

COMMISSION REGULATION (EC) No 1751/2005

of 25 October 2005

amending Regulation (EC) No 1725/2003 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council, as regards IFRS 1, IAS 39 and SIC 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 1725/2003 ⁽²⁾ certain international standards and interpretations that were extant at 14 September 2002 were adopted, including interpretation of the Standing Interpretations Committee (SIC) 12 *Consolidation — Special purpose entities*.

(2) On 17 December 2003 the International Accounting Standard Board (IASB) published revised International Accounting Standard (IAS) 39 *Financial Instruments: Recognition and Measurement*. IAS 39 establishes mainly basic principles for recognising and measuring financial assets and financial liabilities and was adopted by the European Commission by Commission Regulation (EC) No 2086/2004 ⁽³⁾ as of 19 November 2004, with the exception of certain provisions on the use of the full fair value option and on hedge accounting.

(3) On 17 December 2004, the IASB published amendment to IAS 39 *Financial Instruments: Recognition and Measurement — Transition and Initial Recognition of Financial Assets and Financial Liabilities* as part of the IASB's initiative to facilitate the changeover to IAS/IFRS for European companies, especially these registered with the American Securities and Exchange Commission (SEC).

(4) On 11 November 2004, the International Financial Reporting Interpretations Committee (IFRIC) issued amendment to IFRIC Interpretation SIC 12 *Scope of SIC 12: Consolidation — Special Purpose Entities*. The Amendment deals with the current scope exclusion in SIC 12 for post-employment benefit plans and equity compensation plans (SIC-12.6). The purpose of the

change in scope is to ensure consistency with the requirements of IAS 19 *Employee benefits* and to introduce consequential changes required by the recent adoption of IFRS 2 *Share-based Payment* ⁽⁴⁾.

(5) The Commission has concluded that the amended standard and the amended interpretation meet the criteria set out in Article 3(2) of Regulation (EC) No 1606/2002. The consultation with technical experts in the field also support that both amendments meet the technical criteria for adoption.

(6) The adoption of the amendments to IAS 39 implies, by way of consequence, amendments to IFRS 1 *First-time Adoption of International Financial Reporting Standards* in order to ensure consistency between international accounting standards.

(7) Regulation (EC) No 1725/2003 should therefore be amended accordingly.

(8) The amendments should exceptionally take effect for company's financial year starting on or after 1 January 2005, i.e. from a point in time before the publication of this regulation. The retrospective application is exceptionally justified to facilitate for first time adopters the preparation of accounts in accordance with IAS/IFRS.

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex to regulation (EC) No 1725/2003 is amended as follows:

1. The text of the Amendments to International Accounting Standard (IAS) 39 *Financial Instruments: Recognition and Measurement — Transition and Initial Recognition of Financial Assets and Financial Liabilities* is inserted as set out in the Annex to this Regulation.

⁽¹⁾ OJ L 243, 11.9.2003, p. 1.

⁽²⁾ OJ L 261, 13.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 1073/2005 (OJ L 175, 8.7.2005, p. 3).

⁽³⁾ OJ L 363, 9.12.2004, p. 1.

⁽⁴⁾ OJ L 41, 11.2.2005, p. 1.

2. The text of the IFRIC Amendment to SIC 12 *Scope of SIC 12; Consolidation — Special Purpose Entities* is inserted as set out in the Annex to this Regulation.
3. The adoption of the amendments to IAS 39 implies, by way of consequence, amendments to IFRS 1 *First-time Adoption of International Financial Reporting Standards* in order to ensure consistency between international accounting standards.

Article 2

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

It shall apply to each financial year of a company starting on or after 1 January 2005.

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

Done at Brussels, 25 October 2005.

For the Commission
Charlie McCREEVY
Member of the Commission

ANNEX

INTERNATIONAL FINANCIAL REPORTING STANDARDS

IAS 39	Amendments to International Accounting Standard (IAS) 39 <i>Financial Instruments: Recognition and Measurement — Transition and Initial Recognition of Financial Assets and Financial Liabilities</i>
SIC 12	IFRIC Amendment to SIC 12 <i>Scope of SIC 12; Consolidation — Special Purpose Entities</i>

Amendments to IAS 39 *Financial Instruments: Recognition and Measurement*

In the Standard, paragraph 107A is added.

EFFECTIVE DATE AND TRANSITION

107A. Notwithstanding paragraph 104, an entity may apply the requirements in the last sentence of paragraph AG76, and paragraph AG76A, in either of the following ways:

- (a) prospectively to transactions entered into after 25 October 2002; or
- (b) prospectively to transactions entered into after 1 January 2004.

In Appendix A, Application Guidance, paragraph AG76A is added.

Application Guidance**Measurement (paragraphs 43 to 70)****No Active Market: Valuation Technique**

...

AG76A. The subsequent measurement of the financial asset or financial liability and the subsequent recognition of gains and losses shall be consistent with the requirements of this Standard. The application of paragraph AG76 may result in no gain or loss being recognised on the initial recognition of a financial asset or financial liability. In such a case, IAS 39 requires that a gain or loss shall be recognised after initial recognition only to the extent that it arises from a change in a factor (including time) that market participants would consider in setting a price.

Appendix

Amendments to IFRS 1

The amendments in this appendix shall be applied for annual periods beginning on or after 1 January 2005. If an entity applies IFRS 1 for an earlier period, these amendments shall be applied for that earlier period.

A1. IFRS 1 *First-time Adoption of International Financial Reporting Standards* is amended as described below.

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

- (j) decommissioning liabilities included in the cost of property, plant and equipment (paragraph 25E);
- (k) leases (paragraph 25F); and
- (l) fair value measurement of financial assets or financial liabilities at initial recognition (paragraph 25G).

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

Fair value measurement of financial assets or financial liabilities

25G Notwithstanding the requirements of paragraphs 7 and 9, an entity may apply the requirements in the last sentence of IAS 39 paragraph AG76, and paragraph AG76A, in either of the following ways:

- (a) prospectively to transactions entered into after 25 October 2002; or
 - (b) prospectively to transactions entered into after 1 January 2004.
-

International Financial Reporting Interpretations Committee**IFRIC***IFRIC AMENDMENT TO SIC-12***Scope of SIC-12*****Consolidation — Special Purpose Entities***

REFERENCES

IAS 19 *Employee Benefits*
IAS 32 *Financial Instruments: Disclosure and Presentation*
IFRS 2 *Share-based Payment*
SIC-12 *Consolidation — Special Purpose Entities*

BACKGROUND

1. Until this Amendment becomes effective, SIC-12 excludes from its scope post-employment benefit plans and equity compensation plans (SIC-12.6). Until IFRS 2 becomes effective, such plans are within the scope of IAS 19 (as amended in 2002).
2. IFRS 2 is effective for annual periods beginning on or after 1 January 2005. IFRS 2 will amend IAS 19 by:
 - (a) removing from its scope employee benefits to which IFRS 2 applies, and
 - (b) removing all references to equity compensation benefits and equity compensation plans.
3. Furthermore, IAS 32 requires treasury shares to be deducted from equity. When IFRS 2 becomes effective, it will amend IAS 32 to state that paragraphs 33 and 34 of IAS 32 (relating to treasury shares) shall be applied to treasury shares purchased, sold, issued or cancelled in connection with employee share option plans, employee share purchase plans, and all other share-based payment arrangements.

ISSUES

4. The first matter addressed by this Amendment is the inclusion of equity compensation plans within the scope of SIC-12.
5. The second matter addressed by this Amendment is to exclude from the scope of SIC-12 other long-term employee benefit plans. Until the Amendment becomes effective, SIC-12 does not exclude other long-term employee benefit plans from its scope. However, IAS 19 requires those plans to be accounted for in a manner similar to the accounting for post-employment benefit plans.

AMENDMENT

6. Paragraph 6 of SIC-12 is amended as follows.

This Interpretation does not apply to post-employment benefit plans or other long-term employee benefit plans to which IAS 19 applies.

EFFECTIVE DATE

7. An entity shall apply this Amendment for annual periods beginning on or after 1 January 2005. If an entity applies IFRS 2 for an earlier period, this amendment shall be applied for that earlier period.
