Commission Regulation (EC) No 1164/2009 of 27 November 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 18 (Text with EEA relevance)

COMMISSION REGULATION (EC) No 1164/2009

of 27 November 2009

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(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[(1)], and in particular Article 3(1) thereof,

Whereas:

(1) By Commission Regulation (EC) No 1126/2008[(2)] certain international standards and interpretations that were in existence at 15 October 2008 were adopted.

(2) On 29 January 2009, the International Financial Reporting Interpretations Committee (IFRIC) published IFRIC Interpretation 18 *Transfers of Assets from Customers*, hereinafter 'IFRIC 18'. IFRIC 18 is an interpretation that provides clarification and guidance on the accounting for transfers of items of property, plant and equipment from customers, or cash to acquire or construct an item of property, plant and equipment.

(3) The consultation with the Technical Expert Group (TEG) of the European Financial Reporting Advisory Group (EFRAG) confirms that IFRIC 18 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[(3)], 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 18 implies, by way of consequence, amendments to International Financial Reporting Standard (IFRS) 1 in order to facilitate the first time adoption of IFRS.

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

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EC) No 1164/2009. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) 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 18 *Transfers of Assets from Customers* is inserted as set out in the Annex to this Regulation;

2. International Financial Reporting Standard (IFRS) 1 is amended as set out in the Annex to this Regulation.

Article 2

Each company shall apply IFRIC 18 and the amendments to IFRS 1, as set out in the Annex to this Regulation, at the latest, as from the commencement date of its first financial year starting after 31 October 2009.

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, 27 November 2009.

For the Commission

Charlie McCREEVY

Member of the Commission

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ANNEX

INTERNATIONAL ACCOUNTING STANDARDS

IFRIC 18	IFRIC Interpretation 18 *Transfers of Assets from Customers*

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IFRIC INTERPRETATION 18 ***Transfers of Assets from Customers***

REFERENCES

— *Framework for the Preparation and Presentation of Financial Statements*

— IFRS 1 *First-time Adoption of International Financial Reporting Standards (as revised in 2008)*

— IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*

— IAS 16 *Property, Plant and Equipment*

— IAS 18 *Revenue*

— IAS 20 *Accounting for Government Grants and Disclosure of Government Assistance*

— IFRIC 12 *Service Concession Arrangements*

BACKGROUND

1 In the utilities industry, an entity may receive from its customers items of property, plant and equipment that must be used to connect those customers to a network and provide them with ongoing access to a supply of commodities such as electricity, gas or water. Alternatively, an entity may receive cash from customers for the acquisition or construction of such items of property, plant and equipment. Typically, customers are required to pay additional amounts for the purchase of goods or services based on usage.

2 Transfers of assets from customers may also occur in industries other than utilities. For example, an entity outsourcing its information technology functions may transfer its existing items of property, plant and equipment to the outsourcing provider.

3 In some cases, the transferor of the asset may not be the entity that will eventually have ongoing access to the supply of goods or services and will be the recipient of those goods or services. However, for convenience this Interpretation refers to the entity transferring the asset as the customer.

SCOPE

4 This Interpretation applies to the accounting for transfers of items of property, plant and equipment by entities that receive such transfers from their customers.

5 Agreements within the scope of this Interpretation are agreements in which an entity receives from a customer an item of property, plant and equipment that the entity must then use either to connect the customer to a network or to provide the customer with ongoing access to a supply of goods or services, or to do both.

6 This Interpretation also applies to agreements in which an entity receives cash from a customer when that amount of cash must be used only to construct or acquire an item of property, plant and equipment and the entity must then use the item of property, plant and equipment

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either to connect the customer to a network or to provide the customer with ongoing access to a supply of goods or services, or to do both.

7 This Interpretation does not apply to agreements in which the transfer is either a government grant as defined in IAS 20 or infrastructure used in a service concession arrangement that is within the scope of IFRIC 12.

ISSUES

8 The Interpretation addresses the following issues:

(a) Is the definition of an asset met?

(b) If the definition of an asset is met, how should the transferred item of property, plant and equipment be measured on initial recognition?

(c) If the item of property, plant and equipment is measured at fair value on initial recognition, how should the resulting credit be accounted for?

(d) How should the entity account for a transfer of cash from its customer?

CONSENSUS

Is the definition of an asset met?

9 When an entity receives from a customer a transfer of an item of property, plant and equipment, it shall assess whether the transferred item meets the definition of an asset set out in the *Framework*. Paragraph 49(a) of the *Framework* states that 'an asset is a resource controlled by the entity as a result of past events and from which future economic benefits are expected to flow to the entity.' In most circumstances, the entity obtains the right of ownership of the transferred item of property, plant and equipment. However, in determining whether an asset exists, the right of ownership is not essential. Therefore, if the customer continues to control the transferred item, the asset definition would not be met despite a transfer of ownership.

10 An entity that controls an asset can generally deal with that asset as it pleases. For example, the entity can exchange that asset for other assets, employ it to produce goods or services, charge a price for others to use it, use it to settle liabilities, hold it, or distribute it to owners. The entity that receives from a customer a transfer of an item of property, plant and equipment shall consider all relevant facts and circumstances when assessing control of the transferred item. For example, although the entity must use the transferred item of property, plant and equipment to provide one or more services to the customer, it may have the ability to decide how the transferred item of property, plant and equipment is operated and maintained and when it is replaced. In this case, the entity would normally conclude that it controls the transferred item of property, plant and equipment.

How should the transferred item of property, plant and equipment be measured on initial recognition?

11 If the entity concludes that the definition of an asset is met, it shall recognise the transferred asset as an item of property, plant and equipment in accordance with paragraph 7 of IAS 16 and measure its cost on initial recognition at its fair value in accordance with paragraph 24 of that Standard.

How should the credit be accounted for?

12 The following discussion assumes that the entity receiving an item of property, plant and equipment has concluded that the transferred item should be recognised and measured in accordance with paragraphs 9–11.

13 Paragraph 12 of IAS 18 states that 'When goods are sold or services are rendered in exchange for dissimilar goods or services, the exchange is regarded as a transaction