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)

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[(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 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)

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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 12 implies, by way of consequence, amendments to International Reporting Financial Standard (IFRS) 1, IFRIC 4 and Standing Interpretation 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.

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

IFRIC 12	IFRIC Interpretation 12 *Service Concessions Arrangements*

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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.

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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

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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