

論説 Legal Status of Accounting Standards : comparative studies (3)

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Legal Status of Accounting Standards – comparative studies (3)

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Chapter 5 Belgium

1 Companies Act and works council

Following basically Articles 64 through 67 of the Companies Act of 18 May 1873 (Loi du 18 mai 1873 sur les sociétés commerciales), the Companies Act of 1913 (Loi du 25 mai 1913 portant modification aux lois sur les sociétés commerciales) and Articles 77 through 80 of the Companies Act of 30 November 1935 (Loi sur les sociétés commerciales, coordonnées le 30 novembre 1935) did not stipulate specific accounting treatments but they required commercial companies to inventory yearly movables, immovables and payables and to depreciate as necessary (Rochette [1977]p.79).

The Act of 20 September 1948 on organization of the economy (Loi du 20 septembre 1948 portant organisation de l'économie, M.B., 27-28 septembre 1948, p.7768)¹ requested larger enterprises to have works council (Ondememingsraad/Conseil d'entreprise)² and stipulated that a works council may get financial information and appoint auditors for the audit of the information (Article 15).

In this context, the Act of 22 July 1953 creating an Institute of Registered Auditors (Loi créant un Institut des reviseurs d'entreprises, M.B., 2 septembre 1953, p.5322) was enacted in regard with auditing experts that are qualified as auditors. Moreover, the Act of 16 March 1954 on the audit of certain public-interest organizations (Loi du 16 mars 1954 relative au

1 The aim of the Act is to make the society more democratic by enabling workers to participate effectively at all levels of economic and social life.

2 It comprises of the representatives of employees with a corresponding number of the representatives of employers and is not a decision-making organ but a consultative organ of a company.

contrôle de certains organismes d'intérêt public, M.B., 24 mars 1954, p.2210) provided that only the member of the Institute of Registered Auditors may carry out statutory audits of certain public-interest organizations such as companies. It is pointed out, however, that they could not see little progress of legal regulations on the disclosure of financial position by companies before 1970s (Pauwels[1979] p.42). Nonetheless, the *Collège National des Experts-Comptables de Belgique*³ appointed the *Geulette* Committee in 1964 for the purpose of making recommendation on accounting plan, the *Oleffe* working group published a report on disclosure of financial information of companies (*Recommandations relatives à l'information publiée par les sociétés*, Banque Nationale de Belgique) in 1968, and the *De Voghel* Committee (Commission gouvernementale pour l'étude de propositions de réforme des lois relatives à la banque et à l'épargne) in 1970 (Bollen and Lin-Van Nuffel [1997] p.60).

2 Before the Accounting Act of 1975

The Economic and Social Conference held on 23 February and 16 March 1970 requested enterprises to provide more information to works councils (Lefebvre[1984] p.11).

Moreover, Article 2, paragraph 4 of the Economy and Price Control Act (Arrêté-loi du 22 janvier 1945 concernant la répression et les infractions à la réglementation relative à l'approvisionnement du pays, M.B, 24 janvier 1945, p.345), as amended by the Act of 30 July 1971 (Loi du 30 juillet 1971 sur la réglementation économique et les prix - loi modifiant l'arrêté-loi du 22 janvier 1945 concernant la répression et les infractions à la réglementation relative à l'approvisionnement du pays, M.B, 31 août 1971, p.9990), stipulated that standardized accounting plan that larger enterprises should comply with shall be provided by a royal decree while they had waited for until the Royal Decree of 7 March 1978 concerning the content and presentation of a minimum standardized accounting plan

3 The *Collège National des Experts-Comptables de Belgique* set up in 1960 the Accounting Technical Committee, which prepared and published a report, *Plan comptable général belge* (Collège National des Experts-Comptables de Belgique [1965]). The purpose of the report was accounting standardization and the adoption was left to individual enterprises or the Government. Even before this project, some private entities drew up accounting plans for standardization (e.g. Plan du Comité National Belge d'Organisation Scientifique, Plan des Ingénieurs flamands, Plan de la Société Générale de Belgique) (Collège National des Experts-Comptables de Belgique [1965] p.11(n° 13)).

(Arrêté royal du 7 mars 1978 déterminant la teneur et la présentation d'un plan comptable minimum normalisé, M.B., 13 mai 1978, p.5563)⁴.

Furthermore, in the context of the publication of the first draft of the Fourth EC Company Law Directive (Proposal for a Fourth Directive on the Annual Accounts of Limited Liability Companies. COM (71) 1232 final, 10 November 1971, *Bulletin of the European Communities*, 12/71, Supplement 7/71, pp.2–67) in November 1971, the Central Economic Council⁵ issued in June 1972 a statement of opinion on individual accounts and accounting plan (reproduced in: *Mededelingen van het Verbond der Belgische Nijverheid*, Nr 19, 15.7.72, blz. 2157–2184)⁶, which consisted of a proposal of provisions of law on company accounting with detailed commentary to the former. This statement made proposals on the form and the content of individual accounts and consolidated accounts, consistent with the first draft of the Fourth EC Company Law Directive, and referred to the *Oleffe* Report and a proposal for accounting plan prepared by the *Collège National des Experts-Comptables de Belgique* (*Geulette* Report).

In addition, the Royal Decree of 27 November 1973 concerning the economic and financial information to be provided to works councils (Arrêté royal portant réglementation des informations économiques et financiers à fournir aux conseil d'entreprises, M.B., 28 novembre 1973, p.13352) was enacted from the viewpoint of providing a clear and accurate picture of the economic and financial situation of the enterprise to the employees. The Royal Decree set forth the types of information to be disclosed: basic information (Article 4 through Article 14), annual information (Article 17 through Article 23), periodical information (Article 24) and *ad-hoc* information (Articles 25 and 26), and stipulated that

4 Later, it was replaced by the Royal Decree of 12 September 1983 concerning the content and presentation of a minimum standardized accounting plan (Arrêté royal du 12 septembre 1983 déterminant la teneur et la présentation d'un plan comptable minimum normalisé, M.B., 29 septembre 1983 p.11950).

5 The Central Economic Council was set up by the Act of 20 September 1948 on organization of the economy. It comprises of representatives of employers and employees as well as six independent expert members. The Council's mission consists of submitting to a Minister or the Legislative Chambers, either on its own initiative, or at the request of the said authorities, and in the form of reports setting out the various views expressed within this organization, any opinions or proposals concerning issues relating to the national economy.

6 It is pointed out that the statement of opinion of June 1972 by the Central Economic Council had an important impact on the Accounting Act of 1975 (*Exposé des motifs*, Sénat, session 1974–1975, Doc. 436/1, 12 novembre 1974, p.2; Resteau [1985] n° 1444 (p. 110)).

any documents provided to the associates should be provided to the works council as well in cases where the enterprise or the legal person is an association (Article 2).

While, more specifically, the articles of association and the various rules of the company, description of competitive environment, changes in the production costs and selling prices, trends in productivity, budget management and goals of the company, as well as a balance sheet, an income statement, annex to these statements, business report (and, if necessary, an audit report) had been included in the information to be disclosed (Article 17, paragraph 2, No.2), it should be noted that information by segment was required to be included as well (Article 21)⁷. Later, this had a significant influence upon the Accounting Act of 1975 and the 1976 Royal Decree (Jorissen and Oostveldt [2001] p.459).

3 Accounting Act of 1975 and Accounting Standards Commission

The Act of 17 July 1975 concerning accounting and individual accounts of enterprises (Loi relative à comptabilité et aux comptes annuels des entreprises, M.B., 4 septembre 1975, p.10847) (hereinafter referred to as the Accounting Act of 1975) was enacted and several royal decrees were issued upon the delegation in Articles 10 and 11 of the Accounting Act of 1975: the Royal Decree of 8 October 1976 concerning individual accounts of enterprises (Arrêté royal relatif aux comptes annuels des entreprises, M.B., 19 octobre 1976, p.13460) (hereinafter referred to as the 1976 Royal Decree)⁸; the Royal Decree of 29 November 1977 concerning individual accounts of holding companies (sociétés à portefeuille) (Arrêté royal relatif aux comptes annuels des sociétés à portefeuille, M.B., 21 décembre 1977, p.15054); the Royal Decree of 1 September 1986 concerning individual accounts and consolidated accounts of holding companies (Arrêté royal relatif aux comptes annuels et aux comptes consolidés sociétés à portefeuille, M.B., 19 septembre 1986, p.12663); and the Royal Decree of 6 March 1990 concerning consolidated accounts of enterprises (Arrêté royal relatif aux

⁷ Today, the consolidated accounts, turnover, orders received and manufacturing costs for each quarter, a few months' forecast about the inventory levels and employment as well as the information for budgetary process are also included.

⁸ The Central Economic Council opined also in the process of formulating the 1976 Royal Decree. It issued in 9 July 1976, a statement of opinion on business accounting (reproduced in: *Mededelingen van het Verbond der Belgische Nijverheid*, Nr 21, 1.9.76, blz. 2589-2595), requesting tax neutrality and pointing out issues on auditing.

comptes consolidés des entreprises, M.B., 27 mars 1990, p.5675).

Moreover, Article 14 (currently, Article 13) of the Accounting Act of 1975 provides that the King creates the Accounting Standards Commission (Commission des normes comptables/ Commissie voor boekhoudkundige normen), whose mission consists of submitting opinions to a Minister or the Legislative Chambers, either on its own initiative, or at the request of the said authorities (*For details, see van Hulle en Lybaert [2005] p.58*) as well as developing accounting doctrine and formulating the principles of proper accounting, by way of advice or recommendations. Moreover, in cases where an enterprise applies for the derogation from certain provisions in the Accounting Act, the Commission gives an advice to the Minister of Economy (for as SME, the Minister of Small and Medium Enterprises) (Article 15 [currently, Article 14]). In other words, under special circumstances, in accordance with the opinion of the Commission, the Minister of Economy (for as SME, the Minister of Small and Medium Enterprises) may authorize the derogation from the provisions in the Accounting Act and relevant royal decrees⁹. Similarly, Article 125, paragraph 1 of the Company Code (Code des sociétés, M.B., 6 août 1999, p.29440) stipulates the possibility of authorizing derogations.

The grounds for a proposal of establishing an Accounting Standards Commission were given as follows¹⁰: taking into account the innovation of accounting doctrine, certain issues surrounding companies and the general need for adaptation to the situation of the sectors, there is no choice for the Government but to consider setting up a committee specialized in accounting standards while the basic rules are provided in the statute. To create a committee will be of help for developing accounting doctrine and the means of enforcement in general,

9 In the context of advice by the Accounting Standards Commission on authorization of derogations, the Committee has issued the Statement of Opinion No.108-1 through No. 108-6: Statement of Opinion No.108-1 *Derogations from the provisions of the Royal Decree of 8 October 1976 - Procedure* (Bulletin CNC, n° 1, août 1977, p. 22-23); Statement of Opinion No.108-2 *-Application for derogation- Overview* (Bulletin CNC, n° 4, décembre 1978, p. 1-6); Statement of Opinion No.108-3 *Policy of the Accounting Standards Commission as regards to the opinion on individual applications for derogation because of disruption of competitive conditions* (Bulletin CNC, n° 18, janvier 1986, p. 5-7); Statement of Opinion No.108-4 *Statement by an investment company holding shares in other companies* (Bulletin CNC, n° 18, janvier 1986, p. 8); Statement of Opinion No.108-5 *The derogation scheme for credit institutions* (Bulletin CNC, n° 19, juillet 1986, p. 3)(replaced by Statement of Opinion 2011/19); Statement of Opinion No.108-6 *Foreign airlines* (Bulletin CNC, n° 19, juillet 1986, p. 3). *See van Hulle en Lybaert [2005] pp.62-63.*

10 *Expose des motifs*, Sénat, session 1974-1975, Doc. 436/1, 12 novembre 1974, pp. 3 et 4.

and, at the same time, for delegating authority in more specialized implications. In fact, according to the opinion of the Government, it is important to have an agency that not only has advisory powers on the direction that the State should take for the control over company and accounting in regard with technical matters, but also clarifies the criteria for bookkeeping and individual accounts, by codifying so-called regular principles of bookkeeping in the form of a recommendation or opinion. These accounting principles, if possible, may take the form of regulations in accordance with the statutes. Once such a committee will be set up, the committee will play an important role in implementing the provisions of the Accounting Act of 1975, issuing comments and suggestions.

It should be noted that on the mission and status of the Accounting Standards Commission, there were debates both in the Joint Committee of Economic Affairs and Judicial Affairs and in plenary session of the Senate. Amendments were proposed in the Joint Committee as follows: the Accounting Standards Commission shall be under the Central Economic Council; this Committee shall consist of the representatives of employees and employers as well as the members appointed by the Minister of Economy, the Minister of Small and Medium Enterprises, the Minister of Finance, the Minister of Justice, including those representing auditors, accountants and the discipline; this Committee shall submit, either on its own initiative, or at the request, opinions to the Government and the Legislative Chambers, develop the theory of accounting and auditing as well as the principles of regular bookkeeping in the form of guidelines or recommendations; and, this Committee shall, at the request of representatives of employers' associations and employees' associations as well as other interested parties, give opinions on the application of the Accounting Act and its implementing regulations as well as other statutes and orders on accounting records and individual accounts¹¹.

The Minister opposed, however, to such proposals for amendments on the basis of the following reasons: the opinion of the Central Economic Council shall be taken into account in the preparation of the implementing regulations and respected in accordance with Article 13, paragraph 2 of the Accounting Act; the Accounting Act governs not only social relations in enterprises but also all fields with regard to accounting records and individual accounts;

11 *Rapport fait au nom des commissions réunies des Affaires économiques et de la Justice du Sénat*, Sénat, session 1974-75, Doc. 436/2, 12 juin 1975, p.29.

the authority of the Accounting Standards Commission is limited to technical level of accounting doctrine and treatment and it is the Government that decide on the alternatives that have the nature of political or institutional in the form of legislation with the signature of the King; on the composition of the Accounting Standards Commission¹², the Government considers it appropriate that the members of the Commission should be diversified and have impartiality and professional competence since the opinions of the Accounting Standards Commission will be something academic and technical in nature while the opinion of the business community are taken into account by the opinion of the Central Economic Council upon enactment of royal decrees, in which political and economic, social aspects of accounting regulation might do matter (*See also Cousy* [1982] n° 13 [p.142]); and the members be subject to a duty of confidentiality with respect to the information obtained in the course of the mission of the Commission, including the information relating to the permission to derogate¹³. As a result, the amendments were rejected.

On the other hand, one of the tasks of the Accounting Standards Commission that had been proposed in the Government-sponsored Accounting Bill was removed in the course of the deliberations at the commission: “to give opinions on the application of this Act or the implementing regulations at the request of an enterprise or a professional of accounting or auditing”¹⁴. The ground for this deletion was the fear that the judicial power that has the authority to determine the application of the law may be impaired if the Commission provides an opinion on a specific case¹⁵. It was noted, however, that “this deletion is not

12 The Minister proposed that the President and members of the Accounting Standards Commission should be specified in a royal decree, relevant authorities, including tax authorities, the Banking Commission and the Institute of Registered Auditors should be represented, the Central Economic Council or the organizations represented at the Council have the right to nominate a given number of members who are with essential knowledge of accounting and individual accounts, and the Government may nominate persons person of learning and experience as members up to the given number. *Rapport fait au nom des commissions réunies des Affaires économiques et de la Justice du Sénat*, Sénat, session 1974-75, Doc. 436/2, 12 juin 1975, p.31.

13 *Calewaert* proposed, however, the same amendment was proposed at a plenary session (*Amendements proposes par M. Calewaert*, Sénat, session 1974-1975, Doc. 436/3, 16 juin 1975, p.4).

14 *Projet de loi*, Sénat, session 1974-1975, Doc. 436/1, 12 novembre 1974, p.21.

15 *Rapport fait au nom des commissions réunies des Affaires économiques et de la Justice du Sénat*, Sénat, session 1974-75, Doc. 436/2, 12 juin 1975, p. 32. *See also van Hulle* [1981] p.12; *Cousy* [1982] n° 13 [p.142].

intended to eliminate the right of those who is affected by the application of the Accounting Act to request the Commission to provide an opinion of general application and to take the initiative to present the interpretation of the Accounting Act¹⁶.

4 Accounting Standards Commission

According to the delegation in Article 14 of the Accounting Act of 1975, the Royal Decree of 21 October 1975 on the creation of the Accounting Standards Commission (Arrêté royal portant création de la Commission des normes comptables, M.B., 28 octobre 1975, p.13509) (hereinafter referred to as the 1975 Royal Decree) was laid down¹⁷.

Article 1 of the 1975 Royal Decree stipulates the same tasks of the Commission as provided in Article 14 (currently, Article 13) of the Accounting Act. That is, submitting opinions to a Minister or the Legislative Chambers, either on its own initiative, or at the request of the said authorities as well as developing accounting doctrine and formulating the principles of proper accounting, by way of advice or recommendations.

Under the present legislation¹⁸, the Accounting Standards Commission is composed of 17 members, including the President (1975 Royal Decree, Article 2). (1)Two members are appointed on the proposal of the Minister of Finance, among senior officials of the tax administration; (2) one member is appointed by a double list presented by the Financial Services and Markets Authority among the members of the executive committee or management personnel thereof; (3) one member is appointed by a double list presented by the Council of the Institute of Registered Auditors from among the members of the Institute; (4) one member is appointed by a double list presented by the Council of Institute of Accountants and Tax consultants (Institut des experts comptables et des conseils fiscaux),

16 *Rapport fait au nom des commissions réunies des Affaires économiques et de la Justice du Sénat*, Sénat, session 1974–75, Doc. 436/2, 12 juin 1975, p. 32. See also van Hulle [1981] p.13. Olivier is of the opinion that the Accounting Standards Commission should issue a response to the request for interpretation especially in cases where there is no conflict from the viewpoint of taxation with qualification that the court might takes the opposing view (Olivier [1985] p.246). However, see Wymeersch [1982] nr.47 (pp.877–878).

17 *Jorrisen/Block* notes that Belgian practice of financial reporting has been affected by the 1975 Accounting Act, the 1976 Royal Decree and the opinions of the Accounting Standards Commission (Jorrisen and Block [1995] p.389).

18 It was composed of 11 members initially.

among the members of the Institute; (5) one member is appointed by a double list presented by the Council of Institute of Accounting Professionals and Tax Experts (Institut professionnel des comptables et fiscalistes agréés), among the members of the Institute; (6) one member nominated by the Minister of Small and Medium Enterprises, selected on double lists submitted by organizations representing the small and medium enterprises; (7) nine members appointed by virtue of their special expertise in accounting and financial statements, including four in a double list presented by the Central Economic Council, two by the Minister of Economy, one by the Minister of justice, one by the Minister of Budget and the Minister of Small and Medium Enterprises; (8) one member is appointed by a double list presented by the National Bank of Belgium, among the management staff or the executive thereof.

The members are appointed for a renewable term of six years. In case of replacement of a member during his/her term, the new member completes the term of the one it replaces. The term of the members, who belong to the category (1) through (5) above, ends when they lose the capacity in which they were appointed. The members continue to serve until they are replaced (1975 Royal Decree, Article 3).

The King designates, in accordance with the proposal of the Minister of Economy, the Minister of Finance, the Minister of Justice and the Minister of Small and Medium Enterprises, the President of the Accounting Standards Commission from the members of the Commission. The President is designated as for a renewable term of six years. The President chairs and prepares meetings of the Commission and shall ensure the preparation of minutes and the implementation of decisions of the Commission. He/she ensures the daily management of the Commission and shall take the necessary measures to this end. He/she may delegate day-to-day business to a member of the secretariat. In the absence of the President, the oldest member, and if equal seniority, the eldest member will take the duty (1975 Royal Decree, Article 4).

5 Legal Status of Opinions and Recommendations of the Accounting Standards Commission

In the “Statement of Opinion No. 14/1 Authority of the Opinion” of the Accounting

Standards Commission (*Bulletin CNC*, n° 30, février 1993, pp. 12-15), the Commission recognizes, citing Article 14 of the Accounting Act of 1975, which provides the creation of the Accounting Standards Commission, and its Preamble, that the Government has always widely adopted the opinions and proposals of the Commission in implementing the Act¹⁹ and that it is obvious that the opinions submitted to the Legislative Chambers or the Government in accordance with Article 14, No.1 have a binding force both in legal and political sense to some extent, which is decided by the court. On the other hand, the Commission has positioned the views expressed according to Article 14, No. 2 as follows: the views expressed, either directed against a particular enterprise or natural person or published in the Bulletin, for the purpose of Article 14, No. 2 themselves are not binding. These views are, however, a sort of important source of law for interpretation by various persons and entities, especially by judges, of the Accounting Act and implementing regulations as well as the application of the formers to specific situations and cases. They are important as source of complementary rules in the area that are not covered with the decisions of the Government and the provisions of statutes and orders. Accordingly, they play legally the similar role as doctrines in jurisprudence. Like doctrines in jurisprudence, the authority of these views will be backed by the acceptance by entities in the society as the source of law supplementing the provisions in statutes and orders. This acceptance mainly depends upon the validity of reasoning for the views. The authority of the views can be derived, at the same time, from the intent (stated as the grounds for the legislation) of the Legislative Chambers that it created the Commission in order that it will contribute to the development of accounting doctrine²⁰ in regard with the Accounting Act. In addition, it

19 The Accounting Standards Commission points out, in “Accounting Standards Commission: New composition, organization of the activities, work plan and publication” of 2000, that accounting standardization in Belgium is based on the model in which accounting standards are drawn up by the cooperation among public authorities, enterprises, persons and accounting professionals concerned (*Bulletin CNC*, n° 46, n° 2.4).

20 *Lemaitre*, for example, noted as follows (Lemaitre [1981] n° 4(p.632)): it should be kept in mind that the Accounting Standards Commission does not have the power to review the application of the Accounting Act and its implementing regulations but the courts usually have. The Accounting Act does not grant the authority to the opinions and recommendations of the Accounting Standards Commission. It seems that the provisions in the Accounting Act exclude the room for the Accounting Standards Commission to establish norms. Therefore, it might be rather safe to consider that the authority of the opinions and recommendations of the Accounting Standards Commission is not more authoritative than the authority that highly authoritative doctrine (*doctrine très autorisée*) has.

should be noted that most of the opinions of the Commission have become incorporated into the legal or regulatory standards (van Hulle en Lybaert [2005] p.64)²¹.

Locating the opinions of the Accounting Standards Commission in this way is widely accepted as well among academics (e.g. van Hulle [1981] pp.19–20; van Crombrugge [1981] nr. 58 [pp.1011–1012]; Wymeersch [1982] nr.47 [pp.877–878]; Bruystegem [1986] pp.7–8; van Hulle [1989] nr. 151 (p.189); Chérury en Dhaene [2002] p.191; van Hulle en Lybaert [2005] p.64; Buysse [2007] p.81)²². For the purpose of interpretation of the Belgian Constitution, it is not usual to grant the authority to create ordinances to anyone but the King, and it deems as necessary to provide in a sufficiently clear language in an exceptional case (Mast [1975] pp.252–254). Moreover, *De Clippele*, a Senator, raised questions as follows (Interpellation No. 1084 (Session 2000–2001) of 12 January 2001): whether the opinions of the Accounting Standards Commission would apply to tax matters as long as there is no opinion on tax administration in the form of administrative circulars and so on; and whether the fact that high-ranking government officials of the Ministry of Budget participate in the Accounting Standards Commission affects the response to the former question. The Minister of Budget, referring to the Statement of Opinion No. 14/1 of the Accounting Standards Commission, gave the following answer to the first question: the views of the Commission expressed, either directed against a particular enterprise or natural person or published in the Bulletin themselves are not binding; and, in the light of the non-mandatory nature of the opinions of the Commission, the administrative agencies are not

21 In addition to the above, the Commission points out, in the Statement of Opinion No. 14/1, that the Commission has refrained from issuing an opinion on matters relating to taxes as it has no power concerning matters relating to tax and its opinions restrict the power of tax authorities by no means while it has a guideline for the cases relating to taxes indirectly or relating to matters on the Accounting Act that implicitly related to taxes at the same time. The policy adopted by the Commission is as follows: (1) in the cases where the issue relating to the Accounting Act has decisive elements of accounting and legal structure seems to have the nature of the tax law, the Commission will refrain from expressing an opinion; (2) in the cases where the issue is an accounting issue whose doctrine has sufficient interests, the Commission will express an opinion while expressly reserves the characterization of the effect on the tax; and (3) in regard with any decisions that might have effect on tax, the Commission is to move close together with the Minister's Secretariat, Ministry or competent tax authorities, as well as the member that has been appointed from among the high-ranking government officials on taxation. For the influence of the opinions of the Accounting Standards Commission on the interpretation of tax laws, see e.g. Chérury en Dhaene [2002].

22 See also Van Uytvanck, J. [1980] (cited in Cousy [1982] n° 13 [pp.142–143]).

bound by them unless the opinions have been explicitly adopted, especially in circulars²³. The Minister answered in the negative to the second question²⁴ because it is possible for the Commission to issue its opinion without the consent of the representatives from the Ministry of Budget since Article 6 of the 1975 Royal Decree stipulates that the Commission decides by a simple majority except for recommendations and opinions formulated pursuant to Article 13, paragraph 2 of the Accounting Act while the Commission affirmed the policy in the Bulletin No.46 to form a consensus as far as possible in the adoption of the opinion.

Moreover, the courts tend to— though there might be some limitations since most of the cases are related to taxation— refer to and pay regard to the Accounting Standards Commission (cf. Cass., 1^{re} chambre, 20 fevrier 1997, *Revue critique de jurisprudence belge*, 2000, 525, note D.Garabedian; Antwerpen, 5 oktober 1999, *T.F.R.*, nr.182, 498, noot O. van Bauwel; Rb. Gent, 14 november 2002, *T.F.R.*, nr.236, 169, noot J. Speecke; Rb. Antwerpen 25 juni 2003, *Fiscale Koerier*; 2005, 505, noot A. Kiekens; Antwerpen 22 september 2009, *T.F.R.* 374, 68. As those that did not explicitly refer to but seemed to pay respect to, *see e.g.* Cass., 18 mei 2001, *T.F.R.*, nr.209, 969, noot R. Deblauwe; Cass. 23 januari 2003, *T.B.H.* 2003, 836, noot D. Heenen, *T.R.V.* 2003, 541, noot R. Tas), while more than a few court decisions have stood apart from the doctrines given by the Accounting Standards Commission²⁵.

6 Opinions of the Accounting Standards Commission and customary law

An opinion of the Accounting Standards Commission plays a role as an interpretation

23 Sénat, *Questions et Réponses*, Session de 2000-2001, 26 juin 2001, n. 2-37, p.1841.

24 The response (Chambre des Représentants, *Questions et Réponses*, Session de 2009-2010, 18 janvier 2010, p. 320) to the question of *Marie-Christine Marghem*, a Representative, on the “Statement of Opinion No.126/17 Determination of acquisition cost of assets obtained onerously or for free (*Détermination de la valeur d’acquisition d’actifs obtenus à titre onéreux ou à titre gratuit*)” of the Accounting Standards Commission (Interpellation No. 258 of 6 January 2010) referred to this response to *De Clippele*. *See also* the response to the question made by *Leterme* (Chambre des Représentants, Commission des Finances et du Budget, 8 janvier 2002 et 29 janvier 2002, n^{os} 5706 et 6259).

25 Typically, Bruxelles, 7 octobre 1994, *Revue général de fiscalité*, 1995, 103, note C.Roemers, *Journal de droit fiscal*, 1994, 292, note B.Colmant. *See* van Crombrugge [1994] p.1.

of statutes (Olivier [1985] pp. 250–251). It is particularly important in interpreting the rules provided in royal decrees in cases where there exist no reports, etc. in the drafting phase of the decrees (*See Avis n° 14/1, Compétence d’avis, Bulletin CNC, n° 30, février 1993*). Therefore, some have a view that opinions of the Accounting Standards Commission correspond to, in this respect, responses by the Minister of Finance to the questions raised in the Legislative Chambers in regard to the application of tax laws (Olivier [1985] p. 250; van Hulle en Lybaert [2005] p.64)²⁶. It is well accepted, however, that opinions of the Accounting Standards Commission are not something more than the most authoritative (la plus autorisée) legal doctrines²⁷ and are not a legal source that alters or adds to statutes through their interpretation (*See De Page [1962] p.23*).

It should be noted, however, that common awareness of the issue have been shared whether an opinion of the Accounting Standards Commission might become a custom (coutume). *Cousy*, for example, points out that the Accounting Act is an important example of the statutes that delegate the details to factual (conventional) commercial usages (gebruiken)²⁸ and unwritten rules as law in action in practice and asserts that rules, norms and principles referred to in the Accounting Act are inherently non-legal norms (niet-juridische normen/ norms non-juridique) because they belong to the system of non-legal norms in the light of the origin. Moreover, he notes that non-legal norms have been accepted in the statutes and become legal norms by, for example, the requirement of Article 4 of the Accounting Act that all accounting should be carried out in accordance with customary rules of double-entry bookkeeping. *Cousy* notes that such “lawification (juridisering)”²⁹ typically involves the process of formalization or codification and unwritten, and sometimes

26 In the course of deliberations of the Accounting Bill, the Minister responded that the recommendations of the Minister is not required with regard to the opinions of the Accounting Standards Commission (*Rapport fait au nom des commissions réunies des Affaires économiques et de la Justice du Sénat, Sénat, session 1974–75, Doc. 436/2, 12 juin 1975, p. 32*).

27 *van Crombrugge* points out as well that views of the Accounting Standards Commission have a greater authority than any other standards in Belgium (*van Crombrugge [1981] nr. 62[p.1014]*).

28 While *de facto* usage (feitelijke gebruiken / usages de fait) or conventional usage (conventionnele gebruiken / usages conventionnels) is applied on the basis of express or implied intention of the parties as long as it is not referred to in the law, it is widely accepted that customary law (gewoonterechtelijke regelen/usages de droits) itself is an unwritten source of law (*van Ryn en Heenen [1976] nrs. 19–21*).

29 *For details, see e.g. Cousy [1982] and Olivier [1985]*.

ambiguous, standards (whether or not they have been set up for that purpose) are often “codified (gecodeificeerd)” through intervention (tussenkomst) of official or quasi-official organization, an example of which is the Accounting Standards Commission created by the Accounting Act (Cousy [1989] p.177). Some argue, however, that it is generally understood that habits (habitude) become customs when they have been stabilized as essential to form a rule as an interpretation of private law (*See De Page [1962] n° 9*) and it is difficult to locate the opinions of the Accounting Standards Commission as qualified as customs because there are no widely accepted accounting practice for accounting events that the opinions of the Accounting Standards Commission deal with since they are highly technical (Olivier [1985] p. 252). *Cousy* points out as well that the opinions of the Accounting Standards Commission are not genuine rules as customary law (Cousy [1982] n° 13 [p.143])³⁰ because they do not meet the requirements of generality and stability (similar opinions: van Uytvanck [1980b] pp.14–15; van Crombrugge [1981] nr. 60 [p.1012])³¹. Moreover, it is well accepted that a preparer of individual accounts is able to show the evidence that another practice is also in accordance with the law even if it does not lead to harmonization that the Accounting Standards Commission are trying to achieve though a recommendation of the Accounting Standards Commission, which is a good usage (Olivier [1985] p. 254)³². This interpretation is consistent with Article 2, paragraph 5 of the Fourth EC Company Law Directive that requires derogation from statutory provisions in order to present a true and fair view and Article 3 of the 1976 Royal Decree³³ that implemented the former in Belgian law.

30 *Cousy* points out that a sort of new customary law, whose formation is accelerated through the establishment of the organization whose mission is to immobilize practices (habitudes), does not exist (Cousy [1982] n° 13 [p.143]). On the other hand, *Gelders*, the former President of the Accounting Standards Commission, argued that the law has led to the possibility of formulating of rules may be as having a normative content, stipulating that the Accounting Standards Commission may develop opinions and recommendations while in the domain of business accounting, customary law (droit coutumier) on the matter for which development of standards is useful results in a gain, but sufficient agreement is not obtained to associate them with regulatory or legal sanctions (Gelders[1976]p.6, *cited at Cousy [1982] p.155, note 48*).

31 *Frederique* took up the position that a usage must be stable (constant), uniform (uniforme) and public in order to consider it mandatory to follow the usage (Frederique [1946] p.24).

32 *van Crombrugge* further notes, citing Bruns [1971] pp.463–465, that there is a problem to describe accounting standards as equivalent to customary law since diversity is observed among published accounting principles (van Crombrugge [1981] nr. 60 [p.1012]).

33 Currently, Article 24 of the Implementing Regulations for the Company Code (Arrêté royal du 30 janvier 2001 portant exécution du code des sociétés, M.B., 6 février 2001, p.3008).

On the other hand, in the Preamble to the Accounting Bill, the Government noted that principles of proper accounting defined by recommendations of the Accounting Standards Commission might be accepted regulatory (réglementaire) norms for the application of the Accounting Act, if appropriate³⁴. Moreover, some argued that such norms can be considered as pre-legislative (pré-législatif) (Olivier [1985] p. 253; van Uytvanck [1980a]. *See also* Braeckmans [1986] nr.22 [p.27])³⁵. *Cousy* defined, relying upon van Uytvanck [1980a], «pré-législation» as “technical doctrine that has been formed within the areas that had been left by the legislator unresolved on purpose, not showing the view” or best practice (règles de bonne conduite) that is not mandatory by itself and claimed that these will be of guidance or help for auditors and those who are responsible for accounting matters. *Cousy* pointed out, however, that there is no provisions in the Accounting Act of 1975 that incompliance with the standards promulgated by the Accounting Standards Commission or generally accepted fundamental rules will be subject to sanctions as violation of discipline unless the Institute of Registered Auditors explicitly provides that not to comply with the general rule or the standards shall be deemed as breach of discipline.

Moreover, the Report to the King attached to the 1976 Royal Decree³⁶ pointed out that the Government would not find a response to the issues that requires in-depth consideration at once but would leave such problems to the Accounting Standards Commission for consideration and publishing the accounting principles that apply to them³⁷.

Furthermore, the Report to the King attached to the Royal Decree of 29 November

34 *Expose des motifs*, Sénat, session 1974–1975, Doc. 436/1, 12 novembre 1974, p.4.

35 It is described as impossible to find the conclusion about the binding authority of the recommendations of the Accounting Standards Commission definitely from the sociological process of setting rules though it is true that the opinions of the Accounting Standards Commission had influence on the 1983 amendments to the Accounting Act (Olivier [1985] p. 253). Moreover, the view of the Banking Commission on consolidated accounts (Commission bancaire [1978] p.147) and the Report to the King attached to the Royal Decree of 29 November 1997 on individual accounts of holding companies (*Rapport au Roi, Arrêté royal relatif aux comptes annuels des sociétés à portefeuille*, M.B., 21 décembre 1975, p.15054) noted that it is desirable in a novel and complex area to reach solutions gradually, leaving it to the practice and the accounting experts instead of defining mandatory standards (p.15057).

36 *Rapport au Roi, Arrête royal relatif aux comptes annuels des entreprises*, M.B., 19 octobre 1976, pp. 13460–13464.

37 *Rapport au Roi, Arrête royal relatif aux comptes annuels des entreprises*, M.B., 19 octobre 1976, p. 13464.

1977 concerning individual accounts of holding companies³⁸ noted that the standards issued by the International Accounting Standards Commission might be considered as good usage (bon usage) henceforth (désormais)³⁹. *van Hulle/Lybaert* argue that the Commission is in a position suitable for interpreting the accounting statutes and ordinances⁴⁰ since it serves as an advisor to the Legislative Chambers and the Government in advancing accounting-related legislation like a Minister to answer on tax laws at the Legislative Chambers (*See also Olivier* [1985] p. 250) and it has gained moral authority (morele autoriteit) so that the opinions and recommendations of the Accounting Standards Commission are often paid due respect⁴¹. *van Hulle/Lybaert* therefore argue that opinions of the Accounting Standards Commission, which is published in its Bulletin, will often be a potential source of customary law, that is, opinions and recommendations are complied with by considerable number of persons as effective normative provisions (rechtshorigen) immediately after the publication - with confidence that recommended procedures and practices “should be (hoort)” applied -, and, as a result, not merely an opinion but customary law that courts may enforce the compliance in the cases where its application requires, is formed (*van Hulle en Lybaert* [2005] pp.64–65).

In addition to the discussion above, some point out the possibility that a sort of international or national non-legal norms, for example, the International Accounting Standards published by the International Accounting Standards Commission, are *lex mercatoria* (*del Marmol* [1982] p.167; *Braeckmans* [1986] nr.48[p.57]).

38 *Rapport au Roi, Arrêté royal relatif aux comptes annuels des sociétés à portefeuille*, M.B., 12 décembre 1975, p.15054.

39 *van Crombrugge* is not, however, of the opinion that the International Accounting Standard No.3 has gained with respect to consolidated accounts the status of customary law that is legally binding through such a statement by the Minister (*van Crombrugge* [1981] nr. 60 [p.1012]).

40 *Causin* notes that opinions and recommendations of the Accounting Standards Commission are important and essential (incontournable) (*Causin* [2002] p.87).

41 *van Uytvanck* deems opinions and recommendations of the Accounting Standards Commission as a sort of code of conduct (gedragscode) with significant moral authority (moreel gezag) (*van Uytvanck* [1980b] p.15). On the other hand, *van Crombrugge* does not share this view (*van Crombrugge* [1981] nr. 61 [p.1013]).

7 Opinions and recommendations of the Institute of Registered Auditors and the Accounting Standards Commission

According to the Act of 22 July 1953 creating an Institute of Registered Auditors (Loi créant l'Institut des Réviseurs d'Entreprises, M.B., 2 septembre 1953) as amended by Article 51 of the Act of 21 February 1985 concerning the reform of registered auditors (Loi relative à la réforme du revisorat d'entreprises, M.B., 28 février 1985, p. 2230), the Institute of Registered Auditors (Institut des Réviseurs d'Entreprises/ Instituut van de Bedrijfsrevisoren) has been explicitly granted the authority to prescribe the auditing standards⁴². Therefore, incompliance with the auditing standards might lead to sanctions (currently, Act of 22 July 1953, Article 72). Moreover, Article 16 of the Accounting Act of 1975 (before the 1999 amendments, Article 17) provides penalties to a company auditor who certified, deliberately or without normal care, that individual accounts had been prepared in accordance with the provisions in cases where individual accounts had not been in fact. It is completely possible that that failure to comply with the auditing standards set by the Institute of Registered Auditors satisfies this requirement (van Hulle [1989] nr.151 [p.189]).

Furthermore, it is the widely accepted view that accounting experts should follow the opinion of the Accounting Standards Commission unless they have the good reasons for a professional that can justify the incompliance with the accounting opinions of the Accounting Standards Commission because the opinions and recommendations of the Accounting Standards Commission are not binding but they contains rules of fair accounting practice (regel van de behoorlijke boekhoudpraktijk). In other words, opinions and recommendations of the Accounting Standards Commission are taken into consideration in judging whether or not there is negligence or carelessness on the auditors in the course of the audit in the context of the disciplinary actions for violation of discipline (van Uytvanck

42 Currently, Article 30 of the Act of 22 July 1953 creating an Institute of Registered Auditors and organizing the public supervision of the profession of company auditor (Loi du 22 juillet 1953 créant un Institut des Réviseurs d'Entreprises et organisant la supervision publique de la profession de réviseur d'entreprises, coordonnée le 30 avril 2007, M.B., 24 mai 2007, p.27958) grants the Institute of Registered Auditors the authority to set up auditing standards to the extent that they do not conflict with the International Auditing Standards recognized by the legislative instruments of the European Commission.

[1980a]; Cousy [1982] nr.13 [p.153]; Wymeersch [1982] nr. 47 [p.878]). Moreover, the opinions and recommendations of the Accounting Standards Commission would be taken into account as well in judging whether or not the accounts were prepared in accordance with fair accounting practice and the auditors were grossly negligent in the context of the civil liability under the Companies Act of the directors and auditors (Wymeersch [1982] nr. 47 [p.878], Braeckmans [1986] nr.42 [pp.46-47]). Furthermore, *Wymeersch* noted (Wymeersch [1982] nr. 47 [p.878]) that these opinions have significance for determining whether or not the management and the accountants complied with expected fair practice in regard with general tort liability (Civil Code, Article 1382)⁴³. In fact, it is usual also in Belgium that presence or absence of negligence in general tort is determined in the light of the professional norms in respect of professional liability (Dabin en Lagasse [1949] p.57, n° 15; Dalcq [1985] pp.470-471, Braeckmans [1986] nr.37 [p.42]). In other words, it is possible that a violation of the standards that are not mandatory *per se* is deemed as the failure to take due care as an ordinary expert (Dalcq [1985] p.471). The concept of “careful and cautious (*zorgzame en omzichtige*)” expert or citizen is adopted in the context of Articles 1382 and 1383⁴⁴ of the Civil Code (Dalcq [1985] p.474, Vandernberge, van Suickenborne en Hamelink [1980] pp. 1158 en 1164). Courts often have determined, in the light of the quasi-legal (*paralegale*) standard (*cf.* Flamme [1981] pp.317-319), the presence or absence of negligence, and have found negligence (Braeckmans [1986] nr.38 [p.44]. *See also* Flamme [1981] p.323, Cousy [1985] pp.399-400) based on the testimony of expert witnesses (*See* Cousy [1982] p.149).

On the other hand, *van Crombrugge* argues that the significance of opinions and recommendations of the Accounting Standards Commission should be explored in the direction of rebuttable presumption. In other words, he notes that compliance with them usually makes individual accounts give a true and fair view and conformance to the opinions of the Accounting Standards Commission should, in principle, be presumed to lead the

43 The provision is the same as Article 1382 of the French Civil Code and stipulates that “Any act (*fait*) whatever of man, which causes damage to another, obliges the one by whose fault (*faute*) it occurred, to compensate it”.

44 The provision is the same as Article 1383 of the French Civil Code and stipulates that “Everyone is liable for the damage he causes not only by his intentional act (*fait*), but also by his negligent conduct or by his imprudence”.

accounting with due care in cases where the works of the Accounting Standards Commission are made sufficiently accurately and in detail from the point of view of carrying out the accounting with due care (*See* Steenberg [1975] p.759)⁴⁵. He notes, however, as follows: The effect of this presumption is smaller compared to the presumptive effect attached to the compliance to the principles included in the 1976 Royal Decree. While a derogation from the principles in the 1976 Royal Decree is permitted only for giving a true and fair view in individual accounts, a derogation from the opinions and recommendation of the Accounting Standards Commission is allowed not only for presenting a true and fair view (van Uytvanck [1980b] p.19) but also in cases where there are other generally accepted accounting principles to considerable extent and the entity choose the latter (van Crombrugge [1981] nr. 61 [p.1013]).

Even *van Crombrugge* notes that companies have to prove that their individual accounts give a true and fair view in both civil and criminal cases under Article 1382 of the Civil Code or the provisions of the Companies Act (van Crombrugge [1981] nr. 61 [pp.1013–1014]).

It is true that the management of the audited entity are not required comply with the opinions and recommendations of the Accounting Standards Commission by good rights on ground that the opinions and recommendations of the Accounting Standards Commission is well recognized in the auditing standards issued by the Institute of Registered Auditors since they are normally not the member of the Institute of Registered Auditors and not subject to the discipline of the Institute of Registered Auditors while statutory auditors shall be subject to the discipline (van Uytvanck [1980b] p.17) (*See* van Crombrugge [1981] nr. 59 [p.1012]; van Uytvanck [1980b] p.17). Generally accepted accounting principles, albeit indirectly, will however have a special binding force (*dwingende kracht*) also for the audited entity because generally accepted accounting principles are referred to in auditing standards (Rochette [1974] pp. 621–622; van Crombrugge [1981] nr. 63 [p.1015]). This is because any derogation from generally accepted accounting principles might result in an adverse opinion or a qualified opinion for companies to be audited by statutory auditors (van Crombrugge

45 A professional is not necessarily be regarded as having exercised a duty of care in regard with torts simply because he/she merely followed the technical standards. Dalcq [1967] n° 304 [p.164], Cousy [1982] p.150, Cousy [1985] pp.401–403, Braeckmans [1986] nr.39 [p.44].

[1981] nr. 63 [p.1015]).

8 Accounting Standards Commission as autonomous consultative organization

The Secretariat of the Banking, Finance and Insurance Commission had played as the Secretariat of the Accounting Standards Commission in the past (Forrester [1980] IV/32)⁴⁶. The Accounting Standards Commission became, however, an autonomous organization (organisme autonome)⁴⁷ with legal personality (1975 Royal Decree as amended, Article 1)⁴⁸ after Article 1 of the Royal Decree of 3 April 2006 (Arrêté royal du 3 avril 2006 modifiant l'arrêté royal du 21 octobre 1975 portant création de la Commission des normes comptables, M.B., 28 avril 2006, p. 22344) (hereinafter referred to as the 2006 Royal Decree) amending the Royal Decree of 21 October 1975 concerning the creation of the Accounting Standards Commission.

Though the operating costs of the Accounting Standards Commission were to be borne

46 Before the amendments by the 2006 Royal Decree, the Accounting Standards Commission was not a legal person (*See Cousy [1982] n° 13 [p.142]; Braeckmans [1986] nr.22 [p.26]*). Article 8, paragraph 2 (before the amendments by Article 6 of the 2006 Royal Decree) stipulated that the Accounting Standards Commission may request the Banking, Finance and Insurance Commission to provide the secretariat. On the other hand, Article 8 of the 2006 Royal Decree provides that the Accounting Standards Commission would be seconded by the staff of the Banking, Finance and Insurance Commission on the date of entry into force of this Royal Decree, as agreed in an agreement between the Banking, Finance and Insurance Commission and the Accounting Standards Commission, as a transitional measure.

47 According to Mercier [2010] p.71, the autonomy of an autonomous organization is one that departmental autonomy, political autonomy and financial autonomy join together. the Accounting Standards Commission is funded its operating costs by the contributions from businesses (*see e.g. Bruyneel [1978] p.189 on the Banking Commission [currently, the Banking, Finance and Insurance Commission]*), formulate an independent budget and, thus, has financial autonomy. Moreover, the Committee has departmental autonomy because it is neither positioned in the administrative hierarchy nor be subject to general oversight (tutelle) and prior approvals by Ministers. Furthermore, it has political autonomy as well since it has the character of consultative organization and the Accounting Act of 1975 provides the authority of the Commission clearly. The Accounting Standards Commission has members appointed or nominated by the Ministers and, therefore, has a little bit weaker personal independence compared to the Banking, Finance and Insurance Commission that does not have the Government member(*cf. Bruyneel [1978] p.188*).

48 Cf. *Persbericht van de ministerraad van 6 februari 2006* <<http://www.residencepalace.be/archive/20060206/054110386e5316c3f376833cflac5ec8/?lang=nl>>.

by the businesses and companies that were required to lodge their individual accounts and consolidated accounts at the Central Balance Sheet Office of the National Bank of Belgium (Centrale des bilans de la Banque Nationale de Belgique) (Accounting Act of 1975, Article 13, paragraph 2)⁴⁹ also in the past, the Commission now establishes internal rules, prepares annual reports and has independent accounting system as an autonomous organization. Thus, the Commission has the independent Secretariat and employs technical staffs and administrative staffs⁵⁰. Article 4, paragraph 2 of the 1975 Royal Decree (after the amendments by Article 4 of the 2006 Royal Decree) stipulates that the President ensures the daily management of the Commission and shall take the necessary measures to this end and may delegate the daily management to a member of the Secretariat. Article 5⁵¹, paragraph 2 of the 1975 Royal Decree (after the amendments by Article 5 of the 2006 Royal Decree) stipulates that the costs of support are reimbursed by the Commission if the President is seconded by another governmental or other organization for the benefit of the Commission. In this case, the President does not receive any remuneration payable by the Commission, unless the costs are lower than the remuneration of the President, in which case these costs are deducted from the compensation.

Furthermore, Article 8, paragraph 2 of the 1975 Royal Decree (after the amendments by Article 6 of the 2006 Royal Decree) stipulates that “the Commission is responsible for the organization of the Secretariat receives and the National Bank of Belgium’s contribution referred to in Article 13 of the Act of 17 July 1975 on business accounting. The Commission may hire and fire scientific and administrative staffs in the manner it determines in

49 Article 1 (as amended by Article 9 of the Royal Decree of 25 January 2005 (Arrêté royal modifiant l’arrêté royal du 12 septembre 1983 portant exécution de la loi du 17 juillet 1975 relative à la comptabilité des entreprises, l’arrêté royal du 12 septembre 1983 déterminant la teneur et la présentation d’un plan comptable minimum normalisé et l’arrêté royal du 16 juin 1994 fixant la contribution des entreprises aux frais de fonctionnement de la Commission des Normes comptables, M.B., 7 februari 2005, Ed.2, p.3875) of the Royal Decree of 16 June 1994 fixing the contribution of enterprises for the operating costs of the Accounting Standards Commission (Arrêté royal du 16 juin 1994 fixant la contribution des entreprises aux frais de fonctionnement de la Commission des Normes comptables, M.B., 22 juin 1994, p.16996) stipulates that the amount of contribution shall be 2.23 euros per individual accounts or consolidated accounts.

50 Commissie voor Boekhoudkundige Normen op eigen benen, *Bilans* 2006, afl. 541, 1–2.

51 Before the 2006 amendments, Article 5 of the 1975 Royal Decree only provided that “the remuneration of the President and members of the Accounting Standards Commission shall be fixed upon the proposal made by the Minister of Economy. In addition, the President and members may claim reimbursement of travel expenses.”

accordance with the Act of 3 July 1978 on employment contracts. The premises of the Commission shall be provided by the Ministry of Economy (SPF économie)⁵². Article 9 (after the amendments by the 2006 Royal Decree) requires the Commission to adopt its internal rules of procedure and submit them for approval by the Minister of Economy, the Minister of Small and Medium Enterprises, the Minister of Justice and the Minister of Finance. The Commission is requested as well to publish an annual report of its activities including the accounts of the Commission.

On the other hand, as discussed above, the Accounting Standards Commission has been recognized as a consultative organization (*organisme consultatif*) from the very beginning (Cousy [1982] n° 13 [p.142]). According to Article 14 of the Accounting Act of 1975 and Article 1 of the 1975 Royal Decree, one of the task given to the Accounting Standards Commission is submitting opinions to a Minister or the Legislative Chambers, either on its own initiative, or at the request of the said authorities. In comparison with inquiry (*enquête*), consultation is more specific and “institutionalized” (Lewalle et Donnay [2008] p.171) and forms a part of normal supervisory process (*procédé de tutelle normale*) (Dembour [1955] p.84). *Stichele* noted that consultation is one element of the effectiveness of administrative activities, without a doubt, and strengthens the authority of the government at the same time (Stichele [1969] p.248) while *Wastiels* pointed out that the function of consultation is that corresponding to the democratic ideal that seek to communicate bi-directionally and continuously between those who governs and those who are governed (Wastiels [1970] p.49 [cited at Lewalle et Donnay [2008] p.171]). In addition, the Constitutional Council once noted that the Legislature would evaluate whether it is desirable to set up a consultative organization and to determine the constitution of members of the organization in order to ensure the modernizing the operation of judicial court (C.C., 14 novembre 2007, n° 140/2007, n° de rôle 4154, M.B., 28 novembre 2007). The Executive will take, however, the provisions of the Constitution into consideration in judging whether the authority to establish such a committee and define the composition and the mission are granted (C.E., 30 mars 1973, Van Meerhaege c/État belge, n° 15.694, Rec., p.289). Failure to hold consultation that is required by the provisions of the law is deemed, as a rule, as violating the requirement

52 SPF stands for Service public fédéral (federale overheidsdienst [FOD]/federaler öffentlicher Dienst).

of important formality (Auby et Drago [1984] p.319; Dembour [1978] p.280). On the other hand, the Council of State noted that it is necessary to indicate the fact with reasoning when it does not follow the opinions expressed for consultation (C.E., 14 juin 2002, *S.A. Mio c/ État belge*, n° 107.842. See also C.E., 29 septembre 2000, *Dumonceau c/Commune d' Aywaille*, n° 89.919).

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