

## COMMISSION REGULATION (EC) No 254/2009

of 25 March 2009

amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 12

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards <sup>(1)</sup>, and in particular Article 3(1) thereof,

Whereas:

(1) By Commission Regulation (EC) No 1126/2008 <sup>(2)</sup> certain international standards and interpretations that were extant at 15 October 2008 were adopted.

(2) On 30 November 2006, the International Financial Reporting Interpretations Committee (IFRIC) published IFRIC Interpretation 12 *Service Concessions Arrangements*, hereinafter 'IFRIC 12'. IFRIC 12 is an interpretation that provides clarification on how to apply provisions of International Reporting Financial Standards (IFRS) already endorsed by the Commission to service concession arrangements. IFRIC 12 clarifies how to recognise in the accounts of the concession's operator the infrastructure subject to the service concession arrangement. It also clarifies distinction between different phases of a service concession arrangement (construction/operation phases) and how revenues and expenses should be recognised in each case. It distinguishes two ways to recognise the infrastructure as well as related revenues and expenses (the financial asset and intangible asset 'models') depending on the exposure of the concession's operator to uncertainty in its future revenues.

(3) The consultation with the Technical Expert Group (TEG) of the European Financial Reporting Advisory Group (EFRAG) confirms that IFRIC 12 meets the technical criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002. In accordance with Commission

Decision 2006/505/EC of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions <sup>(3)</sup>, the Standards Advice Review Group considered EFRAG's opinion on endorsement and advised the Commission that it is well-balanced and objective.

(4) The adoption of IFRIC 12 implies, by way of consequence, amendments to International Reporting Financial Standard (IFRS) 1, IFRIC 4 and Standing Interpretations Committee's Interpretation (SIC) 29 in order to ensure consistency between international accounting standards.

(5) It is being understood that companies can apply or continue to apply IFRIC 12.

(6) Regulation (EC) No 1126/2008 should therefore be amended accordingly.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Annex to Regulation (EC) No 1126/2008 is amended as follows:

1. International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 12 *Service Concessions Arrangements* is inserted as set out in the Annex to this Regulation;
2. International Reporting Financial Standard (IFRS) 1, IFRIC 4 and Standing Interpretations Committee's Interpretation (SIC) 29 are amended in accordance with Appendix B of IFRIC 12 as set out in the Annex to this Regulation.

<sup>(1)</sup> OJ L 243, 11.9.2002, p. 1.

<sup>(2)</sup> OJ L 320, 29.11.2008, p. 1.

<sup>(3)</sup> OJ L 199, 21.7.2006, p. 33.

*Article 2*

Each company shall apply IFRIC 12, as set out in the Annex to this Regulation, at the latest, as from the commencement date of its first financial year starting after the date of entry into force of this Regulation.

*Article 3*

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 March 2009.

*For the Commission*  
Charlie McCREEVY  
*Member of the Commission*

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## ANNEX

## INTERNATIONAL ACCOUNTING STANDARDS

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IFRIC 12	IFRIC Interpretation 12 <i>Service Concessions Arrangements</i>
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**IFRIC INTERPRETATION 12*****Service Concession Arrangements***

## REFERENCES

- *Framework for the Preparation and Presentation of Financial Statements*
- IFRS 1 *First-time Adoption of International Financial Reporting Standards*
- IFRS 7 *Financial Instruments: Disclosures*
- IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*
- IAS 11 *Construction Contracts*
- IAS 16 *Property, Plant and Equipment*
- IAS 17 *Leases*
- IAS 18 *Revenue*
- IAS 20 *Accounting for Government Grants and Disclosure of Government Assistance*
- IAS 23 *Borrowing Costs*
- IAS 32 *Financial Instruments: Presentation*
- IAS 36 *Impairment of Assets*
- IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*
- IAS 38 *Intangible Assets*
- IAS 39 *Financial Instruments: Recognition and Measurement*
- IFRIC 4 *Determining whether an Arrangement contains a Lease*
- SIC-29 *Disclosure — Service Concession Arrangements*

## BACKGROUND

- 1 In many countries, infrastructure for public services — such as roads, bridges, tunnels, prisons, hospitals, airports, water distribution facilities, energy supply and telecommunication networks — has traditionally been constructed, operated and maintained by the public sector and financed through public budget appropriation.
- 2 In some countries, governments have introduced contractual service arrangements to attract private sector participation in the development, financing, operation and maintenance of such infrastructure. The infrastructure may already exist, or may be constructed during the period of the service arrangement. An arrangement within the scope of this Interpretation typically involves a private sector entity (an operator) constructing the infrastructure used to provide the public service or upgrading it (for example, by increasing its capacity) and operating and maintaining that infrastructure for a specified period of time. The operator is paid for its services over the period of the arrangement. The arrangement is governed by a contract that sets out performance standards, mechanisms for adjusting prices, and arrangements for arbitrating disputes. Such an arrangement is often described as a 'build-operate-transfer', a 'rehabilitate-operate-transfer' or a 'public-to-private' service concession arrangement.
- 3 A feature of these service arrangements is the public service nature of the obligation undertaken by the operator. Public policy is for the services related to the infrastructure to be provided to the public, irrespective of the identity of the party that operates the services. The service arrangement contractually obliges the operator to provide the services to the public on behalf of the public sector entity. Other common features are:
  - (a) the party that grants the service arrangement (the grantor) is a public sector entity, including a governmental body, or a private sector entity to which the responsibility for the service has been devolved.
  - (b) the operator is responsible for at least some of the management of the infrastructure and related services and does not merely act as an agent on behalf of the grantor.

- (c) the contract sets the initial prices to be levied by the operator and regulates price revisions over the period of the service arrangement.
- (d) the operator is obliged to hand over the infrastructure to the grantor in a specified condition at the end of the period of the arrangement, for little or no incremental consideration, irrespective of which party initially financed it.

#### SCOPE

- 4 This Interpretation gives guidance on the accounting by operators for public-to-private service concession arrangements.
- 5 This Interpretation applies to public-to-private service concession arrangements if:
  - (a) the grantor controls or regulates what services the operator must provide with the infrastructure, to whom it must provide them, and at what price; and
  - (b) the grantor controls — through ownership, beneficial entitlement or otherwise — any significant residual interest in the infrastructure at the end of the term of the arrangement.
- 6 Infrastructure used in a public-to-private service concession arrangement for its entire useful life (whole of life assets) is within the scope of this Interpretation if the conditions in paragraph 5(a) are met. Paragraphs AG1–AG8 provide guidance on determining whether, and to what extent, public-to-private service concession arrangements are within the scope of this Interpretation.
- 7 This Interpretation applies to both:
  - (a) infrastructure that the operator constructs or acquires from a third party for the purpose of the service arrangement; and
  - (b) existing infrastructure to which the grantor gives the operator access for the purpose of the service arrangement.
- 8 This Interpretation does not specify the accounting for infrastructure that was held and recognised as property, plant and equipment by the operator before entering the service arrangement. The derecognition requirements of IFRSs (set out in IAS 16) apply to such infrastructure.
- 9 This Interpretation does not specify the accounting by grantors.

#### ISSUES

- 10 This Interpretation sets out general principles on recognising and measuring the obligations and related rights in service concession arrangements. Requirements for disclosing information about service concession arrangements are in SIC-29 *Service Concession Arrangements: Disclosures*. The issues addressed in this Interpretation are:
  - (a) treatment of the operator's rights over the infrastructure;
  - (b) recognition and measurement of arrangement consideration;
  - (c) construction or upgrade services;
  - (d) operation services;
  - (e) borrowing costs;
  - (f) subsequent accounting treatment of a financial asset and an intangible asset; and
  - (g) items provided to the operator by the grantor.

#### CONSENSUS

##### **Treatment of the operator's rights over the infrastructure**

- 11 Infrastructure within the scope of this Interpretation shall not be recognised as property, plant and equipment of the operator because the contractual service arrangement does not convey the right to control the use of the public service infrastructure to the operator. The operator has access to operate the infrastructure to provide the public service on behalf of the grantor in accordance with the terms specified in the contract.

**Recognition and measurement of arrangement consideration**

- 12 Under the terms of contractual arrangements within the scope of this Interpretation, the operator acts as a service provider. The operator constructs or upgrades infrastructure (construction or upgrade services) used to provide a public service and operates and maintains that infrastructure (operation services) for a specified period of time.
- 13 The operator shall recognise and measure revenue in accordance with IASs 11 and 18 for the services it performs. If the operator performs more than one service (i.e. construction or upgrade services and operation services) under a single contract or arrangement, consideration received or receivable shall be allocated by reference to the relative fair values of the services delivered, when the amounts are separately identifiable. The nature of the consideration determines its subsequent accounting treatment. The subsequent accounting for consideration received as a financial asset and as an intangible asset is detailed in paragraphs 23–26 below.

**Construction or upgrade services**

- 14 The operator shall account for revenue and costs relating to construction or upgrade services in accordance with IAS 11.

*Consideration given by the grantor to the operator*

- 15 If the operator provides construction or upgrade services the consideration received or receivable by the operator shall be recognised at its fair value. The consideration may be rights to:
- (a) a financial asset, or
  - (b) an intangible asset.
- 16 The operator shall recognise a financial asset to the extent that it has an unconditional contractual right to receive cash or another financial asset from or at the direction of the grantor for the construction services; the grantor has little, if any, discretion to avoid payment, usually because the agreement is enforceable by law. The operator has an unconditional right to receive cash if the grantor contractually guarantees to pay the operator (a) specified or determinable amounts or (b) the shortfall, if any, between amounts received from users of the public service and specified or determinable amounts, even if payment is contingent on the operator ensuring that the infrastructure meets specified quality or efficiency requirements.
- 17 The operator shall recognise an intangible asset to the extent that it receives a right (a licence) to charge users of the public service. A right to charge users of the public service is not an unconditional right to receive cash because the amounts are contingent on the extent that the public uses the service.
- 18 If the operator is paid for the construction services partly by a financial asset and partly by an intangible asset it is necessary to account separately for each component of the operator's consideration. The consideration received or receivable for both components shall be recognised initially at the fair value of the consideration received or receivable.
- 19 The nature of the consideration given by the grantor to the operator shall be determined by reference to the contract terms and, when it exists, relevant contract law.

**Operation services**

- 20 The operator shall account for revenue and costs relating to operation services in accordance with IAS 18.

*Contractual obligations to restore the infrastructure to a specified level of serviceability*

- 21 The operator may have contractual obligations it must fulfil as a condition of its licence (a) to maintain the infrastructure to a specified level of serviceability or (b) to restore the infrastructure to a specified condition before it is handed over to the grantor at the end of the service arrangement. These contractual obligations to maintain or restore infrastructure, except for any upgrade element (see paragraph 14), shall be recognised and measured in accordance with IAS 37, i.e. at the best estimate of the expenditure that would be required to settle the present obligation at the balance sheet date.

**Borrowing costs incurred by the operator**

- 22 In accordance with IAS 23, borrowing costs attributable to the arrangement shall be recognised as an expense in the period in which they are incurred unless the operator has a contractual right to receive an intangible asset (a right to charge users of the public service). In this case borrowing costs attributable to the arrangement shall be capitalised during the construction phase of the arrangement in accordance with that Standard.

**Financial asset**

- 23 IASs 32 and 39 and IFRS 7 apply to the financial asset recognised under paragraphs 16 and 18.
- 24 The amount due from or at the direction of the grantor is accounted for in accordance with IAS 39 as:
- (a) a loan or receivable;
  - (b) an available-for-sale financial asset; or
  - (c) if so designated upon initial recognition, a financial asset at fair value through profit or loss, if the conditions for that classification are met.
- 25 If the amount due from the grantor is accounted for either as a loan or receivable or as an available-for-sale financial asset, IAS 39 requires interest calculated using the effective interest method to be recognised in profit or loss.

**Intangible asset**

- 26 IAS 38 applies to the intangible asset recognised in accordance with paragraphs 17 and 18. Paragraphs 45–47 of IAS 38 provide guidance on measuring intangible assets acquired in exchange for a non-monetary asset or assets or a combination of monetary and non-monetary assets.

**Items provided to the operator by the grantor**

- 27 In accordance with paragraph 11, infrastructure items to which the operator is given access by the grantor for the purposes of the service arrangement are not recognised as property, plant and equipment of the operator. The grantor may also provide other items to the operator that the operator can keep or deal with as it wishes. If such assets form part of the consideration payable by the grantor for the services, they are not government grants as defined in IAS 20. They are recognised as assets of the operator, measured at fair value on initial recognition. The operator shall recognise a liability in respect of unfulfilled obligations it has assumed in exchange for the assets.

**EFFECTIVE DATE**

- 28 An entity shall apply this Interpretation for annual periods beginning on or after 1 January 2008. Earlier application is permitted. If an entity applies this Interpretation for a period beginning before 1 January 2008, it shall disclose that fact.

**TRANSITION**

- 29 Subject to paragraph 30, changes in accounting policies are accounted for in accordance with IAS 8, i.e. retrospectively.
- 30 If, for any particular service arrangement, it is impracticable for an operator to apply this Interpretation retrospectively at the start of the earliest period presented, it shall:
- (a) recognise financial assets and intangible assets that existed at the start of the earliest period presented;
  - (b) use the previous carrying amounts of those financial and intangible assets (however previously classified) as their carrying amounts as at that date; and
  - (c) test financial and intangible assets recognised at that date for impairment, unless this is not practicable, in which case the amounts shall be tested for impairment as at the start of the current period.

*Appendix A***APPLICATION GUIDANCE**

*This appendix is an integral part of the Interpretation.*

**SCOPE (paragraph 5)**

- AG1 Paragraph 5 of this Interpretation specifies that infrastructure is within the scope of the Interpretation when the following conditions apply:
- (a) the grantor controls or regulates what services the operator must provide with the infrastructure, to whom it must provide them, and at what price; and

- (b) the grantor controls — through ownership, beneficial entitlement or otherwise — any significant residual interest in the infrastructure at the end of the term of the arrangement.
- AG2 The control or regulation referred to in condition (a) could be by contract or otherwise (such as through a regulator), and includes circumstances in which the grantor buys all of the output as well as those in which some or all of the output is bought by other users. In applying this condition, the grantor and any related parties shall be considered together. If the grantor is a public sector entity, the public sector as a whole, together with any regulators acting in the public interest, shall be regarded as related to the grantor for the purposes of this Interpretation.
- AG3 For the purpose of condition (a), the grantor does not need to have complete control of the price: it is sufficient for the price to be regulated by the grantor, contract or regulator, for example by a capping mechanism. However, the condition shall be applied to the substance of the agreement. Non-substantive features, such as a cap that will apply only in remote circumstances, shall be ignored. Conversely, if for example, a contract purports to give the operator freedom to set prices, but any excess profit is returned to the grantor, the operator's return is capped and the price element of the control test is met.
- AG4 For the purpose of condition (b), the grantor's control over any significant residual interest should both restrict the operator's practical ability to sell or pledge the infrastructure and give the grantor a continuing right of use throughout the period of the arrangement. The residual interest in the infrastructure is the estimated current value of the infrastructure as if it were already of the age and in the condition expected at the end of the period of the arrangement.
- AG5 Control should be distinguished from management. If the grantor retains both the degree of control described in paragraph 5(a) and any significant residual interest in the infrastructure, the operator is only managing the infrastructure on the grantor's behalf — even though, in many cases, it may have wide managerial discretion.
- AG6 Conditions (a) and (b) together identify when the infrastructure, including any replacements required (see paragraph 21), is controlled by the grantor for the whole of its economic life. For example, if the operator has to replace part of an item of infrastructure during the period of the arrangement (e.g. the top layer of a road or the roof of a building), the item of infrastructure shall be considered as a whole. Thus condition (b) is met for the whole of the infrastructure, including the part that is replaced, if the grantor controls any significant residual interest in the final replacement of that part.
- AG7 Sometimes the use of infrastructure is partly regulated in the manner described in paragraph 5(a) and partly unregulated. However, these arrangements take a variety of forms:
- (a) any infrastructure that is physically separable and capable of being operated independently and meets the definition of a cash-generating unit as defined in IAS 36 shall be analysed separately if it is used wholly for unregulated purposes. For example, this might apply to a private wing of a hospital, where the remainder of the hospital is used by the grantor to treat public patients.
  - (b) when purely ancillary activities (such as a hospital shop) are unregulated, the control tests shall be applied as if those services did not exist, because in cases in which the grantor controls the services in the manner described in paragraph 5, the existence of ancillary activities does not detract from the grantor's control of the infrastructure.
- AG8 The operator may have a right to use the separable infrastructure described in paragraph AG7(a), or the facilities used to provide ancillary unregulated services described in paragraph AG7(b). In either case, there may in substance be a lease from the grantor to the operator; if so, it shall be accounted for in accordance with IAS 17.

#### Appendix B

##### AMENDMENTS TO IFRS 1 AND TO OTHER INTERPRETATIONS

*The amendments in this appendix shall be applied for annual periods beginning on or after 1 January 2008. If an entity applies this Interpretation for an earlier period, these amendments shall be applied for that earlier period.*

- B1 IFRS 1 *First-time Adoption of International Financial Reporting Standards* is amended as described below. New text is underlined and deleted text struck through.

Paragraph 9 is amended as follows:

9 The transitional provisions in other IFRSs apply to changes in accounting policies made by an entity that already uses IFRSs; they do not apply to a *first-time adopter's* transition to IFRSs, except as specified in paragraphs 25D, 25H, 34A and 34B.

In paragraph 12(a), the reference to paragraphs 13–25G is changed to 13–25H.

In paragraph 13, subparagraphs (k) and (l) are amended, and subparagraph (m) is inserted, as follows:

- (k) leases (paragraph 25F); ~~and~~
- (l) fair value measurement of financial assets or financial liabilities at initial recognition (paragraph 25G); and
- (m) a financial asset or an intangible asset accounted for in accordance with IFRIC 12 *Service Concession Arrangements* (paragraph 25H).

After paragraph 25G, a new heading and paragraph 25H are inserted as follows:

**Service concession arrangements**

25H A first-time adopter may apply the transitional provisions in IFRIC 12 *Service Concession Arrangements*.

- B2 IFRIC 4 *Determining whether an Arrangement Contains a Lease* is amended as described below.

Paragraph 4 is amended as follows (new text is underlined):

- 4 This Interpretation does not apply to arrangements that:
- (a) are, or contain, leases excluded from the scope of IAS 17; or
  - (b) are public-to-private service concession arrangements within the scope of IFRIC 12 *Service Concession Arrangements*.

- B3 SIC-29 *Disclosure — Service Concession Arrangements* is amended as described below (in amended paragraphs new text is underlined).

Its title is amended to *Service Concession Arrangements: Disclosures*.

In paragraphs 1–6 references to ‘Concession Operator’ are changed to ‘operator’, and references to ‘Concession Provider’ are changed to ‘grantor’.

In paragraph 6, subparagraph (d) is amended, and subparagraph (e) is inserted, as follows:

- (d) changes in the arrangement occurring during the period; and
- (e) how the service arrangement has been classified.

After paragraph 6 a new paragraph 6A is inserted, as follows:

- 6A An operator shall disclose the amount of revenue and profits or losses recognised in the period on exchanging construction services for a financial asset or an intangible asset.
-