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Ref.: QMA/PRJ/PW/MBR

Dear Mr. Tiedje,

**Re: FEE Comments on the EC Green Paper “Modernising the Professional Qualifications Directive”**

FEE (the Federation of European Accountants) is pleased to provide you below with its comments on the Green Paper “Modernising the Professional Qualifications Directive”. FEE’s ID number on the European Commission’s Register of Interest Representatives is 4713568401-18.

We welcome the European Commission’s Green Paper “Modernising the Professional Qualifications Directive”. Recognition of professional qualifications obtained in another EU Member State is indeed essential to establish an internal market for professional services.

We support the European Commission’s objective of modernising and simplifying the existing rules to facilitate mobility for professionals where appropriate and help make the European economy more competitive while encouraging growth and job creation. FEE has for many years supported initiatives to increase mobility of professionals in the accountancy services sphere, including working with member bodies to explain the arrangements under EU legislation for mobility and to reduce barriers.<sup>1</sup>

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<sup>1</sup> FEE paper “Internal Market for Services and the Accountancy Profession: Qualifications and Recognition”, November 2007, [http://www.fee.be/publications/default.asp?library\\_ref=4&content\\_ref=761](http://www.fee.be/publications/default.asp?library_ref=4&content_ref=761);  
FEE Round Table on Qualifications and Recognition, June 2008,  
[http://www.fee.be/news/default.asp?library\\_ref=2&content\\_ref=848](http://www.fee.be/news/default.asp?library_ref=2&content_ref=848)  
FEE comments on the evaluation of Directive 2005/36/EC, 14 April 2010,  
<http://www.fee.be/fileupload/upload/Tiedje%20100414%20RPQ%20Directive1642010441432.pdf>  
FEE response to the European Commission’s Consultation Paper on the Professional Qualifications Directive, 17 March 2011,  
[http://www.fee.be/fileupload/upload/FEE%20response\\_EC%20consultation%20RPQ%20Directive110317173201158958.pdf](http://www.fee.be/fileupload/upload/FEE%20response_EC%20consultation%20RPQ%20Directive110317173201158958.pdf)

However, the large number of professions covered by the Professional Qualifications Directive is a challenge in itself for simplification. There is a need to be realistic about how far the recognition of professional qualifications could and should be simplified, also taking into account the aspects of consumer protection and trust. The maintenance of professional competences is important within different professions and to simplify and embed these within the Directive could prove challenging. Particular attention might need to be given to liberal professions, who are frequently either regulated<sup>2</sup> or self-regulated and thus subject to disciplinary mechanisms.

Overall, simplification and promoting cross-border activities should not be seen isolated but rather from a holistic perspective, considering consumers', clients', employees' and professionals' perceptions simultaneously.

For the accountancy profession, recognition of professional qualifications is only one part of the rules that influence cross-border activities: the Services Directive and – for statutory audit services – the Statutory Audit Directive and their inter-relationship with the Professional Qualifications Directive also have to be considered.<sup>3</sup>

For professionals providing accountancy services other than statutory audit, the situation for cross-border activities is generally complex because of (i) the wide range of activities carried out by professional accountants, (ii) differences in Member States' rules regarding the pursuit of those activities and (iii) the existence of different regulatory approaches and market access rules at Member State level. However, we have no information showing that recognition of professional qualifications has effectively played a restrictive role on free movement. Differences in company law, social security law and tax regimes played, and continue to play a much more important role, reducing cross-border activities and movement of professionals.

The general idea of a European professional card is attractive. It has some potential to enhance recognition procedures, increase cross-border mobility as well as – where combined with appropriate control mechanisms to prevent misuse and if the system is developed under a holistic approach – transparency for consumers, professionals, clients and employers.

Regarding statutory audit services, the special requirements laid down in the Statutory Audit Directive prevail over the measures of the Professional Qualifications Directive. Considering for example the specific requirement in the Statutory Audit Directive that statutory auditors need to be entered into a public register, electronically accessible to the public, FEE does not see any additional benefit of a professional card for statutory auditors as long as it is not accompanied by further measures that are conducive to enhance cross-border mobility of professionals. Regarding a potential European Passport for auditors we refer to the FEE response to the EC Green Paper on Audit Policy<sup>4</sup> and the FEE Briefing Paper.<sup>5</sup>

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<sup>2</sup> In the sense of Article 3 1. (a) and 2. of the Professional Qualifications Directive

<sup>3</sup> See attached excerpt of the FEE paper "Internal Market for Services and the Accountancy Profession: Qualifications and Recognition", November 2007, [http://www.fee.be/publications/default.asp?library\\_ref=4&content\\_ref=761](http://www.fee.be/publications/default.asp?library_ref=4&content_ref=761)

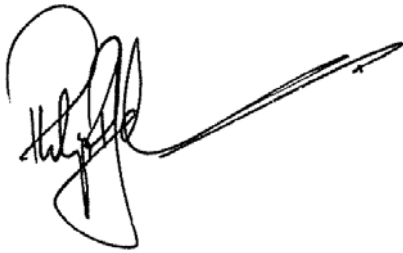
<sup>4</sup> FEE letter dated 8 December 2010, <http://www.fee.be/fileupload/upload/Barnier%20101208%20FEE%20Response%20to%20EC%20Green%20Paper%20Audit%20Policy1712201011118.pdf>

<sup>5</sup> Published 30 June 2011, <http://www.fee.be/fileupload/upload/Briefing%20Paper%2005%20EU%20Passport%201106306201142257.pdf>

An additional subject that should be taken into account when modernising the Professional Qualifications Directive is to define the terms “temporary or occasional”, which was one of the questions asked in the European Commission’s consultation paper earlier this year. We acknowledge that it is challenging within the frame of the Professional Qualifications Directive that covers around 800 professions, whose services vary broadly. Definitions could however be developed on a sector-specific basis and outlined in guidance accompanying the Professional Qualifications Directive.

For further information on this letter, please contact Petra Weymüller, FEE Project Manager from the FEE Secretariat at Tel.: +32 2 285 40 75 or e-mail at [petra.weymuller@fee.be](mailto:petra.weymuller@fee.be).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Philip Johnson', with a long, sweeping horizontal stroke extending to the right.

Philip Johnson  
FEE President

**Question 1:** Do you have any comments on the respective roles of the competent authorities in the Member State of departure and the receiving Member State?

Overall, we agree that the proposed roles of the competent authorities in the Member State of departure and the receiving Member State could have simplification potential.

As suggested in the Green Paper, the professional card would certify that a professional has a certain professional qualification or experience in a Member State. It should however also contain any limitations or restrictions, e.g. if a professional is suspended. For details about essential information on a professional card, we refer to the FEE response to the European Commission's Consultation Paper on the Professional Qualifications Directive (in particular question 13).<sup>6</sup>

Furthermore, for a proper functioning of the system of a professional card, it is essential that the Member State of departure would keep its records (card and website) up to date so that the receiving Member State could fully rely on the information provided on the card and consumers, clients, employees and professionals would have trust in the system. We understand that it is self-evident that the receiving Member State would have the right to raise questions through the IMI system, because the Member State of departure is not necessarily aware of the specific characteristics of the profession in the receiving Member State, which would require that additional information is necessary.

Taking into account that the provision of accountancy services is to a large extent not regulated in the sense of Article 3 1. (a) and 2. of the Professional Qualifications Directive in many Member States and that the number of activities which are reserved by law to professional accountants is very limited;<sup>7</sup> issues around administration and cost may present obstacles to the implementation of the system of a professional card. In Member States where the profession is not regulated and thus no original competent authority exists, designating a competent authority such as National Academic Recognition Information Centres (NARIC) to issue the card could increase the feasibility.

Professional institutes should be included in the system because they are holders of the relevant information about the professionals, however, legal competencies and issues like data protection would have to be clarified.

We understand that the former wording used in the Professional Qualifications Directive would be revised: Member State of departure instead of home Member State and receiving Member State instead of host Member State.

According to the Green Paper, a professional card would be issued by the competent authority of the Member State where the qualification is acquired and under the condition that the professional is entitled to practice. This means that the Member State where the qualification is acquired would be considered as the Member State of departure.

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<sup>6</sup> FEE letter dated 17 March 2011, [http://www.fee.be/fileupload/upload/FEE%20response\\_EC%20consultation%20RPQ%20Directive110317173201158958.pdf](http://www.fee.be/fileupload/upload/FEE%20response_EC%20consultation%20RPQ%20Directive110317173201158958.pdf)

<sup>7</sup> See FEE survey "Provision of Accountancy, Audit and Related Services in Europe - A Survey on Market Access Rules", December 2005, e. g. page 5: [http://www.fee.be/publications/default.asp?library\\_ref=4&content\\_ref=539](http://www.fee.be/publications/default.asp?library_ref=4&content_ref=539)

Providing clarification in this regard in the Professional Qualifications Directive would be helpful, e.g. indicating that the qualification is acquired in the Member State of departure if the final exam or a substantial part of the relevant education has been completed there.

The appropriate physical or virtual format of a professional “card” should be subject to the latest developments of technology.

**Question 2:** Do you agree that a professional card could have the following effects, depending on the card holder's objectives?

a) The card holder moves on a temporary basis (temporary mobility):

- Option 1: the card would make any declaration which Member States can currently require under Article 7 of the Directive redundant.

- Option 2: the declaration regime is maintained but the card could be presented in place of any accompanying documents.

b) The card holder seeks automatic recognition of his qualifications: presentation of the card would accelerate the recognition procedure (receiving Member State should take a decision within two weeks instead of three months).

c) The card holder seeks recognition of his qualifications which are not subject to automatic recognition (the general system): presentation of the card would accelerate the recognition procedure (receiving Member State would have to take a decision within one month instead of four months).

The general idea of a European professional card is attractive. It has some potential to enhance recognition procedures, increase cross-border mobility as well as – where combined with appropriate control mechanisms to prevent misuse – transparency for consumers, professionals, clients and employers.

Its real contribution to the internal market will however depend – as far as the accountancy profession is concerned – on the achievement of further substantial harmonisation in other areas, in particular Member States' company and tax law.

Considering the specific requirement in the Statutory Audit Directive to be entered into a public register, electronically accessible to the public, FEE does not see any additional benefit of a professional card for statutory auditors as long as it is not accompanied by further measures that are conducive to enhance cross-border mobility of professionals.

#### **a) Temporary mobility**

We prefer option 2, where the declaration regime is maintained but the card could be presented instead of any accompanying documents.

**b) Automatic recognition**

Automatic recognition is not applicable for the accountancy profession. This notwithstanding, a timeframe of two weeks appears optimistic for card validity checks, especially in cases where the competent authority in the receiving Member State would have queries to the competent authority in the Member State of departure.

**c) General recognition system**

We agree that presentation of the card could accelerate the recognition procedure, however, the timeframe of one month for a decision appears to be challenging.

The major issue for recognition of professional qualifications has always been the comparability between regulated and unregulated areas of activity, an issue that is not likely to be solved by introducing the professional card.

Integrating new principles such as partial access or common platforms could lengthen the process at least in the beginning.

**Question 3:** Do you agree that there would be important advantages to inserting the principle of partial access and specific criteria for its application into the Directive? (Please provide specific reasons for any derogation from the principle.)

For professionals providing services other than statutory audit, the situation for cross-border activities is complex because of (i) the wide range of activities carried out by professional accountants, (ii) differences in Member States' rules regarding the pursuit of those activities and (iii) the existence of different regulatory approaches and market access rules at Member State level.<sup>8</sup> Professional titles do not always refer to the same range of activities which can be a problem in case of translations.

These differences could become barriers to the free movement of professionals. However, we have no information showing that this has effectively played, and continues to play, a restrictive role on free movement. As already said above, differences in legal and tax regimes played a much more important role, reducing cross-border activities and movement of professionals.

The European Commission asks whether the case-law on partial access should be included into the Professional Qualifications Directive.

When analysing the Court decision, FEE raised questions on how such partial access could work in practice. As far as the accountancy profession is concerned, we concluded that the application of such rules on partial recognition would only arise in exceptional cases,<sup>9</sup> because many activities are not regulated.

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<sup>8</sup> The FEE study Provision of Accountancy, Audit and Related Services in Europe published in December 2005 reviews the different activities that are usually carried out by professional accountants. It shows a variety of situations across Member States [http://www.fee.be/publications/default.asp?library\\_ref=4&content\\_ref=539](http://www.fee.be/publications/default.asp?library_ref=4&content_ref=539)

<sup>9</sup> FEE "Internal Market for Services and the Accountancy Profession: Qualification and Recognition", November 2007, # 162, [http://www.fee.be/publications/default.asp?library\\_ref=4&content\\_ref=761](http://www.fee.be/publications/default.asp?library_ref=4&content_ref=761)

It is important to ensure a level playing field in the internal market. Partial recognition would require adequate information of the consumer which will be difficult to implement, otherwise the system could become extremely confusing for consumers. We assume that it would also prove challenging for competent authorities.

**Question 4:** Do you support lowering the current threshold of two-thirds of the Member States to one-third (i.e. nine out of twenty seven Member States) as a condition for the creation of a common platform? Do you agree on the need for an Internal Market test (based on the proportionality principle) to ensure a common platform does not constitute a barrier for service providers from non-participating Member States? (Please give specific arguments for or against this approach.)

As explained in the Green Paper, the concept of common platforms was not successful in the past, therefore, a revision could be helpful, although it is only relevant for regulated professions.

A lowering of the current threshold of two-thirds to one-third of the Member States may help; it could be determined in conjunction with the Lisbon criteria, which take account of the population figures as well.

However, the main issue with common platforms has been the concept itself, because it proved difficult to agree among Member States upon the compensation measures – and even more difficult in countries where several competent authorities exist.

The “Common Content Project”, which FEE mentioned in its previous letter on this issue,<sup>10</sup> may be a good example in this context. Nine accountancy Institutes from six EU Member States are working together to bring their professional qualifications closer together.

Promoting the European Qualifications Framework (EQF) might also be a useful measure that the Commission could give further consideration.

**Question 5:** Do you know any regulated professions where EU citizens might effectively face such situations? Please explain the profession, the qualifications and for which reasons these situations would not be justifiable.

We are not aware of the extreme case outlined in the Green Paper, where professionals have no other choice than to undergo the entire necessary training to acquire the domestic qualification in the receiving (host) Member State, because compensation measures or partial access are not possible.

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<sup>10</sup> FEE response to the European Commission’s Consultation Paper on the Professional Qualifications Directive, 17 March 2011, [http://www.fee.be/fileupload/upload/FEE%20response\\_EC%20consultation%20RPQ%20Directive110317173201158958.pdf](http://www.fee.be/fileupload/upload/FEE%20response_EC%20consultation%20RPQ%20Directive110317173201158958.pdf)



**Question 6:** Would you support an obligation for Member States to ensure that information on the competent authorities and the required documents for the recognition of professional qualifications is available through a central on line access point in each Member State? Would you support an obligation to enable online completion of recognition procedures for all professionals? (Please give specific arguments for or against this approach).

**a) Central online access point**

Member States should be obliged to inform citizens on the competent authorities and the required documents for the recognition of professional qualifications online. A national central online access point where the information is available in the national language and also in English would be helpful.

As the points of single contact under the Services Directive appear to be already equipped to provide service providers online with any relevant information relating to their activities (regulations, procedures, deadline) and allow service providers to complete electronically all the administrative procedures necessary for the access to and exercise of a service activity, including the procedures for the recognition of qualifications, it appears reasonable to use those points of single contact also for Professional Qualifications Directive.

**b) Online completion of recognition procedures**

Online completion of recognition procedures for professionals could help to simplify and speed up recognition. As with any online procedure, the necessary safeguards would need to be established regarding identification and verification.

**Question 7:** Do you agree that the requirement of two years' professional experience in the case of a professional coming from a non-regulating Member State should be lifted in case of consumers crossing borders and not choosing a local professional in the host Member State? Should the host Member State still be entitled to require a prior declaration in this case? (Please give specific arguments for or against this approach.)

**a) Two years professional experience**

Regarding statutory audit services, the requirements laid down in the Statutory Audit Directive prevail.

Regarding other accountancy services, we disagree that the requirement of two years' professional experience in the very specific case of a professional coming from a non-regulating Member State should be lifted in case of consumers crossing borders and not choosing a local professional in the host Member State.

The situation described in the Green Paper refers to a very specific situation in which – if transferred to the accountancy profession - a consumer would ask an accountant to accompany him cross-border and provide accountancy services (e.g. tax advice).



These accountancy services could (i) require knowledge of the law in the receiving Member State or (ii) require knowledge of the law in the Member State of departure. The situation (i) may not be very likely and the accountant would not provide that kind of services without disposing of the necessary knowledge of the law in the receiving Member State. In situation (ii) it is evident that the accountant would dispose of the necessary knowledge of the law in the Member State of departure. In both cases, there would be no reason for a lifted period of professional experience.

#### **b) Prior declaration**

As mentioned in the response to question 2, we suggest that the declaration regime is maintained but the card could be presented instead of any accompanying documents.

**Question 8:** Do you agree that the notion of "regulated education and training" could encompass all training recognised by a Member State which is relevant to a profession and not only the training which is explicitly geared towards a specific profession? (Please give specific arguments for or against this approach.)

In principle the approach outlined in the Green Paper appears reasonable. However, the type of general "transferrable" skill mentioned is unlikely to be of significant relevance for the accountancy profession, where technical knowledge and competence is the primary factor essential for the delivery of quality services in this area.

**Question 9:** Would you support the deletion of the classification outlined in Article 11 (including Annex II)? (Please give specific arguments for or against this approach).

We are not in favour of deleting Article 11, because it lays down the different levels of professional qualifications for applying the conditions for recognition (Article 13), although the accountancy profession is not concerned by Annex II (List of courses having a special structure referred to in Article 11 such as paramedical and childcare, master craftsman, seafaring and technical sector).

There needs to be a way to map the intellectual level of the professional qualification to a commonly accepted framework. Although we support simplification, we cannot support measures that might lead to a "race to the bottom" in terms of quality of services. There is a need to be realistic about how far the recognition of professional qualifications could and should be simplified, also taking into account the aspects of consumer protection and trust. The maintenance of professional competences is important within different professions and to simplify and embed these within the Directive is challenging.

A system without Article 11 could prove to become extremely complex and might also have some potential to involve additional cost for professionals and competent authorities.

A potential option that might be worth exploring further could however be to replace the five levels in Article 11 with the eight levels of the European Qualification Framework (EQF) in order to align the system.

**Question 10:** If Article 11 of the Directive is deleted, should the four steps outlined above be implemented in a modernised Directive? If you do not support the implementation of all four steps, would any of them be acceptable to you? (Please give specific arguments for or against all or each of the steps.)

As outlined in the response to question 9, we do not recommend the deletion of Article 11, at least not without an alternative set of levels (possibly EQF) to use as reference.

We also do not recommend the four steps suggested in the Green Paper.

As far as possible excessive compensation measures are concerned, harmonisation of the administrative aspects of the aptitude test (duration, frequency, form etc.) could help.

Overall, simplification and promoting cross-border activities should not be seen isolated but from a holistic perspective, taking into account consumers', clients', employees' and professionals' perceptions.

Many professionals invest in long term education including university, practical experience and final examinations which enables them to provide high quality services. This commitment should not be downgraded by allowing access to the same profession without any education. A common platform by which the quality of qualifications already obtained can be assessed could help for regulated professions (see response Question 4).

**Question 11:** Would you support extending the benefits of the Directive to graduates from academic training who wish to complete a period of remunerated supervised practical experience in the profession abroad? (Please give specific arguments for or against this approach.)

It is important to facilitate mobility for graduates who are not yet fully qualified professionals and who seek access to a remunerated traineeship or supervised practice in another Member State.

#### **a) Statutory audit**

The existing legal framework allows mobility of trainees. As stated in the Statutory Audit Directive<sup>11</sup>, at least two thirds of the three years' practical training shall be completed with a statutory auditor or audit firm approved in any Member State. Two years training can therefore explicitly be completed in another Member State. The Statutory Audit Directive does not indicate where and with whom the third year has to be completed. As a consequence, it could be allowed with another employer (who does not need to be statutory auditor) in any Member State. Therefore, even the whole training period could be followed in another Member State.

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<sup>11</sup> Article 10 paragraph 1 of the DIRECTIVE 2006/43/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC

**b) Other accountancy services**

As far as professionals providing accountancy services other than statutory audit are concerned, the principles of the Morgenbesser ruling (graduates from academic training need to be allowed completing a period of remunerated supervised practical experience in the profession abroad and the Member State of departure would have to recognise the traineeship) could be applicable where the profession is regulated in the relevant Member States.

We understand that the final examination after the supervised practice would take place in the Member State of departure, where the initial education was followed. In this case it should be considered that the final examination would offer adequate guarantee that a candidate has to proof his qualification. However, differences in national law (company law, tax law etc.) need to be taken into account when allowing a trainee, who has pursued part of his training period in another Member State, access to the profession. Furthermore, special measures should be put in place in order to ensure that part of the education requirements cannot be avoided or circumvented (qualifications shopping).

**Question 12 – Question 23** are not applicable for the accountancy profession as they refer to health professionals.

**Question 24:** Do you consider it necessary to make adjustments to the treatment of EU citizens holding third country qualifications under the Directive, for example by reducing the three years rule in Article 3 (3)? Would you welcome such adjustment also for third country nationals, including those falling under the European Neighbourhood Policy, who benefit from an equal treatment clause under relevant European legislation? (Please give specific arguments for or against this approach.)

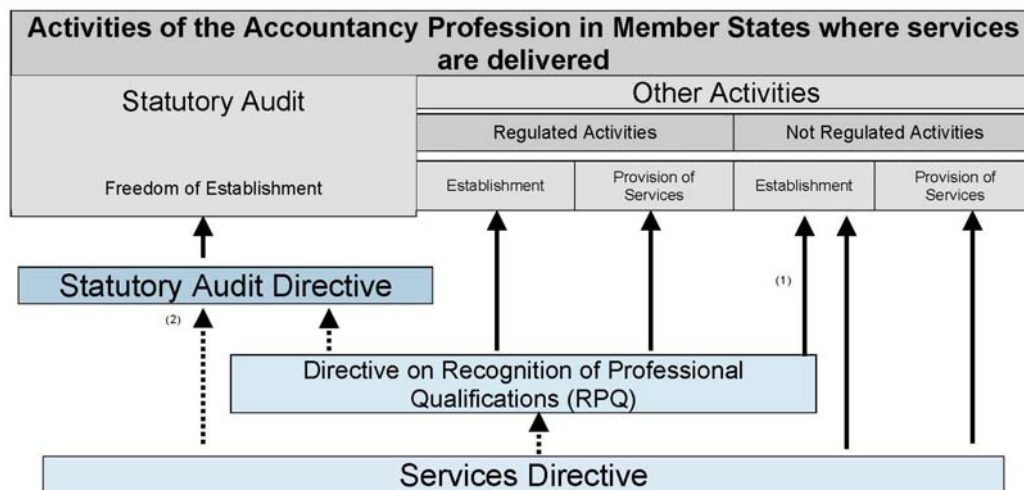
Regarding statutory audit services, the requirements laid down in the Statutory Audit Directive prevail.

Regarding other accountancy services, for the time being we do not see a specific need for adjustment of the treatment of EU citizens holding third country qualifications under the Directive, as mobility of accountants is still quite limited and the specific cases referred to in question 24 may be even less numerous. In any discussion on this issue, an overriding issue relates to the maintenance of the high quality of services provided in Europe.

Excerpt from the FEE paper

“INTERNAL MARKET FOR SERVICES AND THE ACCOUNTANCY PROFESSION: QUALIFICATIONS AND RECOGNITION”<sup>12</sup>

Inter-relationship between the Directives in relation to activities of the accountancy profession: FEE Interpretation (page 31)



<sup>(1)</sup> Application of RPQ is applicable when the non regulated activity is to be carried out as a member of a regulated profession in the host country - See case study 6, § 150.  
<sup>(2)</sup> Interrupted arrows mean that the provisions of the text are applicable if not inconsistent.

<sup>12</sup> [http://www.fee.be/publications/default.asp?library\\_ref=4&content\\_ref=761](http://www.fee.be/publications/default.asp?library_ref=4&content_ref=761)