COMMISSION REGULATION (EC) No 1910/2005

of 8 November 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 International Financial Reporting Standard 1 and 6, IASs 1, 16, 19, 24, 38, and 39, International Financial Reporting Interpretations Committee's Interpretations 4 and 5

(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 International Accounting Standard (IAS) 19 *Employee benefits*.

(2) On 9 December 2004, the International Accounting Standards Board (IASB) published *International Financial Reporting Standard (IFRS) 6 Exploration for and evaluation of mineral resources*, hereinafter 'IFRS 6', as an interim solution to enable entities within this sector to comply with IFRSs without the need for major changes to accounting practice. IFRS 6 permits entities that incur exploration and evaluation expenditure exemptions from some of the requirements of other IFRSs. In specified circumstances, such entities are allowed to continue with their existing accounting treatment for exploration and evaluation expenditure. IFRS 6 includes further guidance on the impairment indicators for exploration and evaluation assets and the impairment testing of such assets.

(3) On 16 December 2004 the IASB issued an amendment to IAS 19 *Employee benefits*. It introduces a further option regarding the recognition of actuarial gains and losses for defined benefit pension plans. It now allows actuarial gains and losses to be recognised, in full, in a statement of recognised income and expense outside the income statement, that is, actuarial gains and losses can be recognised directly in equity. The amendment also specifies how group entities should account for defined benefit group plans in their separate financial statements and requires additional disclosures.

(4) On 2 December 2004 the International Financial Reporting Interpretations Committee (IFRIC) published IFRIC Interpretation 4 *Determining whether an arrangement contains a lease*, hereinafter 'IFRIC 4'. IFRIC 4 sets out criteria for determining whether an arrangement is, or contains, a lease, for example some take-or-pay contracts. IFRIC 4 clarifies under which circumstances these arrangements that do not take the legal form of a lease should, nonetheless, be accounted for in accordance with IAS 17 *Leases*.

(5) On 16 December 2004 the International Financial Reporting Interpretations Committee (IFRIC) published IFRIC Interpretation 5 *Rights to interests arising from decommissioning, restoration and environmental funds*, hereinafter 'IFRIC 5'. IFRIC 5 sets out how a contributor should account for its interest in a fund and how a contributor should account for additional contributions.

(6) The consultation with technical experts in the field confirm that IFRS 6, IAS 19, and IFRIC 4 and 5 meet the technical criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002.

(7) The adoption of IFRS 6, IAS 19, IFRIC 4 and 5 implies, by way of consequence, amendments to IFRS 1 *First-time Adoption of International Financial Reporting Standards*, IAS 1 *Presentation of Financial Statements*, IAS 16 *Property, Plant and Equipment*, IAS 24 *Related Party Disclosures*, IAS 38 *Intangible Assets* and IAS 39 *Financial Instruments: Recognition and Measurement* in order to ensure consistency between international accounting standards.

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

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

[1] OJ L 243, 11.9.2002, p. 1.
[2] OJ L 261, 13.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 1751/2005 (OJ L 282, 25.10.2005, p. 3).

HAS ADOPTED THIS REGULATION:

Article 1

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

1. International Financial Reporting Standard (IFRS) 6 *Exploration for and evaluation of mineral resources* is inserted as set out in the Annex to this Regulation;

2. IAS 19 *Employee benefits* is amended in accordance with Amendment to IAS as set out in the Annex to this Regulation;

3. International Financial Reporting Interpretations Committee's Interpretation (IFRIC Interpretation) 4 *Determining whether an arrangement contains a lease* is inserted as set out in the Annex to this Regulation;

4. IFRIC Interpretation 5 *Rights to interests arising from decommissioning, restoration and environmental funds* is inserted as set out in the Annex to this Regulation;

5. International Financial Reporting Standard (IFRS) 1, IAS 16 and IAS 38 are amended in accordance with Appendix B of IFRS 6 as set out in the Annex to this Regulation;

6. IFRS 1, IAS 1 and IAS 24 are amended in accordance with Appendix F of Amendment to IAS 19 as set out in the Annex to this Regulation;

7. IFRS 1 is amended in accordance with the Appendix of IFRIC 4 as set out in the Annex to this Regulation;

8. IAS 39 is amended in accordance with the Appendix of IFRIC 5 as set out in the Annex to this Regulation.

Article 2

Each company shall apply the standards and interpretations set out in the Annex as from the commencement date of its 2006 financial year, at the latest.

Article 3

This Regulation shall enter into force on the third day following 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, 8 November 2005.

For the Commission

Charlie McCREEVY

Member of the Commission

ANNEX

INTERNATIONAL FINANCIAL REPORTING STATNDARDS

IFRS 6	International Financial Reporting Standard (IFRS) 6 *Exploration for and evaluation of mineral resources*
IAS 19	Amendment to IAS 19 *Employee benefits*
IFRIC 4	IFRIC Interpretation 4 *Determining whether an arrangement contains a lease*
IFRIC 5	IFRIC Interpretation 5 *Rights to interests arising from decommissioning, restoration and environmental funds*

IFRIC INTERPRETATION 5 (incorporating an Amendment to IAS 39)

Rights to Interests arising from decommissioning, restoration and environmental rehabilitation funds

REFERENCES

IAS 8	*Accounting policies, changes in accounting estimates and errors*
IAS 27	*Consolidated and separate financial statements*
IAS 28	*Investments in associates*
IAS 31	*Interests in joint ventures*
IAS 37	*Provisions, contingent liabilities and contingent assets*
IAS 39	*Financial instruments: recognition and measurement* (as revised in 2003)
SIC-12	*Consolidation — Special purpose entities* (as revised in 2004)

BACKGROUND

1. The purpose of decommissioning, restoration and environmental rehabilitation funds, hereafter referred to as 'decommissioning funds' or 'funds', is to segregate assets to fund some or all of the costs of decommissioning plant (such as a nuclear plant) or certain equipment (such as cars), or in undertaking environmental rehabilitation (such as rectifying pollution of water or restoring mined land), together referred to as 'decommissioning'.

2. Contributions to these funds may be voluntary or required by regulation or law. The funds may have one of the following structures:

   (a) funds that are established by a single contributor to fund its own decommissioning obligations, whether for a particular site, or for a number of geographically dispersed sites;

   (b) funds that are established with multiple contributors to fund their individual or joint decommissioning obligations, when contributors are entitled to reimbursement for decommissioning expenses to the extent of their contributions plus any actual earnings on those contributions less their share of the costs of administering the fund. Contributors may have an obligation to make additional contributions, for example, in the event of the bankruptcy of another contributor;

   (c) funds that are established with multiple contributors to fund their individual or joint decommissioning obligations when the required level of contributions is based on the current activity of a contributor-and the benefit obtained by that contributor is based on its past activity. In such cases there is a potential mismatch in the amount of contributions made by a contributor (based on current activity) and the value realisable from the fund (based on past activity).

3. Such funds generally have the following features:

   (a) the fund is separately administered by independent trustees;

   (b) entities (contributors) make contributions to the fund, which are invested in a range of assets that may include both debt and equity investments, and are available to help pay the contributors' decommissioning costs. The trustees determine how contributions are invested, within the constraints set by the fund's governing documents and any applicable legislation or other regulations;

(c) the contributors retain the obligation to pay decommissioning costs. However, contributors are able to obtain reimbursement of decommissioning costs from the fund up to the lower of the decommissioning costs incurred and the contributor's share of assets of the fund;

(d) the contributors may have restricted access or no access to any surplus of assets of the fund over those used to meet eligible decommissioning costs.

SCOPE

4. This Interpretation applies to accounting in the financial statements of a contributor for interests arising from decommissioning funds that have both of the following features:

(a) the assets are administered separately (either by being held in a separate legal entity or as segregated assets within another entity); and

(b) a contributor's right to access the assets is restricted.

5. A residual interest in a fund that extends beyond a right to reimbursement, such as a contractual right to distributions once all the decommissioning has been completed or on winding up the fund, may be an equity instrument within the scope of IAS 39 and is not within the scope of this Interpretation.

ISSUES

6. The issues addressed in this interpretation are:

(a) how should a contributor account for its interest in a fund, and

(b) when a contributor has an obligation to make additional contributions, for example, in the event of the bankruptcy of another contributor, how should that obligation be accounted for?

CONSENSUS

Accounting for an interest in a fund

7. The contributor shall recognise its obligation to pay decommissioning costs as a liability and recognise its interest in the fund separately unless the contributor is not liable to pay decommissioning costs even if the fund fails to pay.

8. The contributor shall determine whether it has control, joint control or significant influence over the fund by reference to IAS 27, IAS 28, IAS 31 and SIC-12. If it does, the contributor shall account for its interest in the fund in accordance with those Standards.

9. If a contributor does not have control, joint control or significant influence over the fund, the contributor shall recognise the right to receive reimbursement from the fund as a reimbursement in accordance with IAS 37. This reimbursement shall be measured at the lower of:

(a) the amount of the decommissioning obligation recognised; and

(b) the contributor's share of the fair value of the net assets of the fund attributable to contributors.

Changes in the carrying value of the right to receive reimbursement other than contributions to and payments from the fund shall be recognised in profit or loss in the period in which these changes occur.

Accounting for obligations to make additional contributions

10. When a contributor has an obligation to make potential additional contributions, for example, in the event of the bankruptcy of another contributor or if the value of the investment assets held by the fund decreases to an extent that they are insufficient to fulfil the fund's reimbursement obligations, this obligation is a contingent liability that is within the scope of IAS 37. The contributor shall recognise a liability only if it is probable that additional contributions will be made.

Disclosure

11. A contributor shall disclose the nature of its interest in a fund and any restrictions on access to the assets in the fund.

12. When a contributor has an obligation to make potential additional contributions that is not recognised as a liability (see paragraph 10), it shall make the disclosures required by paragraph 86 of IAS 37.

13. When a contributor accounts for its interest in the fund in accordance with paragraph 9, it shall make the disclosures required by paragraph 85(c) of IAS 37.

EFFECTIVE DATE

14. An entity shall apply this Interpretation for annual periods beginning on or after 1 January 2006. Earlier application is encouraged. If an entity applies this Interpretation to a period beginning before 1 January 2006, it shall disclose that fact.

TRANSITION

15. Changes in accounting policies shall be accounted for in accordance with the requirements of IAS 8.

Appendix

Amendment to IAS 39 *Financial instruments: recognition and measurement*

The amendment in this appendix shall be applied for annual periods beginning on or after 1 January 2006. If an entity applies this Interpretation for an earlier period, the amendment shall be applied for that earlier period.

A1. In paragraph 2 of IAS 39 *Financial instruments: Recognition and measurement* subparagraph 2(j) shall be added as follows:

2. This Standard shall be applied by all entities to all types of financial instruments except:

…

(j) rights to payments to reimburse the entity for expenditure it is required to make to settle a liability that it recognises as a provision in accordance with IAS 37* Provisions, Contingent Liabilities and Contingent Assets*, or for which, in an earlier period, it recognised a provision in accordance with IAS 37.