Decrees Nos. 1 to 3, therefore, in opposition to the much wider legal and political scope of the Cartel Decree of 1923, are restricted to supervising and influencing price policy. In examining the various decrees, reference will be made to their special economic basis in so far as this is necessary for their comprehension.

3. The following remarks may be made on Decrees Nos. 1 to 3 *from the point of view of public law*.

The basic Emergency Decree of July 26th, 1930 (No. 1), is based on Article 48 of the German Constitution, which, under special internal political conditions, entitles the President of the Reich to apply special measures and even to suspend certain so-called fundamental rights. Such measures are not laws issued in the ordinary course of legislation but extraordinary decrees which may be annulled at the request of the Reichstag.¹ This Emergency Decree *should not be regarded as constituting a legal reform* of the Cartel Decree of 1923, such as was demanded in particular by the Congress of German jurists held in 1928 at Salzburg,² which made concrete proposals on the subject. On the other hand, the Emergency Decree, like the two other special decrees legally based on it, must be regarded in the first place as a temporary measure, which does not affect the validity of the Cartel Decree of 1923. The latter is still in force, and the new decrees, in many cases, expressly refer to it. The authorities in question have therefore now, in many cases, the choice between measures based on this law and on the new decrees. The decrees under discussion, however, in some cases extend the administrative powers which, in some respects, considerably exceed the supervision provided for by the Cartel Decree of 1923. Reference will be made to this subject later.

The Emergency Decree of July 26th, 1930, also differs legally very considerably from the Cartel Decree of 1923, in that it grants *exclusively to the Government of the Reich* the possibility of delegating powers to the *Governments of the States*; it does so without providing for any legal guarantee such as the re-examination of decisions by a Court, while the Cartel Decree of 1923 for the most part merely entitled the administration to make applications and transferred all material decisions to an independent administrative court—*i.e.*, the Cartel Court. On the other hand, the extent of the Government's powers has been considerably restricted, as compared with the Cartel Decree of 1923, by the fact that these Decrees only refer to the *prevention of uneconomic price agreements* and to individual measures such as the "informal embargo" (*formlose Sperre*) for the purpose of imposing such price agreements, to which mention is made below.

Decree No. 4, which does not come into this category, is discussed in a special chapter.

I may mention that the following comments on each Decree are confined to the necessary explanations on legal and economic points; only in important cases of principle are conflicting opinions mentioned regarding the interpretation of certain provisions, while I have entirely refrained from giving my own personal opinions.

¹ In dealing with this Emergency Decree, the Reichstag, however, did not utilise this right.

² See page 66 of the above-mentioned report of the Economic and Financial Section.

II. DECREE FOR THE PREVENTION OF UNECONOMIC PRICE AGREEMENTS OF JULY 26th, 1930
(CARTEL EMERGENCY DECREE). (For text, see *Annex A.*)

1. *The Legal and Economic Position.*

The Decree covers in its basic Section 1, not only the price and sale policy of *cartels* within the meaning of the by no means unimpeachable definition contained in Section 1 of the Cartel Decree, but also of *capitalist organisations* and even of individual undertakings (in particular Section 1, paragraph 1(b) and paragraph 2). In addition, the categories of organisations covered have been considerably extended by Section 1, paragraph 1(c). This paragraph covers agreements and decisions the *result* of which, consciously or unconsciously aimed at, is to regulate prices or business terms in an objectionable manner (acts of evasion). In addition, verbal agreements are expressly referred to, and even mere recommendations—somewhat after the manner of the famous understandings at the “Gary dinners”—which are intended, by the method of their execution and by the application of economic or social pressure on reluctant parties, to impose price regulations or particular terms of business. In particular, organisations similar to the well-known American “open price” unions would be affected. In accordance with the Cartel Decree (Section 1), on the other hand, all such agreements are legally null and void unless they are in writing. This formal provision, which also extends to decisions, aims at making the cartels and the individual measures of their policy amenable to official control. The Emergency Cartel Decree, on the other hand, refers in Section 1, paragraph 1(c), merely to a perceptible *economic result* without regard to the economic or legal method employed. For instance, cartels and similar organisations which do not themselves pursue a price policy, such as the cartels which merely make calculations or fix quotas, therefore also come under the Emergency Decree if they exercise an undesirable effect on prices. The Decree also covers the *verbal threat* of disadvantages to be imposed on a reluctant customer—*i.e.*, an “informal” embargo (against which the Cartel Decree was powerless on account of the absence of a written agreement)—if it “restricts freedom of action in a manner not justified by national economy” (individual subjective effect), or “affects the economy of production or trading in goods or services” (general objective effect). Unlike Reinhold Wolff,¹ I should not regard the decision of an employers’ association to bring about a cost agreement, and thereby also a price agreement, among the members by means of a general regulation of wages as coming under this Cartel Emergency Decree, since wage questions in the widest sense are not covered by this Decree.

There is no doubt that the wider legal scope of the Emergency Cartel Decree gives it a very extensive influence over the practical price policy of the organisations; its practical importance should, however, not be over-estimated, especially in view of the absence of an *obligation to contract*, which would necessarily be its corollary. The provision in Section 1, paragraph 2, regarding the *right of withdrawal* from agreements involving such disadvantages cannot help the customer—*i.e.*, a purchaser of goods or services—if, for instance, he may thereby be cut off from his natural sources of supply.

Section 1, paragraph 1(b), on the other hand, extends the powers of official supervision in a decisive manner. It covers the various kinds of price regulations and terms of business, including the provisions of individual purchase contracts, or, in particular,

¹ *Die Kartell-Notverordnung mit Ausführungsverordnung*; Berlin 1930, page 41.

express provisions of the so-called counter-bond agreement which imposes on one party, usually the purchaser, a definite *price policy for re-sale*. This includes both cartel obligations and individual obligations, the former usually taking the form of reciprocal agreements with purchasing cartels. The most important of the latter kind are the so-called "*price stipulations for re-sale*", by which definite retail prices are imposed by the manufacturers of marked goods on retail trade, a selling system which in many countries has obtained an importance that is growing with the increase in the production of such goods. In the United States and certain other countries, this system is forbidden as being contrary to freedom of trade, and as leading generally, at any rate over long periods, to an increase in the average prices of goods intended for mass consumption, or, at least, for important cultural needs. This subject is specially regulated by the decree regarding compulsory prices for goods bearing a standard mark referred to below in IV.

In legal publications, it is an open question whether such regulations regarding the maintenance of fixed retail prices imposed by a manufacturer regularly and uniformly on all his customers—it is precisely on this uniformity, without any exception, that the Reich court insists in its judgments in actions brought for undercutting these fixed prices—are governed by the Cartel Decree of 1923 with all the consequences resulting therefrom—that is to say, the application of Section 1 (the necessity for a valid contract to be in writing), Section 8 (withdrawal without notice for important reasons), Section 9 (preventive censorship in the exercise of compulsion by the organisation), and Section 4 (invalidity of and withdrawal from such agreements).

The prevailing opinion is opposed to this interpretation on the grounds that these agreements do not organically link together the purchasers into a combine as would be required for cartel agreements under German civil law; they are merely individual agreements, though of identical contents, with the various purchasers. The latter are placed by these agreements in the same relationship to the common supplier, but are *not bound to each other*. As in the case of cartels, the *system* is, in fact, one consisting of measures influencing the market—namely, price regulation—since the supplier automatically assumes the obligation of according the same treatment in respect of prices to his customers, who, however, remain entirely independent of each other and have no common organisation enabling them to exercise any influence on the kind of agreement imposed on them.

According to the opposite opinion, the mere fact of the individual counter-bond agreement concluded between the manufacturer and the consumer constitutes a cartel agreement within the meaning of Section 1 of the Cartel Decree, since this is equivalent to an agreement on "price fixing" and "prices to be demanded", and both contracting parties thereby aim at a common object. According to this view also, the necessary uniformity of these counter-bond agreements (referred to above) also partakes of the character of a cartel while, inversely, the same conclusion is supported by the fact that the individual customer, not only may, but, for reasons of competition, must bind himself, since all his competitors are at the same time subject to the same agreement; this constitutes the importance of "uninterruptedness" (*Lückenlosigkeit*) from the legal point of view of competition and, at the same time, the necessary combination which the character of a cartel requires.

The question has now been practically decided in the sense of the former view, or rather has lost its importance, since according to Section 1, paragraph 3, of the Emergency Decree such agreements are expressly regarded as agreements within the meaning of Section 1 of the Cartel Decree of 1923. Paragraph 3 includes all such price agreements, provided several of them are concluded and they thereby exercise an effect on the fixing of prices. The legal difference between this provision and that of Section 1, paragraph 1(b) which, as stated above, deals with price agreements that are, in practice,

of the same kind, is that the latter provision may prevent *new agreements* of this kind from being concluded, while, according to paragraph 3, in conjunction with Section 1, paragraph 1(a), *already existing agreements* of this kind may be declared void or it may be prohibited to put them into effect in a certain manner.

This, however, raises the further question whether this provision only applies to this Emergency Decree of July 26th, 1930, and consequently, in view of the fact that this Decree comes under public law, is to be regarded merely as a special regulation which is subject to cancellation—that is to say, as an *exceptional extension* of the organised price agreements which are subject to official supervision—or whether it is intended to introduce a *fundamental—i.e., permanent—extension* of the agreements covered by Section 1 of the Cartel Decree of 1923 and to give a more extensive authentic interpretation to that Decree. The importance of this question, in principle, is evident from the above legal consequences. The above-mentioned protective provisions of the Cartel Decree would also be applied to such agreements. It is, however, impossible to go into this question here.

It can, however, be concluded that the Emergency Decree considerably widens the circle of the price and trading agreements subject to official supervision. Section 10 of the Cartel Decree, which, *inter alia*, subjects to supervision the terms of business of *individual undertakings possessing a powerful economic position* would, in itself, also be applicable to such restrictions of individual liberty in the matter of prices, only, however, if it is proved that they endanger the economic system as a whole or the well-being of the community. The provision in question is, however, based on more simple conditions, since, like the whole of Section 1 of the Emergency Decree, which forms the material basis, it does not require that the entire economic system should be endangered but merely that the above-mentioned injury should be done to production and trade or that only individual economic freedom of action should be restricted in a manner not justified by national economy. Thereby it considerably extends the possibilities of intervention on the part of the administration.

2. Powers of the Administration.

(a) Preliminary Conditions.

The Emergency Decree is intended to combat only *abuses* committed by cartels, capitalist organisations (“*Konzerne*”, trusts) and certain other private organisations by means of price regulation and terms of business; its effects are, however, exercised within considerably narrower limits than those of the Cartel Decree of 1923, as it is confined to *price-fixing methods and prices to be demanded* by which “*the economy of production or the trading in goods or services is affected or economic freedom of action (i.e., of each economic unit) is restricted in a manner unjustified by national economy*”. This latter condition, which presupposes subjective damage, differs from Section 8 of the Cartel Decree of 1923, which provides for withdrawal without notice, and Section 9 of the same Decree, which grants protection against compulsion on the part of an organisation (embargo), in not being fulfilled by the existence of purely *subjective individual damage*; it goes further and requires that the damage must be unjustified by national economy. This must be interpreted to mean that it does not refer merely to *individual cases*, but that the damage caused in individual cases by a *private economic system* must be objectionable from a general economic point of view.

The *first* provision—i.e., “if the economy of production or the trading in goods and services is affected”—is narrower than the conditions mentioned in the Cartel Decree of 1923, which refers to danger to the “economic system as a whole or the well-being of

the community ”; it therefore allows of a wider application, unless it is found desirable or necessary to interpret it in conjunction with the wording of Section 1, paragraph 1, last sentence, to mean that, in this case also, action shall only be taken if production and trade are “restricted in a manner unjustified by national economy”. In this case, the economic condition required would correspond to the idea of a danger to “the economic system as a whole”. On this point also, opinions are divided. As, however, in economic questions of this kind, isolated cases of purely individual disadvantages are not, in principle, to be considered as sufficient grounds for administrative intervention, the second more general interpretation is no doubt closer to the object of this Decree, and would also reduce its field of application.

The competent authorities have absolute power to decide whether the conditions demand intervention in definite cases. In pending civil cases, as in the case of the exercise of the right of withdrawal under Section 1, paragraph 2, the ordinary courts can, however, investigate whether the steps taken are within the competence of the authorities.

From this point of view importance should be attached to Section 3 of the Emergency Decree, under which the authorities, before ordering any measure, should hear the economic circles concerned and request the “provisional Economic Council of the Reich to give an opinion”. This is only an instruction and not a stipulation. It is in accordance with the object of Article 11 of the Decree¹ of May 4th, 1920, regarding the “provisional” Economic Council of the Reich, under which this economic parliament received extensive powers of advisory co-operation in the shaping of economic and social policy. The Government, which, when applying the Emergency Decree, has up to the present regularly consulted this body, thereby obtains not only expert advice but most valuable support as against public opinion. Moreover, the Civil Courts and the President of the Cartel Court (the latter when investigating whether the conditions for imposing a penalty under Section 5 of the Emergency Decree obtain) cannot ignore the fact that a Government measure is approved by the Economic Council of the Reich. They are, however, not bound by this fact, since the Government of the Reich can decide freely, in spite of such an opinion; it can come to a contrary decision and bear the entire responsibility.

No provision is made as to the form and method of consulting the economic circles concerned. As a rule, the parties directly concerned—i.e., the cartel and its most important customers—will be heard. As, however, all industrial and commercial circles principally concerned have an economic organisation and possess influence in the Economic Council of the Reich through qualified representatives, the Government will usually have no difficulty in arranging for the consultation which it is entitled to institute. With the exception of Section 14, which enables the Minister of National Economy of the Reich, in the first place, to bring a case before the *Cartel Conciliation Offices* that have been established by the central organisations of the main economic groups (industry, wholesale and retail trade and co-operative societies) and are engaged mainly in settling disputes, the Cartel Decree does not provide for such consultations, but close relations between the authority in question and the cartels have, nevertheless, been established, with good practical results.

The publication in the *Reichsanzeiger* establishes the date of measures taken in accordance with the Emergency Decree and puts them into effect in the sense of Section 3, paragraph 2.

¹ This Decree had become necessary, as this body could not be constituted in the manner laid down in Article 165 of the Constitution of the Reich on account of the lack of professional basis.

(b) *The Authorities entitled to intervene.*

1. In principle, the Government of the Reich is entrusted with the execution of the Emergency Decree by Section 1, paragraph 1, and Section 4. According to the usual practice, this authorisation involves the delegation of rights to the competent Ministers—in the present case, which refers exclusively to intervention in commercial freedom, to the Minister of National Economy and the Minister of Food and Agriculture of the Reich. Only in case of a dispute regarding competence or a failure to reach a decision thereon in a matter falling within the competence of both Ministers would a decision be taken by the entire Cabinet under Article 57 of the Constitution of the Reich.

2. Section 15 of the Cartel Decree of 1923 gave the *Governments of the States* an influence over the exercise of supervision in view of the fact that a number of the organisations in question—although in practice only a restricted number—are exclusively or mainly of local importance, so that the competent States' Governments are entitled, in the first place, to give a judgment. Allowance is also made by the Emergency Decree, Section 4, for that independence of the authorities of the several States, which is politically justified in a *Bundesstaat* and which is, moreover, expressly provided for in Articles 14 and 15 of the Constitution of the Reich.

If the influencing of the market is locally restricted, the application of the Emergency Decree is entrusted to the States' Governments acting in agreement, however, with the Government of the Reich.¹ The necessity for a uniform administrative policy is self-evident, especially in respect of such a difficult economic problem which requires uniform execution throughout the territory of the Reich. According to the text of Section 4, paragraph 1, the Government of the State can *claim* such a delegation of powers and can entrust a department with this task with the consent of the Government of the Reich.

The Emergency Decree includes the further case of interests being involved which extend to several German States. In this case, the Government of the Reich may, in agreement with the States' Governments concerned, decide on the authority to be entrusted with the execution of the Decree. In this case, however, unlike that mentioned above, the Government of the Reich is *not obliged* to delegate its powers, even if the States concerned have agreed among themselves. The object of this provision is to maintain uniformity of execution for a particular part of the territory of the Reich independent of its political structure.

Under Article 15, paragraph 2, of the Constitution of the Reich, the Government of the Reich is further entitled in special cases to send representatives to the delegated authorities of the States. In view of the right of supervision conferred by the same article it can, however, greatly influence the methods of execution.

(c) *Methods of Intervention by the Administration.*

The provisions in question are contained in Sections 1 and 2 of the Emergency Decree, which refer to two fundamentally different kinds of intervention.

While the provisions of Section 1 regarding nullity, withdrawal and prohibition *directly* prevent the application of private economic market policy of the kinds mentioned in that Section, the reduction or cancellation of import duties provided for in Section 2 exercise merely an *indirect* effect by facilitating foreign competition.

¹ Up to the present, Prussia and Württemberg have each availed themselves of this right on one occasion by prohibiting price agreements.

1. *Nullity of Cartel Agreements and Decisions.*—According to Section 1, paragraphs 1(a) and 3, agreements existing under the conditions therein mentioned and decisions which have already been put into execution may be rendered ineffective by being declared null and void. This provision is moulded on Section 4 of the Cartel Decree, with the essential difference, however, that the Emergency Decree gives the Government of the Reich a direct autonomous right to issue such orders, while, under the previous Decree, it was merely entitled to *apply* to the Cartel Court, which had to decide regarding nullity. In such cases, the Government of the Reich has now two possibilities of taking action.

In accordance with Section 3, paragraph 2, of the Emergency Decree, the declaration of nullity comes into *effect* on the date of publication in the *Reichsanzeiger*.

In principle, agreements and decisions are declared null and void only in so far as this is necessary in order to prevent production or trade from becoming uneconomic or freedom of trade from becoming restricted in the sense of the last phrase of Section 1, paragraph 1. Consequently, *agreements* may be declared to be *partly* void. *Decisions* will, as a rule, be declared entirely void, since they contain a concrete measure of market policy. The declaration of nullity can only produce effect *ex nunc*, as otherwise an impossible economic position would arise, and the ordinary courts must decide on the *consequences* of this measure in respect of any part of the agreement which is not invalidated and also on any other consequences under civil law. For this purpose, as already mentioned, the courts are entitled to re-examine the legality of the administrative measure.

In accordance with Section 1, paragraphs 1(a) and 3, the declaration of nullity can only refer to a *concrete* method of fixing or demanding prices. The firms concerned must therefore remain free at any time to put into effect fresh agreements or decisions which do not contain the objectionable measures. Section 1, paragraph 1(c), provides protection against attempts at evasion.

2. In accordance with Section 1, paragraph 1(a), the declaration of nullity may be replaced by the *prohibition of a certain method of executing agreements and decisions*. Such prohibition also takes effect from the date of publication in the *Reichsanzeiger*.

This milder form of intervention must always be applied by the administration in view of its general powers, not in order to *combat a defective price-fixing system in principle*, but only certain specific effects. This method was already provided for in Section 4 of the Cartel Decree of 1923. In practice, it will lead to negotiations with the interested parties, as in the case of the "Trade practice conferences of the Federal Trade Commission" in Washington.

In accordance with Section 1, paragraph 1(b), prohibition may also refer to *terms of business and methods of fixing prices* which *de jure* or *de facto* (economically) bind re-salers or other third parties in the above-mentioned manner. It is consequently possible to prohibit, not only agreements containing such restrictions (legal restriction), but also *unilateral measures* which have the same economic effect. It is, however, obvious from the intention of the Emergency Decree that such a measure may not be applied in the case of merely *individual* transactions, but that there must be an intention to influence the market *systematically*—that is to say, to extend, in principle, the conditions or methods of price-fixing to a considerable number of transactions of the kind in question. On the other hand, not only cartels, but also individual undertakings such as *Konzerne* and trusts are thereby included. This measure has consequently not only a different but also an essentially more specialised sphere of action than Section 10 of the Cartel Decree. *Third parties* bound by agreements under civil law may obtain protection under Section 1, paragraph 2, in virtue of the provision that they are entitled to withdraw from such agreements, naturally provided the latter have not already been carried out.

Lastly, *prohibition* may also apply to the acts of evasion mentioned in Section 1, paragraph 1(c). Their importance has been explained above. It is, however, difficult in practice to define the nature and extent of the "acts" coming under this provision, especially as it will frequently be impossible to establish the necessary causal connection in this particular field. The difficulty of establishing economic facts with sufficient accuracy, together with the natural desire of private business to avoid burdensome restrictions, is, however, sufficient justification for such supplementary provisions.

3. A third method of official intervention is provided for in the Emergency Decree, Section 1, paragraph 2, by the above-mentioned provision regarding *withdrawal* from *agreements* concluded under the *conditions objected to* in paragraph 1. The agreements in question are such as are concluded by members of the organisations mentioned in Section 1, paragraph 1, or by these organisations themselves with *third parties*—i.e., their customers—as referred to above under 2. This does not include agreements by which the parties are formed into an organisation, or agreements in accordance with Section 1, paragraph 3. These can only be combated in accordance with paragraph 1(a). The right of withdrawal cannot be waived, and can therefore not be precluded by private agreement. It can, however, only be exercised within a time-limit announced for each case in the publication of the order under Section 3, paragraph 2. At the end of this period, the right lapses. The right of withdrawal does not necessarily refer to the entire agreement; but, in accordance with the restriction contained in the Cartel Decree, Section 10, paragraph 1, sentence 2, may extend only to the withdrawal from the objectionable terms of business or method of price-fixing. Consequently, it is, for instance, not permitted to withdraw from a successive delivery contract as a whole, but only from objectionable accessory conditions such as the obligation to maintain certain re-sale prices (Section 1, paragraph 1(b)). This restriction is of particular importance as, contrary to the provisions of Section 10 of the Cartel Decree of 1923, in this case *both* parties have the right of withdrawal, while Section 10 only granted this right to the *injured* parties.

Parts of agreements which have already been carried out are in any case unaffected. As in the case of the Cartel Decree, Section 10, disputes regarding the admissibility and extent of the right of withdrawal must be decided by the ordinary courts, which must apply Sections 346 to 356 of the German Civil Code.

4. *Customs Measures.*—The power of reducing or cancelling import duties in accordance with the Emergency Decree, Section 2, gives the Government of the Reich a means of defence which has for many years been recommended by technical publications on the subject and by political practice as a method of combating the excessive growth of monopolistic market policy.

The power thus conferred on the Government of the Reich is merely an application of the right of taking such Customs measures in case of urgent economic necessity, which was provided for by the Law on Customs Modifications of August 17th, 1925; in that case, however, the right was only granted subject to the consent of the Reichsrat (which represents the several States in legislation and administration), and of a Reichstag Commission. So far, such measures are provided for only in very few countries. This measure again gives the Government of the Reich autonomous power in pursuance of the principle on which the Emergency Decree is based, and corresponds essentially with the Combines Investigation Law of 1923 in Canada and similar measures in Australia.

This measure provides the Government of the Reich with a second instrument for attaining the objects pursued by the Emergency Decree. Contrary to the forms of intervention provided for in Section 1 of that Decree, it may be concluded from the nature of this measure that both measures can hardly be applied *at the same time*. The Government has rather a choice of methods, and the one provided for in Section 2 can, as a rule,

only be applied in quite exceptional cases, as it necessarily has a much wider general effect. This conclusion is based on the following reasons:

The question whether this right only applies to autonomous duties or also to duties fixed by commercial agreements with third States is left open. Any unconditional most-favoured-nation clauses in the treaties must in any case be observed and all participating States are entitled to benefit by the reductions in Customs duties in such cases. This clause as a rule reads as follows:

"The Contracting Parties guarantee each other most-favoured-nation rights and treatment for imports. . . . Each of the Contracting Parties consequently undertakes to grant to the other Party without compensating return and immediately all privileges and favours which it has granted or may hereafter grant to a third State, especially in respect of the amount of, the security for, and the levying of Customs duties. . . ."

As conventional Customs tariffs and most-favoured-nation treatment are usually intended merely to protect the parties against increases in duties or unfavourable Customs differentiations, it is unlikely that the application of this measure will give rise to any international difficulties.

The cancellation of the measure—that is to say, the reintroduction of the previous Customs duties, which is at any time possible—*must* take place at the request of the Reichstag, and will re-establish the original international *status quo*.

It is not clear from the text and meaning of Section 2 itself whether this measure also involves the admission or extension of temporary import free of duty (*Zollfreier Veredelungsverkehr*). As this measure is a minor one and its effect—only, however, in really appropriate cases—can be more accurately estimated than the general reduction or annulment of duties, the application of this Customs measure may be regarded as covered by Section 2. The application of this measure has always been strongly recommended in publications on the subject as a suitable means of combating especially any unhealthy price policy adopted by semi-manufactured goods industries which is likely to hamper exports.

(d) *Penal Measures.*

The *penalty* provided for by Section 5 of the Emergency Decree for infringement of measures issued in virtue of this Decree is a fine of an unlimited amount. In this respect it is similar to the penalty provided for by Section 17 of the Cartel Decree of 1923. It can only be imposed on the application of the competent supreme authority of the Reich or of the State. The application is to be addressed to the President of the Cartel Court; the latter, or his representative, is responsible for the imposition of the penalty. In character it is a compulsory measure intended to enforce compliance with the decrees of the State and also to punish open resistance. It is therefore imposed by a jurisdiction which, as already mentioned, thereby obtains a certain right of re-examination. The penalty is imposed on any party infringing the law. It may therefore be imposed on physical persons, individual firms and cartels *qua* corporations; in the last-mentioned case, however, as a rule it is only imposed on the responsible organs, with regard to which the statutes, in conjunction with the provisions of civil law and the companies' law, must be consulted in each individual case.

III. EXECUTORY DECREE REGARDING THE CANCELLATION AND PROHIBITION OF COMPULSORY PRICES, ISSUED ON AUGUST 30TH, 1930. (For text, see *Annex B.*)

Preliminary Observation.

This Decree, in accordance with the preamble, is based on Section 1 of the Emergency Decree. It is the first special decree for putting the Emergency Decree into effect (a second one being the Price of Marked Goods Decree dealt with in the following chapter);

it refers to a very definite kind of cartel policy, which may perhaps be best described as an extension of the cartel agreement to outside goods or services—*i.e.*, such as are not supplied by the cartel members themselves. It consequently deals with an extension of the cartel power to outside goods or outside services by binding a further economic category—namely, the purchaser. It may also cover counterbond agreements (*Reversverträge*) made by individual suppliers with their customers, and also mere business terms, always provided that they are intended to exercise compulsion in respect of prices on resale; lastly, as in the case of the Emergency Decree, it covers all acts of evasion.

These extensions are intended to give the organisations an increased protection against the evasion of fixed prices for cartel goods or services. This may be explained by the following concrete examples :

(a) On the occasion of the publication of the Emergency Decree, it was stated in the Press that the linoleum industry organisation, not only prescribed the prices at which its dealers should resell linoleum, but also fixed the prices for brass rods, cardboard and mouldings, which, though generally used with the linoleum, are obtained from quite different suppliers.

(b) A cartel or a monopolistic individual undertaking ("*Konzern*"), producing only semi-manufactured goods, obliges its customers who work them up into manufactured goods to maintain fixed minimum prices for such goods, possibly in order to increase the paying capacity of its customers or to secure a special reputation for the quality of the semi-manufactured goods as against competing goods.

(c) A cartel for manufactured goods for household use has members who instal these goods themselves, and other members who deliver the goods to a competent workman for installation for his own account. In order to protect the cartel prices, the work of installation—*i.e.*, an outside service—is subjected to a fixed price, since otherwise the firms installing the articles themselves would be enabled by undercutting the prices of these services to compete indirectly in price.

On the other hand, if the purchasers of marked goods are bound to maintain fixed prices for the suppliers' *own* goods, such an obligation does not come under this Decree.

Ad Section 1.—These *vertical* obligations must be *legal obligations regarding the fixing of prices—i.e.*, either agreements or terms of business. They must be imposed on the purchaser—*i.e.*, the wholesale or retail trader, or the firm working up the goods for sale to third parties, in fact on all firms representing a further stage in the economic process and reselling the goods.

Agreements binding the parties in such a manner are void (Section 1, paragraph 1), and such terms of business are prohibited (Section 1, paragraph 2). The Decree therefore constitutes a *general prohibition* of such legal and economic restrictions. In this case also, the nullity may be only partial. The terms of business are particularly emphasised, although they must be regarded as already covered by Section 1, paragraph 1, since they form a part of each purchase contract.

Ad Section 2.—This is a general protective clause against all attempts to evade the object of Section 1 and is similar to Section 1, paragraph 1(c), of the Emergency Decree.

Ad Section 3.—As such agreements are in any case null and void, in accordance with Section 1, the right of withdrawal granted by Section 1, paragraph 2, of the Emergency Decree can only refer to agreements between the re-salers and *their* customers. Notice of withdrawal must be given within one month. Disputes arising out of the exercise of this right are decided by the ordinary courts.

Ad Section 4.—As this is a concrete executory provision, it may be cancelled independently of the Emergency Decree.

IV. DECREE REGARDING THE COMPULSORY PRICES FOR GOODS BEARING A STANDARD MARK, DATED JANUARY 16TH, 1931, AND THE NOTICE ATTACHED THERETO OF THE SAME DATE. (For text, see *Annex C.*)

Preliminary Observations.

This Decree is also based on Section 1 of the Emergency Decree.

In accordance with the view which has recently become generally accepted, the definition contained in Section 1 of the kinds of goods covered by this Decree does *not* regard uniformity of the re-sale price as their *essential* characteristic. In fact, there are many marked goods in Germany which are not subject to price regulation by the manufacturers. Hitherto, legislation in Germany and in almost all European countries has extensively protected this price system, especially with a view to combating unfair competition. On the other hand, this system is, in principle, prohibited in the United States and in countries which have adopted English law (except Great Britain herself), such as Canada and New Zealand, in which the fundamental idea of preventing any restriction of trade is still strictly interpreted.

The Government of the Reich, in issuing this Decree and notice, has followed the advice obtained from the Economic Council of the Reich under Section 3, paragraph 1, of the Emergency Decree. The majority of this body, in accordance with its opinion of August 15th, 1930,¹ demanded the cancellation of such fixed prices for foodstuffs and luxuries. In its final conclusions of November 15th, 1930,² this body requests the Government to endeavour to reduce the prices of marked goods, especially foodstuffs and other articles of daily consumption (*Lebens- und Genussmittel*). It recommended, in the first place, that negotiations should be conducted with the manufacturers and traders. If this method failed, a general cancellation of the price agreements for those marked goods was proposed. The Emergency Decree adopted these principles in its essentials.

Its validity is questioned on the ground that it does not define its object sufficiently accurately; it would, however, appear to be valid, as all its material provisions contain a clear definition of the economic facts in question. It is, in addition, made much more accurate than, for instance, the Executory Decree of August 30th, 1930, by the categories of goods mentioned in the notice attached to the Decree. Moreover, such intervention in business matters by means of decrees and enactments can only refer to *categories* of goods, as any exact enumeration is impracticable on account of the instability of economic conditions.

Ad *Section 1*.—Section 1 first of all gives a general definition of marked goods as they appear in daily commerce. But of the totality of these, only a part is covered by the Decree—namely :

1. Foodstuffs;

2. Goods to which the Marked Goods Decree shall apply after official notice to this effect has been published.

The *carte blanche* granted in the latter provision is based on the conditions for the application of the Marked Goods Decree contained in Section 2.

Twelve types of goods were specified in the notice which was published at the same time. No further notices have been issued since.

Ad *Section 2*.—Price-fixing of marked goods implies agreements within the meaning of Section 1, paragraph 1(a) and paragraph 3 of the Emergency Decree. They are *declared*

¹ Printed in *Kartell-Rundschau* 1930, page 605 *et seq.*

² Printed in *Kartell-Rundschau* 1930, page 739 *et seq.*

null and void unless the prices they fix are reduced as prescribed, or if these agreements contain clauses prohibiting the re-saler from continuing to grant, in addition to the reduction in prices, discounts (rebates, etc.) hitherto in force. At the suggestion of the Reich Economic Council, July 30th, 1930, was fixed as the index date for basic prices which have to be reduced. Seeing that the Marked Goods Decree—also the notice to be published from time to time in virtue of this Decree of other goods affected—was to come into force, in accordance with Section 6, paragraph 1, fourteen days after publication, the index date for price reductions of the goods included in the Decree at its publication (January 16th, 1931) was January 31st, 1931.

The obligations to be nullified must be obligations imposed on the buyer, but only where they impose fixed prices for *resale to customers in the home market*. From this it is to be inferred that the following categories of buyers are affected :

(a) First and foremost the retail trader;

(b) The wholesaler who sells to firms who either submit these goods to further manufacture or else consume them (*e.g.*, marked soaps or chemical cleaning preparations for laundry businesses), as opposed to the wholesaler who supplies the retail trader; for this retail trader cannot be regarded as a consumer within the meaning of Section 2 of the Marked Goods Decree.

This Decree naturally applies also to agreements whereby the wholesaler, without any compulsion by the manufacturer, and therefore quite independently, fixes prices for further distribution.

It does not matter what the business agreement is on the basis of which the buyer, who is bound, acquires goods; all that is required is an *independent* right to dispose of them. Thus the commission agent, in the sense of Section 383 of the Commercial Code, is also to be regarded as a "buyer" within the meaning of the Marked Goods Decree.

The methods of price-fixing covered by Section 2, paragraphs 1 and 2, can be inferred from the purpose of the Marked Goods Decree. The requirement of a reduction of these prices by at least 10 per cent as compared with consumer prices ruling on July 1st, 1930, makes it clear that it can only refer to certain retail selling prices. That also agrees with the customary marked price system, in particular with the system of indicating the price on the wrapper.

An obligation to maintain specified *minimum* prices will, as a rule, come under the Marked Goods Decree, though admittedly this obligation does not impose fixed prices but only a price limit, but by fixing the minimum limit it practically amounts to definite price fixing. In individual cases, the fixing of *maximum* prices may also be regarded as an offence under Section 4 of the Marked Goods Decree.

In paragraph 2 of Section 2, "terms of business" and "methods of price fixing" are defined as in the other decrees already dealt with. Their application is forbidden under the same conditions as are laid down for agreements in paragraph 1.

Differences of only fractions of a Reichspfennig (one-hundredth of a Reichsmark) from the statutory price reduction as between the two index dates specified are to be left out of account.

Since both declarations of nullity and prohibitions in these cases affect civil rights exclusively, disputes arising therefrom are decided by the ordinary courts.

Ad Section 3.—Section 3 deals with special disputes such as those which have frequently arisen between *buying and selling co-operatives*, particularly consumers' co-operatives, on the one hand, and manufacturers of marked articles on the other hand, on account of breaches of price maintenance agreements through the practice of co-operatives of granting bonuses (dividends)—usually yearly—on their members' annual purchases.

Manufacturers were induced to take up this hostile attitude to bonuses principally by retail traders, for whom these indirect reductions, by the consumers' associations' stores for example, of retail prices of marked goods, which in their case were strictly fixed, meant a much resented form of competition.

Paragraph 3 outlines the class of co-operatives which come under consideration in this connection. The definition follows closely that given in Section 1 of the Law on Co-operatives of 1889 (Gesetz über Erwerbs- und Wirtschaftsgenossenschaften).

Section 3 sets aside, by *declaring them null and void* or by *prohibiting* them, agreements or conditions of business as far as they preclude the granting of such bonuses or rebates.

"Bonuses on purchase price" in Section 3, paragraphs 1 and 2, refers to *cash* bonuses. These may be given with each individual purchase or as a yearly bonus. Clearly, however, bonuses in goods should not be excluded, though these could only rarely be given on marked articles which are mostly sold in unit packings.

These "*rebates*" differ from those mentioned in Section 2, paragraphs 1 and 2, in that these latter refer to *any kind* of price bonus (therefore, also to gifts having a definitely fixed value) which used to be expressly allowed by the price maintenance system as, for example, the granting of discounts up to 5 per cent on marked articles on a particular list, and especially also the system which is widespread in Germany of giving *rebate thrift stamps*, which, after a specified sum has been accumulated (for example, RM. 10), can be converted into cash or goods. The rebates referred to in Section 3, on the other hand, deal with the types of co-operative bonuses to members, which are generally very similar in practical effect.

In any case, price quotations in the retail trade for marked articles are seriously affected by this competition with co-operatives, so that their preference for fixed prices for the marked goods mentioned in Section 1 should be somewhat shaken.

Ad Section 4.—The *evasion clause* has already been referred to. It is worth mentioning, as an example, that it would constitute an evasion, within the meaning of this paragraph and of Section 1, paragraph 1(c), of the Emergency Decree, if the retailers in a particular locality, in order to maintain the price-fixing clauses which had been forbidden, undertook by special agreement to continue to maintain them for specified marked goods.

Ad Section 5.—This paragraph provides for the admission of exceptions in special cases after consultation of the Reich Economic Council. These conditions must be taken as applying to unforeseen serious private handicaps resulting to the producer from the reduction of prices, as, for instance, sudden sharp increases in production costs and similar *objective* reasons outside his control, and not to subjective reasons such as errors in profit estimates, for which he alone is responsible. But even in the former case applications will only be considered when they do not conflict with the interests or wellbeing of the community.

The penal provisions of Section 5 of the Emergency Decree apply to infringements of the Marked Goods Decree, since this is issued on the basis and in application of the Emergency Decree.

V. COMPULSORY CARTELS OF THE SUGAR, POTATO-STARCH AND DAIRY INDUSTRIES.

Whereas the decrees hitherto dealt with have involved serious intervention in private business organisation by a tightening of public control, the further extension of the compulsory formation of cartels is provided for within the framework of the more comprehensive Emergency Decree for the Safeguarding of Industry and Finance of December 1st, 1930 (*Reichsgesetzblatt*, 1930, Part I, page 517 *et seq.*), in Chapter V: "Prescriptions for th

Improvement of Market Conditions for German Agricultural Products", Section 2, Articles 7 and 8.

Preliminary Observations.

Cartels formed under State compulsion have existed since 1919 as a result of the Coal Industry Law of March 23rd, 1919, and the Potash Industry Law of April 24th, 1919, whereby these two industries were amalgamated throughout the entire Reich in compulsory cartels; for the various hard and brown coal districts in the form of selling syndicates organised as private companies and, in the case of the potash industry, as one uniform syndicate. The element of compulsion lay in the provision that the competent Reich Minister of Economy *should*,¹ by decree, force recalcitrant firms to become members, as regularly happened in the coal industry in the case of minorities.

Furthermore, by the Match Monopoly Law of January 29th, 1930 (*Reichsgesetzblatt*, 1930, Part I, page 11), a compulsory cartel for the match industry was established in the form of a Government monopoly. It involves fundamentally the taking over from the producers of matches produced in the monopoly area and their direct distribution (supply monopoly), the importation of matches into the monopoly area from abroad (import monopoly), and the export of matches abroad from the monopoly area (export monopoly). The monopoly is operated by the "Deutsche Zündwaren-Monopolgesellschaft", which is organised as a private company with a public status.

The foregoing concerns only *industrial organisations for agricultural products, sugar and potato manufactures (potato-starch and meal) and milk production*, as well as the *preparation and utilisation of dairy products*.

But the establishment of these new syndicates does not run counter to the principle of tightening State supervision, since they are by their essence subject to State supervision. Whereas, in the case of amalgamations in the dairy industry, it was provided by the prescriptions of the first Decree for carrying out the Milk Law of May 15th, 1931 (*Reichsgesetzblatt*, 1931; Part I, page 150), that these syndicates also should be subject to the most important regulations of the Cartel Decree, in the case of the sugar and potato-starch syndicates, the application of this Decree, with the exception of Article 8 (on giving notice of withdrawal) was expressly prescribed.

Emergency Decree of December 1st, 1930, Part VIII, Chapter V, Section 2 (for text, see Annex D).

By the terms of paragraph 1 of Article 7, firms in these industries are to be amalgamated as regards both production and sales.

By the terms of Article 8, paragraph 1, the Government of the Reich, with the consent of the Reich Council—amalgamations of this type will, as a rule, cover several States of the Reich—may publish legal decrees regarding executive details defining primarily the statutory provisions of decisive material importance. It may further grant these cartels legal personality.

By the terms of paragraph 2, recalcitrant firms may be compelled to adhere even to provisions which depart from the statutes. (The penal provisions mentioned in Article 10 (imprisonment or fine) could hardly be regarded as of importance in setting up these compulsory cartels.)

In execution of this Decree, there has already been founded, in virtue of the Decree on the amalgamation of the sugar industry of March 27th, 1931 (*Reichsgesetzblatt*, 1931, Part I, page 86 *et seq.*), "Wirtschaftliche Vereinigung der Deutschen Zuckerindustrie".

¹ In the case of the *coal industry*, a modification has been introduced by the Emergency Decree of June 6th, 1931 (*Reichsgesetzblatt*, Part I, page 279 *et seq.*), in that the question of compulsion is left to the discretion of the Minister.

Its object is "with a view to agreements with other sugar-producing countries", according to Article 3 of the Statute, "so to organise the German sugar industry, by meeting domestic requirements, furthering domestic consumption and investigating export possibilities, that a proportionate beet consumption may be achieved within the limits of the price of sugar allowed by the Customs regulations".

The member firms to be compulsorily amalgamated in accordance with Article 2 are, according to Article 9, "those sugar factories actually operating at the time".

Articles 7 to 9 give the Minister for Food and Agriculture considerable discretion in preparing the organisation, and, in addition, Article 6 gives him control over the domestic quota and price policy.

By Article 38 of the Milk Law of July 31st, 1931, producing firms, also firms preparing and utilising dairy products, may be amalgamated by the supreme authorities of the States for the control of the employment and sale of milk and milk products. By the terms of paragraph 3, States' Governments may in this case enforce the same provisions as the Government of the Reich in the case of the sugar and potato-starch syndicates. In the interests of uniformity in cartel supervision, principles are laid down in the "First Decree to give Effect to the Milk Law" of May 15th, 1931 (Annex to Article 28), whereby the States' Governments are empowered and obliged to reserve to themselves rights of intervention against certain decisions and measures of the amalgamations, similar to those which are in existence in the case of voluntary combines in virtue of the Cartel Decree of 1923 and the Cartel Emergency Decree of July 26th, 1926.

The Decree on the organisation of the potato products industry is in preparation.

B. THE LAST EMERGENCY DECREES IN 1931, PARTICULARLY EMERGENCY DECREE No. 4 OF THE PRESIDENT OF THE REICH, DATED DECEMBER 8TH, 1931, FOR PROTECTING TRADE AND FINANCE AND SAFEGUARDING THE PEACE OF THE COUNTRY. (*Reichsgesetzblatt* I/1931, No. 79, of December 9th, 1931.) (For text, see *Annex E*).

I. PRELIMINARY OBSERVATIONS.

The increasing gravity of the economic crisis led to further serious restrictions being placed on private enterprise towards the end of 1931, with the object of reducing the level of German domestic prices, not merely in the sphere of commodity prices, but generally in every sphere of economic importance.

Chapter I of Emergency Decree No. 4 accordingly provides that the prices enforced by *cartels* and by *individual agreements* (counter-bond agreements), such as delivery contracts or guarantee certificates (individual counter-bonds), shall be reduced by about 10 per cent as compared with the prices current on July 1st, 1931.

Further, Chapter II of the Decree sets up a *Price Control Commissioner for the Reich*, whose duty it is to prevent the charging of unduly high prices for essential commodities in everyday use and essential services. Provisions are also enacted—extremely drastic even in their details—for reducing the *interest rates* on public and private debts. The other measures, such as facilities and reductions in connection with *house rents*, *fiscal innovations* and important modifications in the regulations governing *wages* and *social insurance*, form, apart from the fresh taxation imposed to safeguard the public finances, essential elements of the general programme put forward.

As regards the constitutional aspect of these measures, we would refer to the explanations given above on the subject of the previous decrees.

We are only concerned here with the chapters dealing with the *regulation of prices*—viz., Chapters I and II of Part 1 of Emergency Decree No. 4, together with the executive rules relating thereto.

II. COMPULSORY PRICES.

The provisions of Part I of the Emergency Decree No. 4, Chapter I, "Adjustment of Compulsory Prices to the New Economic Situation", are examined below :

A. Substantive Provisions.

1. Article 1 of the Decree stipulates that, by January 1st, 1932, all prices are to be reduced by at least 10 per cent as compared with the level of June 30th, 1931. This applies to all "compulsory" prices—*i.e.*, to all price arrangements based on contractual agreements of the character described in Article 1 of the Decree of July 26th, 1930 (see above). The latter Decree, in its turn, refers to the organisations covered by the Cartel Decree (*Kartellverordnung*), so that the reduction of prices affects all cartels and similar price combines, and, in particular, the price stipulations applicable to the next stage of the economic process—for instance, the price provisions which the coal industry and many branches of the iron and steel industry impose on their wholesalers and, through these latter, on retailers.

The Reich Minister for National Economy, or in matters coming within his competence (Chapter I, Article 11), the Reich Minister for Food and Agriculture, and, in the case of price-fixing of purely *local scope*, the supreme authorities of the various States empowered by the Government of the Reich, or, again, the subordinate authorities duly empowered for the purpose by the above-mentioned supreme authorities (Chapter I, Article 12), may also require prices to be reduced further than the prescribed 10 per cent, this reduction to be effected by a date to be appointed by them (Chapter I, Article 1, paragraph 4).

If prices are not reduced by the date appointed, all agreements on which the maintenance of the prices is legally based (Chapter I, Article 1, paragraph 5) are to that extent *null and void*, this ensuing automatically on the expiry of the appointed period.

These provisions affect all kinds of cartel agreements from the ordinary price cartel to the cartel selling organisation, but they do not apply to purchasing cartels, cartels tendering for contracts, and those which merely regulate the quantities produced or sold, and therefore do not regulate prices. In the case of the two latter classes of cartels, prices are not permanently and uniformly fixed; the first class aims, of course, solely at forcing prices down by centralising purchases. On the other hand, the so-called "*Kalkulationskartelle*" come under the provisions in so far as they definitely determine the final price by fixing uniform figures, be it only for some of the decisive factors composing the cost price—*e.g.*, the price of the raw material or pattern and the percentage of profit.

(a) Exceptions are expressly provided for *international agreements* (Chapter I, Article 5, paragraph 2), but only if enterprises actually established abroad have concluded with German enterprises agreements fixing prices for the *German* market. The exception does not apply if the foreign interests are represented in a cartel on German territory by independent branches in Germany itself. No exception is allowed, either, in the case of international cartels which merely allocate territorial areas—*e.g.*, the International Raw Steel Cartel—and which leave the fixing of German sales prices to the discretion of the German cartel concerned. International agreements thus excepted must be reported by January 1st, 1932, to the Reich Minister for National Economy and the agreements enclosed.

(b) Exceptions are also made (Chapter I, Article 3, paragraphs 1 and 2) in the case of the coal and potash selling organisations which were set up in 1919 by special legislation, though they, too, must comply with the general 10 per cent reduction in price. In other

respects, however, special sales regulations have been provided for these categories of commodities. Chapter I, Article 3, paragraph 3, of the Decree stipulates that the coal-selling organisations and district cartels of coal wholesalers may not in future impose any embargo or similar measure within the meaning of Article 9 of the Cartel Decree or contractual penalties (*Vertragsstrafen*) on retailers for selling under the agreed price. Special provisions will be issued regulating the prices for such retail traders. The authorities may (Chapter I, Article 7) proceed to a new regulation of prices in all cases in which the compulsory prices are regulated by law. The general provisions of Articles 1 and 2 do not apply to the above-mentioned organisations.

(c) In a quite general sense, Chapter I, Article 5, paragraph 1, further empowers the Ministers concerned to grant complete or partial exceptions in cases where the application of the measures contained in Chapter I "appears likely to cause unforeseen economic disadvantages which cannot be obviated in any other way, and when such exceptions do not conflict with the interests of the national economy and the common weal".

The provisions above described also apply to the special agreements relating to.

2. *Compulsory prices for goods bearing a standard mark* (Chapter I, Article 2). This expression was defined when we discussed the Marked Goods Decree of January 16th, 1931. The prices of these marked goods have also to be reduced on the same appointed day and with similar legal consequences. In contrast to the provisions of the above-mentioned Special Decree, this obligation will henceforth apply to *all* marked goods, and here, again, the authorities may (paragraph 2) insist on far-reaching reductions.

3. *The obligation to reduce prices* applies to all branches of trade and industry and to all classes of commodities where prices are regulated, but the reduction of 10 per cent is only obligatory if prices have not already been replaced by at least this amount since the appointed date, June 30th, 1931. The reduction must, however, be a permanent one and not, for instance, be merely introduced temporarily for competitive purposes or on special occasions (exhibitions, clearance sales, etc.). Again, the 10 per cent must be computed on the regular cartel price, and not on exceptional prices. Accordingly, the Decree does not apply, either, to price arrangements which only came into force after the above-mentioned appointed date.

On the other hand, the provisions of the Decree also apply to the regulation of prices based merely on *recommendations* (Chapter I, Article 4). These prices must also be similarly reduced; the price arrangements are prohibited unless such reduction takes place. The object of this stipulation is to prevent the provisions of Chapter I, Article 1, being evaded by informal agreements. Chapter I, Article 9, also prohibits any transactions intended to evade directly or indirectly the purpose of the Decree. This clause—on which no explanatory comments are given—has doubtless been intentionally drafted on such broad lines to make it impossible for business circles to circumvent the regulations.

The Decree does not state whether the price in question is the gross price or the net price—that is, inclusive or exclusive of incidental expenses (*e.g.*, freight, packing, etc.). The object, however, being generally "to adjust prices to the new economic situation", all sales prices current in the market, which will usually mean the net prices, will certainly have to be reduced. The purpose of the reduction is to lower trade expenses or cheapen the cost of living, and this would not, on the whole, be achieved if the vendor, for instance, merely deducted certain incidental expenses, such as the cost of freight or packing, or, say, raised the discount. These devices cannot at all events be resorted to in fixing the price for the final consumers, more particularly in the case of marked goods. The whole idea of the Decree is that the consumer should get the direct benefit of the full 10 per cent

reduction on every purchase, however small. In the case of wholesale transactions, which are the general rule with *cartels*, doubts may nevertheless be entertained as to whether the requirements of the Decree might not also be met by deducting such expenses or by making a corresponding increase in the discounts, thus effectively reducing prices by the prescribed amount. It must, however, be remembered that freights will also have to be correspondingly decreased, and that the prices of packing material, etc., will be reduced, so that the vendor would frequently save on these expenses and not have to support the 10 per cent reduction himself. Conversely, an increase of those expenses to compensate the reduction in price would, of course, be an act of evasion. Similarly, the imposition of severer terms of payment, at any rate to such an extent as partially or wholly to compensate the price reduction, would also be regarded as an "act of evasion" (within the meaning of Chapter I, Article 9).

Theoretically, a price reduction could also be achieved by maintaining the nominal price of the article, but at the same time increasing the quantity supplied or offering a superior quality. In view, however, of the aim of the Decree, these two alternatives—the second in particular—could only be admitted in *exceptional cases*, and certainly only when the marked goods can be carefully examined, as, for instance, in the case of those which are put up in separate packages.

4. Without the permission of the competent Ministers of the Reich (see Chapter I, Article 8), prices which have been reduced in compliance with the Decree may not—if the price agreement is maintained—be again increased by the cartel before July 1st, 1932.¹ An exception is made in the case of the prices for coal and potash, for which special regulations are provided; in the case of the Potash-Selling Organisation there is also an international (German-French) cartel.

It is similarly prohibited, without the permission of the competent Ministers of the Reich, to revive during the same period agreements which have been cancelled or to *conclude fresh agreements regarding prices* of the kind specified in Chapter I, Article 1. There is, of course, the possibility that, when a price agreement is terminated, a vendor, having obtained a free hand, may later arbitrarily raise his prices. This, however, is a purely theoretical possibility, which, under conditions of open competition, quite apart from existing marketing difficulties, can never be taken advantage of in practice.

5. The above provisions apply not only to *goods*—that is, industrial products of every kind—but also to *industrial services* (*gewerbliche Leistungen*, Chapter I, Article 1, paragraph 4). In German law, the latter term, while not defined with absolute clearness, denotes any gainful employment which is predominantly of a mechanical (artisan) character; it thus excludes purely intellectual professions. The latter, the so-called "liberal" professions—viz., medicine, law, etc.—do not come into consideration. This provision is intended to apply mainly to price agreements or recommendations made by corporations and groups of craftsmen, organisations which, in the last decade particularly, have pursued a very extensive and effective collective policy with regard to prices. These organisations also came under the Cartel Decree of 1923.

6. In the case of agreements between cartels belonging to different stages of the economic process, in virtue of which every party is bound to apply certain specific prices,

¹ This prohibition has not been renewed for the period after July 1st, 1932; the Government, however, has informed the public that, in view of the general economic situation, it expects that, for the moment at any rate, prices will not be raised. According to Press reports, the Price Commissioner (cf. III) has already declared that, so far as he is concerned, the measures he has taken shall generally remain in force even after July 1st, 1932.

each stage—that is, both the producers' cartel and the traders' (wholesalers') cartel—must effect the price reduction.

If, as in the case of marked goods, only retail prices are fixed, the reduction must apply to these. The Decree does not itself specify, but leaves the question to be decided by the parties themselves, whether the manufacturer should make certain concessions to the retailer and reduce his sales price, or whether the retailer must bear the whole burden.

B. *Executory Provisions.*

1. The parties to the price agreement are obliged to carry out the price reduction *by the date appointed*. To facilitate compliance with an obligation which, in view of the very short notice given, may create difficulties for bodies possessing a large number of members or a complicated structure, cartels are not required (Chapter I, Article 1, paragraph 3) to carry out the formalities imposed upon them by their statutes. Decisions may be communicated by letter or even by telephone.

2. The possibility that exceptions may be allowed does not relieve the parties from their obligation to reduce prices within the period appointed—that is, by the end of 1931.

3. The obligation to reduce prices can only apply to transactions subsequent to January 1st, 1932, and, in the case of previous agreements or contracts for successive deliveries, only to such deliveries as are made after December 31st, 1931. The question, however, may be contested under German civil law. As the measure is of a general character and involves administrative compulsion—that is, it modifies by *force majeure* the original conditions of business transactions—the purchaser ought to be granted a right of withdrawal if the reduction in price is refused; otherwise, he would be seriously handicapped in the competitive struggle.

4. The decisions of the competent Ministers (or the duly authorised authorities of the States) as to whether prices have or have not been reduced as prescribed are final (Chapter I, Article 6) and binding on courts of law, administrative authorities and arbitral tribunals.

5. The partial nullification, already mentioned, of cartel agreements, resolutions and individual undertakings (in the case of marked goods) extends (Chapter I, Article 1, paragraph 5) also to the obligation imposed on members to dispose of goods only through a central sales office (sales “syndicate”). Members thus recover their freedom to sell independently.

The nullification takes effect forthwith, by operation of law, in the case of failure to observe the general date appointed for reducing prices (January 1st, 1932) or those fixed by special order of the competent authorities (Chapter I, Article 1, paragraph 4; Articles 2 and 5).

6. Fines of an unspecified amount in Reichsmark (Chapter I, Article 10) are exacted for infringements or evasions. They are imposed at the request of the authorities by the President of the Cartel Court or his representative and recovered in accordance with the provisions of the Fiscal Code of the Reich (*Reichsabgabenordnung*).

7. As Chapter I of the first part of Emergency Decree No. 4 only refers to concrete facts—namely, compulsory *prices* and price agreements relating to the next stage of the economic process, particularly compulsory prices for marked goods—and as, moreover, nothing to the contrary is laid down on the matter, both the 1923 Cartel Decree and the other Decrees already referred to in this memorandum remain fully operative.

The Decree regarding the price regulation of marked goods, of January 16th, 1931, is, it is true, superseded in so far as its provisions, including those relating to the reduction of prices, referred only to certain categories of goods, whereas Emergency Decree No. 4 (Chapter I, Part 1, Article 2) provides for the cheapening of all marked goods the prices of which are controlled. The Decree regarding compulsory prices for marked goods, however, retains its special significance—for example, as regards the important provisions of Article 2, paragraphs 1(b) and 2, and Article 3.

The Cartel Court will still be competent to adjudicate—*e.g.*, in cases where notice is given—owing to Emergency Decree No. 4 having altered the basis of the association.

The ordinary law courts will continue to decide whether the prices in question are prices which should be legally reduced or whether there is a valid price arrangement relating to the next economic category—*e.g.*, in a civil suit to prohibit sales being made at uneconomic prices; they have no jurisdiction, however, if the Minister has already given the decision referred to above (Chapter I, Article 6), which is binding on all law courts and arbitration tribunals.

III. LOWERING OF PRICES ON THE OPEN MARKET.

A. *Basic Regulations.*

Chapter II of Part 1 of Emergency Decree No. 4, entitled “Protection against Excessive Prices”, deals with measures designed to reduce prices not fixed by an organisation.

The provisions which follow, however, are limited to “essential commodities in everyday use” and “essential services satisfying daily requirements” (Chapter II, Article 1).

The duty of dealing with unduly high prices in this sphere of consumption is entrusted to a special “Price Control Commissioner for the Reich”. He is appointed by the President of the Reich and is under the direct orders of the Chancellor of the Reich. He possesses full dictatorial powers. His term of office is decided by the Government of the Reich.

His duties are only very vaguely defined by the tenor of the Decree itself and certain of its provisions.

According to Chapter II, Article 2, he has constantly to supervise the prices referred to in Article 1, with respect to their “formation” and to the “price margins” and “increases” by which the various economic stages benefit. He must take steps to lower rates which he considers excessive.

In view of the fact that, under Article 13 of Chapter I (which we discussed above) of Part 1 of Emergency Decree No. 4, the duties and powers of the Price Commissioner remain “unaffected”, he can also take very effective action in connection with compulsory prices (Chapter I). Chapter II, Article 2, in particular, empowers him to supervise price margins and increases, and also the prices of marked goods. The Commissioner has made use of these powers by issuing, for instance, the Ordinance concerning compulsory prices in the retail coal trade, dated December 16th, 1931 (*Reichsgesetzblatt*, I/1931, No. 83, of December 22nd, 1931).

The Price Commissioner can also delegate his powers to the supreme authorities of the States (Chapter II, Article 5) and, should circumstances so require, may also, in agreement with the Governments of the individual States, appoint “agents” for particular classes of commodities or areas, such agents being under his orders. A special “Milk Prices Commissioner” has, for instance, been appointed for Greater Berlin. The orders of the Commissioner of the Reich apply to the territory of the Reich or parts

thereof (Chapter II, Article 6, paragraph 2). Furthermore, the Reich, States and communal authorities, as well as other corporations of public law standing, must furnish free of charge all necessary assistance to the authorities of the States responsible for carrying out the above orders.

Chapter II, Article 3, stipulates that the subordinate police authorities must, by publishing orders and employing the means of compulsion open to them under the laws of the States, carry out the instructions that have been given. An appeal may be made against these police orders in the administrative tribunals; but the Reich Government may issue special provisions on this subject. The powers of the police are limited only in so far as the Government of the Reich, by means of provisions for giving effect to this Chapter, has imposed special penalties.

The Government of the Reich may (Chapter II, Article 6) issue decrees and general administrative regulations to enable the Price Commissioner to discharge his duties, as well as supplementary provisions, more particularly as regards the method of effecting price reductions, the marking of prices, and price-lists. The Government may repeal Chapter II or any of the decrees and issue the necessary transitional provisions.

As particular importance is attached to the cheapening of traffic services, public means of transport, particularly private and narrow-gauge railways and tramways (Chapter II, Article 4), which lower their tariffs to a "reasonable extent" under this Chapter, may be given compensation in the form of total or partial exemption from the transport tax imposed by the Law of June 29th, 1926.

The provisions of this Chapter came into force on the day of publication—viz., December 9th, 1931.

B. Decree concerning the Powers of the Price Commissioner.

The Decree of December 8th, 1931, concerning the powers of the Price Control Commissioner of the Reich, which came into force on the day of promulgation, December 9th, 1931, defines in greater detail the duties of the Price Commissioner.

His dictatorial powers appear in the provision contained in Article 4 of the Decree, in virtue of which he himself establishes the list of goods and services within the meaning of Article 1 of the basic Decree—*i.e.*, he determines his own sphere of action. Furthermore, Article 1 gives him, in particular, powers to issue price regulations and orders, and to take action either by conducting negotiations or by issuing orders. Under Article 3, for instance, he may require goods to be ticketed and price-lists to be displayed with full particulars, so as to enable consumers to co-operate extensively in the control of prices. The Commissioner has already made effective use of this power by issuing a Decree dated December 17th, 1931, on the ticketing of goods and price-lists (*Reichsgesetzblatt*, I/1931, No. 85, of December 29th, 1931). This Decree prescribes that plain and fancy bread and fresh meat should be ticketed and that hairdressers should display their prices. For the same reasons, the Price Commissioner may (Article 6), in appropriate circumstances, set up "Price Committees", with consultative powers, composed of representatives of the circles interested—*i.e.*, suppliers and consumers. The Commissioner may, finally, in order to facilitate his enquiries, avail himself of the Decree of July 13th, 1923, on the obligation to furnish information.

To enable the Commissioner to discharge his duties, he has been invested with the following powers:

1. Infringements of his orders regarding prices and increases (Article 1, paragraph 2, of the Decree) are punishable by imprisonment, police detention or a fine of an unlimited amount, or by two or several of these penalties;

2. He may (Article 2) stop the operation of enterprises supplying goods or services within the meaning of Article 1 of the Decree, if they infringe the provisions and orders of the Decree or if the proprietor or manager is proved to be unreliable. The Commissioner may also direct the business and office premises to be closed down. These penalties are of the same nature as those laid down in the Decrees of July 13th, 1923, and June 26th, 1924, concerning trading restrictions, and also in the Law of July 19th, 1923. Any party affected may, within a period of one week, appeal to the Economic Court of the Reich (with which the Cartel Court is also connected) against the above penalties, and against such penalties only. This appeal does not, however, unless otherwise provided, suspend the operation of the penalty. The Economic Court must give its decision within one month.

By an order in the *Reichsgesetzblatt*, I/1932, No. 1, of January 9th, 1932, the Price Commissioner has temporarily delegated his powers to the supreme authorities of the States, within strictly defined limits and for particular commodities—e.g., the retail trade in all agricultural produce (except milk, butter and cooking fat), poultry, fish (except sea fish), saddlery and joinery articles, and the marked goods defined in Article 12 of Emergency Decree No. 4.

3. For the rest (Article 7), in accordance with the provisions of Chapter II of Part 1 of Emergency Decree No. 4, the subordinate authorities—more particularly, as already stated, the police authorities—are responsible for carrying out the Commissioner's orders. It is open to the parties concerned to contest such action by resorting to the administrative tribunals provided for under the laws of the various States.

Annex A.

DECREE OF THE PRESIDENT OF THE REICH OF JULY 26TH, 1930, FOR REMOVING FINANCIAL, ECONOMIC AND SOCIAL DISTRESS. (*Reichsgesetzblatt*, 1930, I, page 328.)

FIFTH CHAPTER.—THE PREVENTION OF UNECONOMIC PRICE AGREEMENTS.

Section 1.

1. The Government of the Reich may :

(a) Declare invalid agreements or decisions of the kind mentioned in Section 1 of the Decree of November 2nd, 1923, against the Abuse of Economic Power (*Reichsgesetzblatt*, I, page 1067), if they contain obligations regarding price-fixing methods or the prices to be demanded, or prohibit their being executed in a certain manner;

(b) Prohibit the application of business terms or methods of fixing prices which restrict any person legally or economically in respect of the manner of fixing prices or the prices to be demanded;

(c) Prohibit acts which, while not coming under (a) and (b), are calculated to bring about essentially the same economic result by reason of the conditions, the circumstances of the case, or the procedure adopted or to be adopted ; in particular, recommendations referring to methods of fixing prices or to the prices to be demanded, or the application of economic or social pressure in order to ensure the execution of such recommendations,

if the production of or trading in goods or services is made uneconomic thereby or economic freedom of action is restricted in a manner not justified by national economy.

2. The Government of the Reich may also decree that parties may withdraw from agreements concluded under conditions such as those to which objection is stated under paragraph 1. This right of withdrawal cannot be waived; it expires if the withdrawal is not declared within the period provided for in the Decree. Sections 346 to 356 of the Civil Code, and Section 10, paragraph 1, sentence 2, and paragraphs 2 and 6 of the Decree against the Abuse of Economic Power are applied *mutatis mutandis*.

3. Agreements within the meaning of Section 1 of the Decree against the Abuse of Economic Power are held to include agreements by which several independent undertakings belonging to the same economic category bind themselves individually to adopt a certain procedure towards other parties in the method of fixing prices and the prices to be demanded

Section 2.

If the conditions for adopting measures in accordance with Section 1 obtain, the Government of the Reich may reduce or abolish import duties on dutiable goods the prices of which are fixed by the methods mentioned in Section 1.

Section 3.

1. Before ordering any measure to be taken in accordance with Sections 1 and 2, the Government of the Reich shall hear the economic circles concerned. It shall ask the Provisional Economic Council of the Reich to give an opinion.

2. Measures in accordance with this Decree shall be published in the *Reichsanzeiger* and shall come into effect on the date of publication

Section 4.

If the influence of any of the acts mentioned in Section 1 is restricted to certain markets, the powers conferred on the Government of the Reich under Section 1 shall, with the Government of the Reich's consent, be exercised by the Government of the State concerned or an authority appointed by the latter.

If the markets of several States are affected, the Government of the Reich may, in agreement with the Governments of the States concerned, decide on the authority competent to exercise the powers conferred under Section 1.

Section 5.

Any person acting contrary to measures issued in accordance with this Decree shall, on the application of the competent supreme authority of the Reich, or, in the case provided for in Section 4, on the application of the competent supreme authority of the State concerned, or the authority appointed by it, be subject to a penalty to be imposed by the President of the Cartel Court, or his representative. The penalty shall consist of a fine, the maximum amount of which is unlimited. The fine shall be collected in accordance with the provisions of the Reich Taxation Ordinance (*Reichsabgabenordnung*).

Annex B.

EXECUTORY DECREE REGARDING THE CANCELLATION AND PROHIBITION OF COMPULSORY PRICES, ISSUED ON AUGUST 30TH, 1930. (*Deutscher Reichsanzeiger*, No. 205, of September 3rd, 1930.)

In virtue of Section 1 of the fifth chapter of the Decree issued on July 26th, 1930, by the President of the Reich for removing financial, economic and social distress (*Reichsgesetzblatt*, I, page 311), the following is decreed :

Section 1.

1. Agreements of the kind mentioned in Section 1, paragraph 1(a), 3 of the fifth chapter of the Decree issued by the President of the Reich for removing financial, economic and social distress, shall be null and void if they impose on the purchaser of goods obligations regarding the manner of fixing prices or the prices to be demanded :

- (a) For goods of other kinds or other origin, or
- (b) For industrial services.

2. It is forbidden to apply terms of business which restrict the purchaser of goods legally or economically in respect of the manner of fixing prices or the prices to be demanded :

- (a) For goods of other kinds or other origin, or
- (b) For industrial services.

Section 2.

It is forbidden to take steps which are calculated directly or indirectly to cause essentially the same economic result as the agreements or terms of business mentioned in Section 1.

Section 3.

In accordance with Section 1, paragraph 2, of the fifth chapter of the Decree issued by the President of the Reich for removing financial, economic and social distress, the parties are entitled to withdraw from agreements concluded under the conditions mentioned in Section 1. Such withdrawal must be declared within one month after the publication of this Decree.

Section 4.

The Government of the Reich shall decide on the date when this Decree shall cease to be in force.

Annex C.

DECREE REGARDING THE COMPULSORY PRICES FOR GOODS BEARING
A STANDARD MARK, ISSUED ON JANUARY 16TH, 1931.
(*Deutscher Reichsanzeiger*, No. 14, of January 17th, 1931.)

In virtue of Section 1 of the fifth chapter of the Decree issued by the President of the Reich on July 26th, 1930, for removing financial, economic and social distress (*Reichsgesetzblatt*, I, page 311), it is decreed as follows :

Section 1.

The provisions of this Decree shall apply to trade in the following goods if their packing, their make-up or the receptacles from which they are sold to the consumer are provided with a mark indicating their origin (name of the firm, motto or picture, etc.) (so-called marked goods) :

1. All materials which are intended for human consumption in an unchanged, prepared or worked-up condition (foodstuffs), with the exception of fresh milk, spirits and sparkling wine;

2. Other goods specified by the Government of the Reich in announcements in the *Deutscher Reichsanzeiger*.

Section 2.

1. If agreements of the kind described in Section 1, paragraph 1(a), 3 of the fifth chapter of the Decree issued by the President of the Reich for removing financial, economic and social distress, oblige the purchaser of marked goods (Section 1) to demand fixed prices when reselling goods to consumers inside Germany, such obligation shall be void :

(a) If the fixed price is not reduced by at least 10 per cent as compared with the retail price existing on July 1st, 1930;

(b) If the purchaser is prevented from granting, in addition to this reduction, any rebates which he was entitled to grant on July 1st, 1930.

2. It shall be forbidden to apply terms of business or methods of fixing prices which legally or economically bind the purchaser of marked goods (Section 1) to demand fixed prices on reselling the goods to consumers in the country :

(a) If the fixed price is not reduced by at least 10 per cent as compared with the price existing on July 1st, 1930;

(b) If the purchaser is prevented from granting, in addition to this reduction, any rebates which he was entitled to grant on July 1st, 1930.

3. The legal consequences to which paragraphs 1 and 2 relate shall not apply if the reduction is less than the minimum reduction required by not more than a fraction of a Reichspfennig, unless the retail price existing on July 1st, 1930, is thereby left unchanged.

Section 3.

1. If agreements of the kind mentioned in Section 1, paragraph 1(a), 3 of the fifth chapter of the Decree issued by the President of the Reich for removing financial, economic and social distress, oblige inland associations for joint purchase (Bezugsgemeinschaften)

not to grant rebates to their associates (or members or partners) on the purchase price of marked goods (Section 1) obtained from them, such obligation shall be void.

2. It shall be forbidden to apply terms of business or methods of fixing prices which legally or economically bind inland associations for joint purchases (Bezugsgemeinschaften) not to grant rebates to their associates (or members or partners) on the purchase price of the marked goods (Section 1) obtained from them.

3. Associations for joint purchase (Bezugsgemeinschaften) within the meaning of this regulation are registered co-operative societies and other economically similar associations possessing legal personality, the business of which is essentially restricted to their associates (or members or partners), and their purchasing centres.

Section 4.

It is prohibited to take any action which is calculated directly or indirectly to produce essentially the same economic effect as the provisions of agreements which are declared null and void, or terms of business which are prohibited, by this Decree.

Section 5.

If the application of this Decree leads to considerable unforeseen economic disadvantages, the Minister of National Economy of the Reich may, after taking the opinion of the Provisional Economic Council of the Reich, admit exceptions to the Decree, provided they are not opposed to the economic interests of the country or to the public welfare.

Section 6.

1. This Decree shall come into force for the goods referred to in Section 1, paragraph 2, fourteen days after they have been specified in the *Deutscher Reichsanzeiger*, and, in other cases, fourteen days after its publication.

2. The Government of the Reich shall decide on what date it shall cease to be in force.

NOTICE ISSUED ON JANUARY 16TH, 1931.

In virtue of Section 1, paragraph 2, of the Decree of January 16th, 1931, regarding compulsory prices for goods bearing a standard mark (*Reichsanzeiger*, No. 14), the following is decreed :

The Decree regarding compulsory prices for marked goods shall apply to the following goods, if they are marked goods within the meaning of this Decree, and if the purchaser is bound by counter-bond agreements (Reverse), business terms, or similar compacts to demand fixed prices when reselling them to consumers in the country :

1. Articles for cleaning, treating, dyeing or improving the appearance of the skin, the hair, the nails and the mouth;

2. Materials and their preparations intended for external or internal application to the body of persons or animals with a view to preventing or removing diseases, pains or bodily injuries, with the exception of remedies for internal consumption containing more than 50 per cent in weight of spirit of wine;

3. Bandages and plasters;

4. House and kitchen utensils;

5. Floor coverings, with the exception of carpets and textile fibre materials;

6. Articles for washing, polishing, scouring and cleaning, and for preparing linen and articles of clothing;
7. Paints for artists, painters and household use;
8. Typewriters and office equipment;
9. Ready-made clothing and personal linen;
10. Thread made of textile fibres and all kinds for sewing, knitting, embroidering, darning and crochet work;
11. Articles of rubber and rubber substitute;
12. Gramophone records, provided the fixed retail price on July 1st, 1930, was not more than five Reichsmarks, or less.

Annex D.

DECREE OF THE PRESIDENT OF THE REICH, DATED DECEMBER 1ST, 1930,
FOR PROTECTING TRADE AND FINANCE.

(*Reichsgesetzblatt*, I, pages 517 to 604.)

PART 8.

CHAPTER V, SECTION 2.—COMBINES.

Article 7.

With the consent of the Reich Council (Reichsrat), the Government of the Reich may, for the purpose of regulating production and sales, amalgamate sugar factories and enterprises using potatoes for industrial manufacture.

When so doing, it must take steps to ensure the best possible return and to prevent injury to the national economy or the interests of the community.

The Decree of November 2nd, 1923, to prevent the abuse of economic power (*Reichsgesetzblatt*, I, page 1067) shall apply to such combines; nevertheless, there shall be no notice to terminate them in accordance with Article 8 of the present Decree.

Article 8.

The Government of the Reich may, with the consent of the Reich Council, publish decrees for the execution of Article 7. It may in particular :

1. Regulate by statutes the rights and duties of the members and the other legal relations of the combines, and provide that such combines shall have legal personality;
 2. Amalgamate enterprises with already existing combinations of enterprises of the same nature, and in so doing regulate the rights and duties of the members in a manner which may even be at variance with the contractual agreements.
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Annex E.

FOURTH DECREE OF THE PRESIDENT OF THE REICH, DATED DECEMBER 8TH, 1931,
FOR PROTECTING NATIONAL TRADE AND FINANCE AND SAFEGUARDING THE
PEACE OF THE COUNTRY. (*Reichsgesetzblatt*, 1931/I, pages 699 to 745.)

PART 1.—REDUCTION OF PRICES AND RATES OF INTEREST.

CHAPTER I.—ADJUSTMENT OF COMPULSORY PRICES TO THE PRESENT ECONOMIC SITUATION.

Article 1.

1. Compulsory prices must, in order to be adapted to the present economic situation, be reduced by January 1st, 1932, at the latest, by at least 10 per cent as compared with the level of June 30th, 1931.

2. Compulsory prices shall be regarded as the prices which the parties concerned have undertaken to demand on the home market under agreements or decisions of the kind referred to in Article 1, Chapter V, of the Decree of the President of the Reich of July 26th, 1930, for removing financial, economic and social distress (*Reichsgesetzblatt*, I, page 311) (for instance, cartels, cartels with selling organisations (syndicates), and combines fixing prices for undertakings in the next stage of the economic process, in the following branches: iron and steel industry, industry for working-up iron and metals, building materials, chemical products, paper, glass, ceramic industry, textiles and artificial fertilisers).

3. The decision with regard to the reduction of prices may also be issued by letter, telegraph or telephone; all provisions of agreements or statutes which are at variance with this prescription shall not apply in this matter.

4. If the Reich Minister for National Economy deems it necessary that there should be a more considerable reduction in the prices of particular articles or industrial services (*gewerbliche Leistungen*), or of groups of these commodities or services, he may lay down the rate of such reduction and require that it be effected within such period as he may fix.

5. If the prices of commodities or industrial services are not reduced as provided for in paragraph 1, or if a demand of the Reich Minister for National Economy (paragraph 4) is not complied with within the period laid down, the agreement or decision (paragraph 2) shall be null and void in so far as it contains obligations relating to the application of compulsory prices for the commodities or services in question; if those concerned have undertaken in an agreement or decision (paragraph 2) jointly to sell their commodities or services, such undertaking shall also be null and void in so far as it applies to commodities or services the prices of which have not been reduced in accordance with the provisions of paragraph 1.

Article 2.

1. The prices of "marked goods" (*Markenwaren*) which are laid down in agreements of the kind referred to in paragraph 2 of Article 1 must, in order to be adjusted to the present economic situation, be reduced for the home market before January 1st, 1932, at the latest, by at least 10 per cent as compared with the level of June 30th, 1931.

2. If the Reich Minister for Economic Affairs considers that, in the case of particular marked articles or groups of such articles, a more considerable reduction is necessary, he may fix the rate of such reduction and require that it be effected within such period as he may determine.

3. If the prices of marked articles are not reduced in accordance with paragraph 1 or if a demand of the Reich Minister for Economic Affairs (paragraph 2) is not complied with within the period fixed, the agreements (paragraph 1) shall be null and void in so far as they contain obligations regarding the application of compulsory prices for such marked articles. Such legal consequence shall not ensue if the reduction is less than that laid down by not more than a fraction of a Reichspfennig.

4. Marked articles within the meaning of paragraphs 1 to 3 are articles which themselves bear a mark indicating their origin (for instance, the indication of the commercial firm, a name or a picture), or whose packing, wrapping or receptacles (from which they are extracted for sale) contain such a mark.

Article 3.

1. The following special provisions shall apply to the coal industry and trade :

(i) The most recent prices of the coal and lignite selling organisations (syndicates) published by the "Reichskohlenverband" in the *Deutscher Reichsanzeiger* and the *Preussischer Staatsanzeiger* are to be reduced by 10 per cent as from January 1st, 1931.

(ii) The Reich Minister for Economic Affairs may issue provisions regarding reductions in the prices of the selling organisations (syndicates).

(iii) The selling organisations (syndicates) of the coal industry and trade and wholesale coal enterprises which are alone authorised to supply certain areas with coal may not take in regard to retailers any measures of the kind referred to in paragraph 1 of Article 9 of the Decree of November 2nd, 1923, intended to prevent the abuse of economic power (*Reichsgesetzblatt*, I, pages 1067 and 1090), or impose upon them conventional fines for selling at prices below the retail prices laid down in agreements or decisions of the kind referred to in Article 1. They are forbidden to impose any restrictive measures whatever on retailers in so far as the latter purchase fuel of German origin.

(iv) Special regulations will be drafted with regard to compulsory prices in the retail coal trade.

2. The following special provisions shall apply to the potash industry and trade :

(i) The maximum prices of potash salts fixed for the home market in the Decree of the Reich Potash Council (Reichskalirat) of December 22nd, 1926 (*Reichsanzeiger*, No. 298) must be reduced by 10 per cent by January 1st, 1932, at the latest.

(ii) The Reich Minister for Economic Affairs is authorised to issue provisions regarding reductions in the prices of the German Potash Syndicate.

Article 4.

No person may recommend another (give advice or make suggestions to another) to ask particular prices for commodities or industrial services (*gewerbliche Leistungen*) in the home trade, unless the prices the application of which is recommended have been reduced in accordance with the provisions of the present chapter.

Article 5.

1. The Reich Minister for Economic Affairs may authorise exceptions to the provisions of the present chapter in the event of the application of these provisions entailing unforeseen and considerable economic injury which it is impossible otherwise to avoid, provided always that such exceptions do not conflict with the interests of the national economy or those of the community; such exceptions may be granted subject to certain restrictions.

2. The provisions of the present chapter shall not apply to the prices of commodities or industrial services (*gewerbliche Leistungen*) that the parties concerned have undertaken to observe under the terms of an international agreement or decision which, in virtue of its contents, comes under one of the categories referred to in paragraph 2 of Article 1. Those to whom such exception applies shall inform the Reich Minister for Economic Affairs of this by January 1st, 1932, at the latest, and submit the agreements to him.

Article 6.

If the Reich Minister for Economic Affairs takes a decision as to whether prices have been reduced in conformity with the provisions of the present chapter, his decision shall be final and it shall be binding upon the courts, arbitral tribunals and the administrative authorities.

Article 7.

Notwithstanding the provisions of Article 3, the Reich Minister for Economic Affairs may fix the prices for associations the formation of which is provided for either by laws or by decrees, or which are constituted in virtue of special legislative authorisation, and he may in such a case regulate the price reductions. The Articles 1 and 2 shall not apply to the associations referred to in the first sentence.

Article 8.

1. Except in cases where the Reich Minister for Economic Affairs has given his consent, it shall be forbidden up to July 1st, 1932, as regards commodities or industrial services (*gewerbliche Leistungen*) :

(i) To raise the prices which have been reduced in compliance with the provisions of the present chapter, if the prices continue to be compulsorily fixed;

(ii) To lay down, by means of agreements or decisions of the kind referred to in Article 1, prices for commodities or services the prices of which were not compulsorily laid down at the time of the coming into force of the present chapter, or the compulsory prices of which are null and void in accordance with the provisions of the present chapter.

2. Paragraph 1, No. 1, shall not apply to the prices of the selling organisations (syndicates) of the coal industry and trade and the prices of the German Potash Syndicate.

Article 9.

All acts are prohibited which, directly or indirectly :

(1) May have the same economic effect as the agreements or decisions, or parts thereof, which are null and void in accordance with the present chapter;

(2) May render it possible to evade the price reductions provided for in the present chapter.

Article 10.

Any person failing to take account of the nullity of an agreement or decision, or of parts thereof, arising out of the provisions of the present chapter or an order given in virtue of Article 7, and any person contravening the provisions of Articles 3 and 4, the second sentence of paragraph 2 of Article 5, or of Articles 8 or 9 shall, on the demand of the Reich Minister for Economic Affairs, be mulcted in a fine by the President of the Cartel Court or his substitute. No maximum is laid down for the fine. The amount shall be recovered in accordance with the provisions of the Reich Fiscal Code (*Reichs-abgabenordnung*).

Article 11.

The powers provided for in Articles 1 to 3, 5 to 8 and 10 shall be exercised, within the limits of his competence, by the Reich Minister for Supplies and Agriculture.

Article 12.

1. If the effect exercised on the market by agreements or decisions of the kind referred to in paragraph 2 of Article 1 is confined to certain areas, or if a recommendation (Article 4) is addressed to a group of persons in a particular area, the Government of the Reich may delegate its powers in whole or in part to the supreme authorities of the State in question; when the Government of the Reich makes use of this authorisation, the supreme authorities of the State may delegate the powers thus conferred on them to a subordinate authority.

2. If the effect in question applies to the territory of several States, the Government of the Reich may, in agreement with the Governments of the States concerned, designate the supreme authority of a State or the subordinate authority to which the said powers shall be delegated.

Article 13.

The duties and powers of the Price Control Commissioner of the Reich (Chapter II of the present Part) remain unchanged.

Article 14.

The Reich Minister for Economic Affairs, and the Reich Minister for Supplies and Agriculture may issue regulations and administrative provisions deemed to be necessary for the execution of the present chapter.

Article 15.

The Reich Minister for Economic Affairs and the Reich Minister for Supplies and Agriculture shall appoint the date on which the present chapter shall cease to be applicable.

• CHAPTER II.—PROTECTION AGAINST EXCESSIVE PRICES.

Article 1.

1. In order to protect the population against excessive prices for indispensable articles in everyday use and for essential services designed to meet current requirements,

a Price Control Commissioner for the Reich shall be appointed. He shall be under the orders of the Chancellor of the Reich and shall reside in Berlin.

2. The Government of the Reich shall determine the duration of his powers.

Article 2.

The Reich Commissioner shall be responsible for exercising continuous supervision over the prices referred to in Article 1, the formation of such prices and, in particular, the price margins and increases by which the undertakings at the various stages of the economic process benefit. If the Reich Commissioner considers that certain prices, price margins or increases are excessive, he shall take steps to reduce them.

Article 3.

1. It shall be for the Government of the Reich to determine the penalties which may be laid down in the regulations to be issued in virtue of the present chapter.

2. If no penalties are provided for, the supreme authorities of the States shall, at the request of the Government of the Reich, instruct the police authorities to provide in each particular case, by means of a police order, for the execution of the measures generally prescribed in virtue of the present chapter and, if necessary, to ensure such execution by employing the means of compulsion open to them under the laws of the State. An appeal may be made against these police orders in the administrative tribunals. The Government of the Reich may issue supplementary provisions on this subject.

Article 4.

At the request of the Reich Commissioner, private and narrow-gauge railways and tramways may be granted total or partial exemption from the Transport Tax under the Law of June 29th, 1926, relating to the Transport Tax (*Reichsgesetzblatt*, I, page 357), provided that they lower to a reasonable extent their tariffs in force on the date of the coming into operation of the present chapter, regard being had to the measures provided for in the present Decree.

Article 5.

1. The Reich Commissioner may delegate his powers in whole or in part to the supreme authorities of the States. When he makes use of this authorisation, the supreme authorities of the States may delegate the powers thus conferred on them to subordinate authorities.

2. Should circumstances make this specially desirable, the Reich Commissioner may, in agreement with the Governments of the individual States, appoint agents for those States or parts thereof and delegate his powers to them in whole or in part. These agents shall be under the direct orders of the Reich Commissioner.

3. The provisions of the present chapter shall, moreover, be enforced by the authorities of the States. The administrations of the Reich, the States and the communes and other corporations having public law standing shall co-operate free of charge in the execution of the provisions of the present chapter.

Article 6.

1. The Government of the Reich shall be authorised to issue decrees and general administrative regulations with a view to the execution of the provisions of the present

chapter. If it deems this necessary, it may also issue supplementary provisions; it may, in particular, enact regulations as regards the method of effecting price reductions, the marking of prices, the prohibition to continue to operate enterprises and the closing down of industrial and commercial premises. It may order that the present chapter or certain provisions thereof shall cease to be applicable and may issue the necessary transitional provisions for that purpose.

2. When the Reich Commissioner issues provisions or regulations, these shall be applicable to the whole territory of the Reich or to parts thereof.

Article 7.

The provisions of the present chapter shall come into force on the day of publication.

2. NEW HUNGARIAN LEGISLATION ON CARTELS.

I. THE HUNGARIAN CARTEL LAW OF OCTOBER 15TH, 1931.

(For text, see *Annex*.)

PRELIMINARY OBSERVATIONS.

Information regarding the position of the legislation prior to the promulgation of this law is contained in my report published in the *Review of the Legal Aspects of Industrial Agreements*.¹ At the end of that report, it was stated that since 1904 endeavours had been made in Hungary to introduce public control over cartels. The new law is based, in its main ideas, largely on the German Decree of 1923. It does not, however, contain the two essential points provided for in the two Articles 8 and 9 of the German law—namely, the withdrawal of members without notice and the preventive censorship of the compulsion exercised by the organisation (embargo, etc.). The Hungarian procedure, contrary not only to the German procedure but also to that prescribed by the Norwegian law, constitutes therefore an entire procedure of public law. As in the case of the German decree, a special jurisdiction is called upon to decide. On the other hand, a special cartel commission is established, as in Norway, having the character of a consultative body appointed to secure the application of the law.

GENERAL STRUCTURE OF THE LAW.

A. *Substantive Provisions.*

Ad *Article 1*.—As in the German decree, the fundamental agreements of all cartels and organisations, in order to be valid, must be *in writing*; the organisations referred to are cartels or other legally established corporations with a similar object—namely, the regulation of economic competition; they therefore include such capitalistic organisations as combines ("Konzerne"), communities of interests (Interessengemeinschaften), patent societies (Patentgemeinschaften), etc., which eliminate competition in important matters by means of agreements; they do not include large undertakings formed by fusion.

¹ Prepared for the Economic Committee by M. Henri Decugis, Mr. Robert E. Olds and Dr. Siegfried Tschierschky : Geneva, 1930 (document E.529(1), pages 67 and 68).

These provisions are amplified by Article 6. The new Articles 17 and 18 of the law, unlike the draft, extend control, at the instance of agricultural interests, to the prices of agricultural produce *on local markets*. These clauses prohibit agreements and other forms of artificial interference which influence market prices to the disadvantage of the producer. This plainly refers to artificial interferences with the free establishment of prices which, owing to their local effects and the fact that they are confined to agricultural produce, do not fall within the same category as the organisations referred to in Articles 1 and 6, and are therefore dealt with separately.

Ad *Article 2*.—Such of these organisations as include even *one* large member undertaking are under a special *obligation to register* their agreements and decisions regarding competition. Notification is compulsory, not only for national cartels, but also, under Order No. 5381/1931.M.E., for foreign cartels, provided even a single member has his offices in Hungary or is domiciled there.

Ad *Article 3*.—When applying for registration, the *legally empowered representatives* of such organisations must be exactly designated and their powers submitted. They must be Hungarian nationals. In the absence of a representative or if the representative is prevented from attending, a solicitor is appointed as *official representative* by the President of the Cartel Court at the cost of the organisation.

Ad *Articles 6 and 7*.—The Articles 6 and 7 contain the *measures* to be taken in case of need against the agreements and decisions mentioned in Articles 1 and 2; such measures may also be directed against any act or method of procedure which is not based on a written document, but has the same object in respect of competition (Article 6, paragraph 1). These articles also expressly include the so-called “trusts” (Article 6, last paragraph, and Article 7, first paragraph)—that is to say, the large individual undertakings mentioned above.

Such action may be taken in cases where the interest of national economy or of the common good is endangered and, in particular, where production, trade or the prices of goods (services rendered are not mentioned) are regulated in a manner unjustified by the economic position and to the detriment of the consumers, the producers or contractors of the same or another branch of industry. From this it may be concluded that *embargoes* come under these sections if they are intended to regulate trade in a manner contrary to public policy or morality and good order, to the detriment of firms in the same branch (outsiders) or other branches—namely, customers of more advanced stage of the economic process—*e.g.*, firms working-up raw materials obtained from a cartel. This situation thus approximately corresponds to that contemplated in Article 4 of the German Cartel Decree.

If these conditions obtain, the *Minister of National Economy* may, in the first place, take action in accordance with Article 6. In virtue of an extensive obligation to give information—a refusal to give such information being regarded under Article 6, paragraph 2, as an admission by the parties concerned of the facts objected to—the Minister may, under paragraph 1, No. 1, endeavour to modify the measures to which objection is taken by means of *negotiations* conducted by himself or initiated by him or by calling in an *arbitration commission*.

If these negotiations fail, and in special cases, he may, however, propose to the Ministry to take steps against the guilty parties by *withdrawing their privileges in respect of taxes, duties and the like*; by *excluding them from public tenders*; or by *special industrial or freight measures*.

According to No. 4 of paragraph one, he may propose, with the agreement of the Cabinet, to *modify or cancel Customs rates*.

He may also propose to the Cartel Court to *prohibit the execution* of a harmful measure

in the sense of Article 6, paragraph 1, by means of a *provisional order* under penalty of a fine. Lastly, he is authorised under No. 6 to order the immediate institution of a public prosecution in accordance with Article 7. If, in the Minister's opinion, it is unnecessary to take *immediate* action, he must, as a rule, obtain the opinion of the Cartel Commission before taking any of the measures in question.

The institution of a *public prosecution* provided for in Article 7 is subject to more serious conditions—*i.e.*, to the existence of more serious facts than those mentioned above—since action is to be taken by the "Causarum regalum Direktorat"¹ in the Cartel Court only in case of an infringement of the law or of morality or in case of injury to *special* interests; moreover, action can only be taken on the instructions of the Minister.

The Cartel Court may order the dissolution of the organisation itself or forbid the execution of any agreement concluded or decision adopted by it, or the activity or procedure complained of, in all cases under penalty of a fine.

An application for public prosecution (Article 7, penultimate paragraph) may be made to the Minister on production of proof, not only by any authority, but also by any private person. The Minister is not bound to comply with this application but, if it is made by an authority or public body, he must, as a rule, obtain the opinion of the "*Cartel Commission*" before taking a decision.

Actions brought by *private persons* must, however, concern matters exceeding the scope of purely private interests. The law therefore applies only to cases in which *purely* private interests, such as losses due to an embargo which may not be in itself objectionable, are not involved. Persons whose private interests suffer damage have their remedy, now as hitherto, in the ordinary courts. There is no protection against an embargo, such as is provided by Article 9 of the German law; nor is a member free, as in Germany, to withdraw without notice on the ground of a judgment of the Cartel Court. In this respect, the character of the Hungarian law as being solely in the public interest is logically consistently upheld.

B. Procedural Provisions.

The law provides for the co-operation of the following authorities :

1. The Minister of National Economy;
2. The Cartel Commission;
3. The "Causarum regalum Direktorat";
4. The Cartel Court;
5. The local Market Police (under Articles 17 and 18).

With regard to No. 1, the functions of the Minister are established in detail in the law : Article 2, paragraphs 1, 2, 3, and 4; Article 5, paragraphs 1, 2 and 5; Article 6; Article 7, paragraph 1; Article 10, paragraph 1; Article 13, paragraph 2; Article 14, paragraph 4; Article 17, paragraph 3. His most important substantive powers are those referred to above and are contained in Articles 6 and 7; Article 8, paragraph 2 (preparation of the list of lay assessors of the Cartel Court); Article 10 (application for a provisional order by the Cartel Court); Article 12, paragraph 2 (decision regarding the institution of proceedings "in the public interest", which are necessary in order to discontinue civil or arbitration proceedings); Article 13, paragraph 2 (instructions to

¹ According to information which I have obtained from competent authority, this expression, which is taken from the German translation of the law in the *Pester Lloyd*, is not usual, even in Hungary. The body in question is the "*legal representative of the Treasury*"; it consists of "official solicitors" who receive a fixed salary, and represents the interests of the Treasury under private law.

the Direktorat regarding actions for invalidating arbitration awards); Article 14, paragraph 1 (application for the imposition of a fine), and paragraph 4 (application for prohibition of the exercise of commercial and industrial activity); and Article 17, paragraph 3 (institution of criminal proceedings).

With regard to No. 2, the *Cartel Commission* (National Commission) is, in accordance with Article 5, an *advisory* body, obviously in the sense of the decisions taken by the Conference of German Jurists in 1928; it is composed of prominent scientists and practical men, acting in an honorary capacity, but on the footing of public officials as regards, for instance, professional secrecy. They are appointed by the Cabinet.

Under Order No. 5382/31 M.E., the manufacturing industries, craftsmen, commerce, agriculture, the general consumer, and labour are to be represented on this commission by at least one member each. The term of office is three years, but the chairman and vice-chairman may be removed before the expiry of that period. The meetings, which are not public, may also be attended by representatives of the Ministers concerned, but these have no vote. The expenses are defrayed by the Ministry of Commerce.

As shown, however, by Article 6, penultimate paragraph, the Minister must, as a rule, take the advice of this Commission, especially in the case of complaints from public authorities and corporations. In accordance with Article 9, paragraph 3, the *Cartel Court* may also request the Cartel Commission to give its opinion or to investigate an expert's report.

With regard to No. 3, as already mentioned, the "Causarum regalium Direktorat" has, in the first place, the powers of a public prosecutor (Article 7, paragraph 1, and Article 10, paragraph 1). It would appear to be of special importance that it is entitled to take action with a view to annulling an *arbitration award* that infringes this law; it can, however, only do so at the request of the Minister (Article 13, paragraph 2). Lastly, it is also entitled, at the request of the Minister, to ask the Cartel Court to inflict penalties (Article 14) and to prohibit the exercise of a business (Article 14, paragraph 1, No. 3). Its prosecution has a *suspensory* effect; an arbitration award cannot be put into effect until the Cartel Court has taken a decision; any private execution guaranteed by the deposit of security is invalid (Article 13, last paragraph).

As regards No. 4, the *Cartel Court* is a *special court* consisting of five members and is attached to the Supreme Court (*curia regis*). The president of the latter is also president of the Cartel Court, and has the right to delegate his powers to his representative or to a divisional president. He prepares a list of judges of the Supreme Court from which two judges are appointed by the president of the Cartel Court for each case. The two lay assessors¹ are appointed from a list of ten experts prepared by the Minister of Justice; this list is in turn extracted from a list of at least thirty experts prepared every three years by the Minister of National Economy (Article 8). The Hungarian Cartel Court is thus, like the German, a joint special tribunal for the whole of the national territory. Its powers have already been mentioned. The cases brought before it are always "prosecutions in the public interest". Its procedure is governed by the principles of civil procedure unless this law contains special provisions to the contrary—for instance, for actions taken in the public interest (Article 12, paragraph 2). In principle, the procedure is *summary*, as these matters are urgent in view of their serious influence on the national economy (Article 9). The employment of advocates by the parties concerned in a cartel action is compulsory, but there is no limit to the number of parties joining in the action (as co-plaintiffs).

The decision of the Cartel Court is binding on the ordinary courts and on the Arbitration Court (Article 12, paragraph 1).

¹ Hitherto there have been no assessors in civil legal procedure.

The Article 12 does not provide for “*popular*” *prosecution* similar to that provided for in the German decree (Article 12, paragraph 3), but only for the discontinuance of civil procedure, the appeal to the Minister of National Economy, and the continuation of the civil action when the Minister expressly refuses to bring an “action in the public interest” (Article 7), or gives no decision within an emergency time-limit of thirty days.

On the other hand, as mentioned above, Article 7, paragraph 1, No. 3, provides for a general right to take action by making application to the Minister of National Economy. Such action has the effect of a *plea* put in against the civil action or the arbitration procedure. In view, however, of the Minister’s power of decision (Article 7, last paragraph), it has no greater force than the right granted by the German decree to each party to appeal to the German Minister of National Economy or the Minister of Food and Agriculture, if necessary, through the Government of a State, in which case the Minister has also full power of decision.

The Cartel Court must also decide regarding the above-mentioned *cancellation* of *arbitral awards* (Article 13, paragraph 2). The matter *must* be referred to that Court if the arbitral award is disputed as being a violation of this law, whether this is the main or an accessory reason.

Lastly, the Cartel Court is competent officially to impose *penalties* on the basis of the law, on receipt of an application from the two competent authorities (Minister and “Direktorat”), in the case referred to in Article 14, paragraph 1, No. 3.

Disputes between parties affected by an agreement or a decision within the meaning of the law, in respect of rights accruing from such agreements or decisions or from the invalidity of the legal position together with the rights of third parties, may (Article 11, paragraph 1) form the subject of actions before the civil courts. The further provision (paragraph 2) that agreements which are contrary to the above regulation are void should no doubt be interpreted to mean that an agreement precluding ordinary procedure in favour of arbitration procedure shall in future be void; the latter procedure is therefore only admissible with the actual consent of both parties. Consequently, withdrawals from agreements and decisions or third party claims for compensation may be brought before the civil courts, always, however, subject to the restriction of powers established in Article 12.

As regards No. 5, the *market police* are the lowest authority. If they cannot settle the case, the second administrative authority—the district administrative board—may take proceedings, even provisionally, for petty offences—*i.e.*, may inflict fines. Lastly, the central authority (the Minister) may also take proceedings.

* * *

Under Order No. 5380/31 M.E., the law came into force on October 15th, 1931. A Hungarian commentary by Judge Kamill Sándorffy has been published by the firm of Franklin. Brief critical studies have also been published by Dr. Arthur Meszlény, Higher Privy Councillor and barrister, in the *Ungarisches Wirtschaftsjahrbuch*, seventh year, 1931, and by Dr. Nándor Ranschburg, barrister, in the *Kartell-Rundschau*, 1931, pages 737 *et seq.*

II. PROVISIONS OF THE ORDINANCES RELATING TO THE HUNGARIAN LAW ON CARTELS.

On October 6th, 1931, the Hungarian Government issued three ordinances regarding Law No. XX of 1931 on agreements governing commercial competition.

1. The first ordinance issued under No. Z1.5380/1931.M.E. relates to the putting

into force of the above-mentioned Law and fixes the date of its entry into force at October 15th, 1931.

2. The second ordinance issued under No. Zl.5,381/1931.M.E. contains five chapters consisting of thirty articles which prescribe the rules for submission, declaration and registration stipulated in the above-mentioned law.

(a) The first chapter (Articles 1 to 6) relates to the obligation of submitting agreements and decisions regulating commercial competition.

Under Article 1 and Article 2, paragraph 2, of the law, all written agreements or decisions must be submitted to the Minister of Commerce which contain obligations limiting the production, sale or price of a commodity, or restricting or regulating commercial competition in any other way (cartels and other similar legal relationships). It is stipulated, however, that at least one commercial company or an industrial or commercial enterprise employing more than twenty employees must be a party to the said obligations.

Provisions supplementing or modifying the agreements or decisions which have to be submitted must also be notified when they involve a material change in the legal relationship. The obligation of submission is determined, not by the usual economic or legal description, nor by the outward form of the legal relationship, but by the latter's actual tenor. In the intention of the law, the documents relating to the constitution of the commercial company, association or other body corporate must also be submitted when the formation of the latter aims at regulating the trade in certain goods, and when a commercial company or industrial or commercial undertaking employing more than twenty employees is a party thereto. On the other hand, the obligation of submission does not apply to agreements or decisions concluded by monetary institutions and other credit establishments, or by private insurance companies, with regard to the commercial conditions applicable to their business and their commercial policy in general; as these agreements and decisions do not regulate commercial competition in regard to goods, they are not covered by the provisions of the law.

Agreements or decisions must also be submitted, whatever the nationality or domicile of the parties or the place where the act containing the obligation was drawn up, provided that at least one of the parties has his domicile or establishment in Hungary.

All those who participate in the conclusion of the agreement or the taking of the decision are under the obligation to submit it. For reasons of expediency, the above-mentioned ordinance contains special provisions regarding agreements or decisions exclusively concluded or taken by State or communal undertakings, or by enterprises created in virtue of a legislative enactment or ordinance. In such cases, instead of submitting the agreements and decisions, the Minister exercising administrative supervision, and the municipalities or communes concerned, communicate the necessary particulars to the Minister of Commerce for registration.

The time-limits provided for submission are :

1. Forty-five days as from the entry into force of the law when the legal relationship became effective before the entry into force of the law;
2. Fifteen days as from the formation of the legal relationship when the latter arises subsequently to the entry into force of the law.

(b) Chapter II (Articles 7 to 12) regulates, first of all, the mode of submission of the documents subject to this formality. It lays down that an original and two copies of each document must be submitted to the Minister of Commerce. This chapter also lays down the procedure applicable when submission has not been made within the prescribed time-limit or has been made in an improper manner. It is further prescribed

that, when the document has been regularly submitted, the original, duly attested, shall be returned to the submitting party.

(c) Chapter III (Articles 13 to 22) contains provisions regarding the designation of representatives. According to the law, the parties to one of the agreements or decisions mentioned, when submitting the document, must designate at least one and not more than three Hungarian subjects domiciled in Hungary, stating their rank or occupation and their domicile, to act as their representatives before the courts or before other authorities in all matters connected with the agreement or decision, to make binding declarations on their behalf and to receive the decisions and other official communications which may be notified to them. The representatives must be designated in writing, and, if possible, in the act accompanying the submission of the document.

Furthermore, the chapter in question contains detailed provisions regarding the attributions of the representative and the possibility of collective representation in the case of more than one representative being designated. It also contains the requisite provisions with regard to the powers of the representative and the declaration of acceptance of the said powers, as well as the termination of the latter. Lastly, it prescribes the cases in which the President of the Cartel Court may designate a provisional representative.

(d) Chapter IV (Articles 23 to 28) contains provisions with regard to registration. The Minister of Commerce keeps a register showing the parties to the agreements and decisions submitted, the subject of the latter and the representatives designated (cartel register); entries in this register can only be made in virtue of written orders.

The Minister of Commerce may order that, in addition to the keeping of the cartel register, registers of names and subjects and other auxiliary registers should be kept.

To safeguard important existing economic interests, the documents submitted and the ministerial acts relating to decisions and agreements with regard to commercial competition have to be regarded as confidential. Special importance must be attached to safeguarding trade and manufacturing secrets.

As regards the cartel register, the ordinance only permits the communication of information and the delivery of copies to a limited extent. Thus, details from the cartel register and copies of certain pages may only be delivered to persons who can prove that they have a legitimate right to obtain such information.

(e) Chapter V, which relates to the final provisions, fixes October 15th, 1931, as the date for the entry into force of the ordinance.

3. The third ordinance, issued under No. Zl.5382/1931.M.E., relates to the organisation and competence of the Cartel Commission.

(a) In accordance with Chapter I (Articles 1 to 3) this Commission, consisting of Chairman, Vice-Chairman and nine members, is renewable every three years. The Chairman and Vice-Chairman are appointed by the Head of the State on the proposal of the Government; the members of the Commission are appointed by the Government as follows: seven members are proposed by the Minister of Commerce, who submits at least one representative each of industry, handicrafts, commerce and agriculture; the two other members of the Commission are proposed by the Minister of Social Welfare and Labour, one representing consumers and the other workers. After the expiration of the period of three years, the Chairman, Vice-Chairman and members of the Commission may be reappointed. The Chairman, Vice-Chairman and members may be removed before the end of their term of office.

(b) Chapter II (Articles 4 to 10) regulates the activities of the Cartel Commission. The Cartel Commission may give opinions on questions connected with the application of the law, either on the request of the Minister of Commerce or other authorities or on

its own initiative. The Commission meets on the summons of the Chairman, Vice-Chairman or member temporarily acting as Chairman. As a rule, subjects are submitted by a Rapporteur designated by the Chairman, who at the same time states his opinion of the case in question. The members of the Commission and the representatives of the Ministers may speak and, if necessary, the Director of the Fiscal Law Department. The Commission expresses its opinion in the form of resolutions. Only the Chairman, Vice-Chairman and members of the Commission may vote. In case of a difference of opinion, the Commission adopts its resolutions by a majority vote; in the case of equality of votes, the Chairman has a casting vote.

Minutes are kept of the meetings of the Commission. Meetings are not public.

The secretarial work of the Commission is done by the staff placed at its disposal by the Minister of Commerce.

The expenditure connected with the work of the Commission is borne by the Minister of Commerce.

(c) Chapter III, which contains the final provisions, fixes October 15th, 1931, as the date of entry into force of the ordinance.

Annex.

LAW OF OCTOBER 15TH, 1931, ON THE SUBJECT OF AGREEMENTS
FOR THE CONTROL OF COMMERCIAL COMPETITION.

Article 1.

All agreements or decisions involving the compulsory limitation of the output, sale or selling-price of any commodity, or otherwise controlling commercial competition (*e.g.*, cartels or other legal arrangements with a similar object), shall be null and void unless embodied in writing. The same rule shall apply to any agreements or decisions amending or changing such original agreements or resolutions.

Article 2.

All agreements and decisions covered by Article 1, at least one of the parties to which is a trading company or an industrial or commercial undertaking employing more than twenty persons, shall be submitted for registration to the Minister of National Economy within fifteen days of the date on which such agreement was come to or such decision adopted. The same rule shall apply to agreements or decisions of a similar nature amending or changing original agreements or decisions.

The Ministry is empowered to make regulations for the compulsory submission of other agreements and decisions which affect, in whole or in part, the economic life of the country or its trade, but are not covered by the provisions of the previous paragraph, even if such agreements or decisions do not fall within the scope of Article 1.

Agreements or decisions covered by Article 1 shall not be valid unless, in addition to being embodied in writing, they are also submitted for registration when such registration is required by Article 2.

In case of the non-submission or incomplete submission of such documents, the Minister of National Economy may require the parties concerned to carry out or to complete that formality; and the party concerned is bound to comply with such demand.

The obligation to submit for registration shall be binding on each and every party to the agreement or decision, but due performance of the obligation by one of the parties shall discharge the others of their liability.

Article 3.

When a document is submitted for registration, one or more but not more than three persons, whose status or employment and domicile shall be specified, shall be nominated to represent the parties under obligation before the courts or any other authority in matters connected with the agreement or decision, to make binding declarations on their behalf, and to accept decisions and other official communications applicable to them. These representatives must be Hungarian nationals resident in Hungary.

When more than one representative has been nominated, each of them severally shall have authority to represent the parties concerned, unless the latter have provided otherwise in their declaration.

The declaration shall be accompanied by the document empowering the representative and, if the declaration is not made by the representative himself, by his written acceptance. In the event of the failure or inability of the representative to carry out his duties, the President of the Cartel Court shall, at the expense of the parties under obligation to make the declaration, nominate a temporary representative from among the advocates registered at the Bar, who shall act as representative until the parties have given notice in proper form of the appointment of a representative.

Article 4.

Documents submitted shall be treated as confidential, and special care must be taken to safeguard trade secrets and secret processes.

The Ministry will issue detailed regulations regarding the procedure for making submissions and declarations, and regarding registration.

Article 5.

A national commission (Cartel Commission) shall be set up at Budapest, composed of a President, Vice-President and nine members, to give advice when necessary on matters connected with the enforcement of the present law; the President and the Vice-President shall be nominated by the Head of the State on the recommendation of the Ministry; seven members shall be nominated by the Minister of National Economy, and two shall be selected by the Ministry, on the recommendation of the Minister of Public Welfare and Labour, from among persons familiar with the practical or theoretical aspect of the subject. Membership of the Commission shall be honorary.

The representatives of the Ministers and the representatives of the "Causarum regaliū Direktorat" shall also be entitled to attend the meetings of the Cartel Commission and to take part in its debates.

No decision shall be valid unless at least five members, including the President, are present. Members concerned in the matter under discussion shall not be permitted to take part in the debate.

Should any industry concerned in the matter under discussion be thus deprived of representation, the President of the Commission may nominate as a supplementary member a person familiar with the theoretical or practical side of the matters in which the industry in question is concerned.

The members of the Cartel Commission, when carrying out their duties, are subject in the same way as public officials to the penalties laid down in the penal laws and to the obligation of professional secrecy.

The Ministry shall make the necessary detailed regulations regarding the organisation and work of the Cartel Commission.

Article 6.

If, by reason of the agreements or decisions covered by Article 1, or of any other action or policy directed towards the ends mentioned therein (even though not embodied in any written agreement or decision), the economic interests of the country or the public welfare are imperilled, and particularly in any case in which it is sought to control the manufacture, sale or price of any commodity in a manner not justified by the economic situation and to the detriment of consumers, producers or distributors, whether in the branch of industry primarily concerned or in any other branch, the Minister of National Economy may take the following measures :

(1) He may order an official enquiry into the matter, and in connection therewith may require a statement of all steps taken for the enforcement of the agreements or decision under enquiry and other data, as well as explanations and the submission of written documents; he may, through his representative, enquire into the management and administration of the organisations concerned, and may call for the production of their books and other written material; he may further, if necessary, demand statements from partners, employees, or other persons, and may require such statements to be made on oath in court.

(2) Should he deem it necessary, in the interests of the national economy or of the public welfare, to annul, change or amend an agreement or decision, their methods of enforcement, or any other measure, or to put an end to any existing practice or policy, he may take steps to reach an agreed arrangement by direct or indirect negotiations, with the assistance, if necessary, of a board of arbitration, and may take decisions in accordance with the result of such negotiations.

(3) In the event of no satisfactory outcome from the procedure described in paragraph 2, he may submit to the Ministry a proposal for compelling the parties to cease from action detrimental to the economic interests of the country or to the public welfare, by withdrawing their fiscal, Customs, or other privileges; by excluding them from Government contracts; and by trade regulations or railway restrictions.

The Ministry shall not be entitled under the present paragraph to exceed its legal powers; nevertheless, provided that the conditions required by this law are satisfied, it may take action, even if the special conditions required for such action under other laws are not fulfilled. Should, however, the Ministry, acting under the present paragraph, consider it necessary to cancel trading licences or other similar administrative licences without which the parties could not carry on their commercial or industrial affairs, an official application to this effect must be made by the Ministry to the Court (Articles 7, 10 and 14).

(4) He may submit to the Ministry a proposal to alter or abolish certain Customs duties or to take other Customs measures; the decision of the Ministry on such proposal shall be made without reference to the legal conditions and limitations governing such measures.

(5) If circumstances require it, he may request the Cartel Court to authorise provisional measures (Article 10).

(6) He may further give directions for prosecutions in the public interest (Article 7).

In order to avoid the official enquiry contemplated in No. 1, the Minister of National Economy may call upon the parties to supply information, at the same time intimating that, should they fail to submit or disclose the information required, the facts

alleged will be regarded as proved, and that the necessary steps will be taken to deal with them.

As a general rule, the Cartel Commission should be consulted before any action involving a decision on the issue, unless the matter is one which brooks no delay.

The present article shall apply, *mutatis mutandis*, to any commercial enterprise which, even without any agreement or understanding with other enterprises, independently exploits its predominant position in the market by taking action or adopting a policy which endangers the economic interests of the country or the public welfare, as set out in paragraph 1.

Article 7.

If the agreements and decisions covered by Article 1, or the manner of their application, or the organisation resulting therefrom, or any action or policy of the nature specified in the first and last paragraphs of Article 6, are contrary to law or morality, or specially harmful to the economic interests of the country or the public welfare as provided in Article 6, it shall be lawful for the "Causarum regalium Direktorat", on instructions from the Minister of National Economy, to apply to the Cartel Court (application in the public interest) for an injunction ordering any or all of the following steps as circumstances may require :

(1) The dissolution of the organisation set up by agreement or decision, and the discontinuance, under pecuniary penalty, of its activities.

(2) A prohibition, under pecuniary penalty, to carry out the agreement or decision.

(3) The discontinuance, under pecuniary penalty, of the illegal acts or policy.

The Cartel Court shall specify the amount of the penalty in a decision ordering such action (Article 49 of Law LIV: 1912).

It shall be open to any public body, or to any private person whose interests are involved, to submit to the Minister of National Economy the information and evidence at their disposal and to request him to direct that proceedings be instituted in the public interest.

The Minister of National Economy is not bound to comply with a request of this nature, but if the demand is made by a public authority or corporation, the Minister shall as a rule decide thereon after consulting the Cartel Commission.

Article 8.

The Cartel Court shall be a special court, set up within the Royal Curia, in the form of a panel composed of the President, two judges and two assessors.

The President of the Cartel Court shall be the President of the Royal Curia, or, on his nomination, the second President or a divisional President of the Royal Curia. The two members of the Cartel Court shall be chosen by the president of the court to which the case has been referred from among the divisional presidents and judges designated in advance by the President of the Curia. The assessors of the Cartel Court shall be chosen by the president of the court to which the case has been referred from among the ten experts designated in advance every three years by the Minister of Justice from a list, drawn up by the Minister of National Economy, containing the names of not less than thirty experts.

Article 9.

Proceedings instituted in the public interest must be taken against all parties known to be concerned; when a representative has been declared or appointed under Article 3, notice of the action must be given to him. Every party concerned in the suit may also take part in the case individually by employing a legal representative.

Except as otherwise provided in the present law, the rules of the Civil Procedure Code shall apply *mutatis mutandis*. The investigation and decision of the case shall be treated as a matter of urgency.

The Court, acting independently or otherwise, may further request the Cartel Commission to give an opinion or to examine an expert report.

When an action is brought in the public interest, the defendant's costs shall not be chargeable to the Treasury, even if the case is dismissed.

Similarly, the relevant legal principles cannot be employed for the purpose of claiming damages against the Treasury in respect of administrative action taken under the present law.

Article 10.

Where an urgent decision is essential in the public interest, the Cartel Court may, on the demand of the Minister of National Economy, but in action brought in the public interest, only at the request of the "Causarum regalium Direktorat", provisionally suspend, under pecuniary penalty, the carrying into effect of the agreement, decision, or disposition, and the continuance of the action or policy called in question; the Court may also suspend provisionally all obligations deriving therefrom, or take any other provisional steps required in the public interest.

The Cartel Court shall, either on application or acting independently, cancel the provisional decision when the reasons for the order no longer operate.

Article 11.

Nothing in the present law shall bar the parties affected by the agreement or decision from claiming through the ordinary forms of law the rights accruing to them either from their mutual obligations, or from the cancellation of such obligations; the same applies to third party rights against them.

Any agreement to the contrary shall be null and void.

Article 12.

The decision of the Cartel Court is binding on the ordinary law courts and on arbitral tribunals.

If in an ordinary law court or in an arbitral tribunal the issue is raised whether the agreement, decision, or action of an organisation comes under the provisions of paragraph 1 of Article 7, the hearing of the case shall be suspended, and the Minister of National Economy shall be asked to give instructions for legal action in the public interest, in order to obtain a decision on the point. The provisions of the present law with regard to actions in the public interest shall also apply, *mutatis mutandis*, to such actions. If the Minister of National Economy informs the ordinary law court or the arbitral tribunal that he does not consider it desirable to cause an action to be brought in the public interest, or if no notification of the decision taken on this request is received by the court within thirty days, the hearing shall be resumed.

Article 13.

The arbitral tribunal shall be bound to give notice to the "Causarum regalium Direktorat" of every award rendered by it in any action arising out of an agreement, decision, action or policy coming under the provisions of the present law. The award of the arbitral tribunal shall not become effective until after the lapse of fifteen days from the date of such notification.

In addition to the grounds mentioned in Article 748 of the Civil Procedure Code, the award of the arbitral tribunal may be set aside by means of legal action if it is contrary to any of the provisions of the present law. A demand for the setting-aside of the award on the ground that it is in breach of the present law can only be put forward by the "Causarum regalium Direktorat" acting on instructions from the Minister of National Economy. Any appeal based solely, or besides other reasons, on alleged violation of the provisions of the present law must be heard by the Cartel Court.

The starting of an action by the "Causarum regalium Direktorat" shall suspend the execution of the award of the arbitral tribunal until such time as the Cartel Court has pronounced judgment.

Any agreement between the parties whereby the award of the arbitral tribunal may be executed extra-judicially, if the fine has previously been deposited, shall be null and void.

Article 14.

On application by the "Causarum regalium Direktorat", submitted by order of the Minister of National Economy, the Cartel Court shall inflict fines as follows :

(1) On any person who, in contempt of law and without subsequent excuse, fails to submit an agreement or decision covered by Article 1;

(2) On any person who, without reasonable excuse, fails to comply with the summons sent to him under Article 6, paragraph 1, No 1, or prevents the execution of the order pronounced;

(3) Either on application or on its own initiative, on any person who, notwithstanding the infliction of a fine by the Cartel Court under Article 7, paragraph 1, Nos. 1 to 3, gives effect to a decision or agreement the execution of which has been forbidden by the Cartel Court, or performs an action or adopts a policy which has been forbidden by the Cartel Court.

In assessing fines imposed under the present article or under Articles 7 and 10, regard shall be had to the actual or potential profits accruing to the defendant from the illegal action in question, and to his financial position; otherwise there shall be no limit to the amount of the fine that may be imposed.

All persons on whom fines are imposed, and also the organisation concerned, are jointly and severally liable.

If the Cartel Court has repeatedly inflicted fines on the same person under Nos. 2 and 3 of paragraph 1, such person may be prohibited, either at the request of the Minister of National Economy or as a result of fresh legal action undertaken in the public interest at the request of the "Causarum regalium Direktorat", from engaging in any industrial or commercial activity.

Article 15.

When the fine is not demanded during the course of an action undertaken in the public interest, the penalty shall be settled, *mutatis mutandis*, in accordance with the procedure in commercial cases.

The Royal Court has jurisdiction in cases arising out of Article 14, paragraph 1, Nos. 1 and 2, and the Cartel Court in those arising out of Article 14, paragraph 1, No. 3, and paragraph 4.

The Minister of Justice may by regulation take any special decisions which may be necessary. No action shall lie when more than three years have elapsed from the date on which the illegal act was committed; no fine may be levied after the lapse of five years from the confirmation of the decision.

Article 16.

Agreements entered into or decisions agreed to before the coming into force of the present law shall, if not already in writing, be embodied in writing within thirty days of the entry into force of the law. Such documents, as are required under Article 2 to be submitted, shall be submitted to the Minister of National Economy within forty-five days of the entry into force of the law.

Article 17.

Any understanding, combination, or other measure, the object of which is the manipulation, to the detriment of producers, of the free and natural level of market prices for agricultural produce, is hereby forbidden.

The local authorities shall take the necessary steps, through the market police, to prevent the influencing of price levels in the manner referred to in the previous paragraph. These authorities shall be required to suppress by all legal means at their disposal any abuses of this nature which may come to their notice.

Should the market police be unable to suppress these abuses, or should it appear, from a comparison of the local prices of any product with the national prices or with the rates quoted on the Budapest Commercial and Stock Exchange, that, all the circumstances being taken into account, the prices consistently received by the producer are so disproportionately low as to give ground for a presumption that such low prices are due to abuses of the nature dealt with in paragraph 1, the Minister of National Economy, acting in concert with the Minister concerned, may, either on a reasoned request from the Administrative Commission or on his own initiative, declare that, until further orders, proceedings may be instituted for breach of the provisions of Article 18 in respect either of agricultural produce offered for sale on the market or of certain specified commodities. In urgent cases, the Administrative Commission itself may provisionally order similar measures, pending action by the Minister of National Economy on the lines proposed.

Article 18.

Unless such action is punishable by a heavier penalty, any person who concurs or co-operates with others or spreads false rumours, with the object of influencing the free and natural level of market prices for agricultural produce to the detriment of producers, shall be guilty of an offence punishable by a fine.

Such offences fall within the jurisdiction of the administrative authority acting as a police court, and of the State police within the limits of their powers.

These proceedings can only be instituted in respect of acts committed subsequently to the taking of the decision provided for in Article 17.

When the sentence has been made definitive, it must be transmitted to the "Causarum regalium Direktorat" in order that the latter may make proposals as to the decisions to be taken under the present law or otherwise.



Article 19.

The Ministry shall decide by regulation the date of the coming into force of the present law. The necessary arrangements for the putting into force of Articles 17 and 18 shall be embodied in a special regulation to be issued by the Minister of the Interior in agreement with the Minister of National Economy. In other respects, the Minister concerned shall be responsible for the execution of the present law. If the post of Minister of National Economy is vacant, the duties imposed by the present law on the Minister of National Economy shall be performed by the Minister of Commerce.

The administrative work involved by the present law shall be performed by the staff of the Ministry of Commerce.

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