COMMISSION REGULATION (EC) No 1329/2006

of 8 September 2006

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 the International Financial Reporting Interpretations Committee's (IFRIC's) Interpretations 8 and 9

(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.

(2) On 12 January 2006, the International Financial Reporting Interpretations Committee (IFRIC) published IFRIC Interpretation 8 *Scope of IFRS 2*. IFRIC 8 clarifies that the accounting standard International Financial Reporting Standard (IFRS) 2 *Share-based Payment* applies to arrangements where an entity makes share-based payments for apparently nil or inadequate consideration.

(3) On 1 March 2006, IFRIC published IFRIC Interpretation 9 *Reassessment of Embedded Derivatives*. IFRIC 9 clarifies certain aspects of the treatment of embedded derivatives under IAS 39 *Financial Instruments: Recognition and Measurement*.

(4) The consultation with the Technical Expert Group (TEG) of the European Financial Reporting Advisory Group (EFRAG) confirms that IFRIC 8 and IFRIC 9 meet the technical criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002.

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

(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 1725/2003 is amended as follows:

1. The International Financial Reporting Interpretations Committee's (IFRIC's) Interpretation 8 Scope of IFRS 2 is inserted as set out in the Annex to this Regulation;

2. IFRIC's Interpretation 9 Reassessment of Embedded Derivatives is inserted as set out in the Annex to this Regulation.

Article 2

(1) Each company shall apply IFRIC 8 as set out in the Annex to this Regulation as from the commencement date of its 2006 financial year at the latest, except for companies with a January, February, March or April commencement date which shall apply IFRIC 8 as from the commencement date of the 2007 financial year at the latest.

(2) Each company shall apply IFRIC 9 as set out in the Annex to this Regulation as from the commencement date of its 2006 financial year at the latest, except for companies with a January, February, March, April or May commencement date which shall apply IFRIC 9 as from the commencement date of the 2007 financial year at the latest.

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[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 708/2006 (OJ L 122, 9.5.2006, p. 19).

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 September 2006.

For the Commission

Charlie McCREEVY

Member of the Commission

ANNEX

INTERNATIONAL FINANCIAL REPORTING STANDARDS

IFRIC 8	IFRIC Interpretation 8 *Scope of IFRS 2*
IFRIC 9	IFRIC Interpretation 9 *Reassessment of Embedded Derivatives*

IFRIC INTERPRETATION 8

Scope of IFRS 2

References

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

— IFRS 2 *Share-based Payment*

Background

1. IFRS 2 applies to share-based payment transactions in which the entity receives or acquires goods or services. 'Goods' includes inventories, consumables, property, plant and equipment, intangible assets and other non-financial assets (IFRS 2, paragraph 5). Consequently, except for particular transactions excluded from its scope, IFRS 2 applies to all transactions in which the entity receives non-financial assets or services as consideration for the issue of equity instruments of the entity. IFRS 2 also applies to transactions in which the entity incurs liabilities, in respect of goods or services received, that are based on the price (or value) of the entity's shares or other equity instruments of the entity.

2. In some cases, however, it might be difficult to demonstrate that goods or services have been (or will be) received. For example, an entity may grant shares to a charitable organisation for nil consideration. It is usually not possible to identify the specific goods or services received in return for such a transaction. A similar situation might arise in transactions with other parties.

3. IFRS 2 requires transactions in which share-based payments are made to employees to be measured by reference to the fair value of the share-based payments at grant date (IFRS 2, paragraph 11) (*). Hence, the entity is not required to measure directly the fair value of the employee services received.

4. For transactions in which share-based payments are made to parties other than employees, IFRS 2 specifies a rebuttable presumption that the fair value of the goods or services received can be estimated reliably. In these situations, IFRS 2 requires the transaction to be measured at the fair value of the goods or services at the date the entity obtains the goods or the counterparty renders service (IFRS 2, paragraph 13). Hence, there is an underlying presumption that the entity is able to identify the goods or services received from parties other than employees. This raises the question of whether the IFRS applies in the absence of identifiable goods or services. That in turn raises a further question: if the entity has made a share-based payment and the identifiable consideration received (if any) appears to be less than the fair value of the share-based payment, does this situation indicate that goods or services have been received, even though they are not specifically identified, and therefore that IFRS 2 applies?

5. It should be noted that the phrase 'the fair value of the share-based payment' refers to the fair value of the particular share-based payment concerned. For example, an entity might be required by government legislation to issue some portion of its shares to nationals of a particular country, which may be transferred only to other nationals of that country. Such a transfer restriction may affect the fair value of the shares concerned, and therefore those shares may have a fair value that is less than the fair value of otherwise identical shares that do not carry such restrictions. In this situation, if the question in paragraph 4 were to arise in the context of the restricted shares, the phrase 'the fair value of the share-based payment' would refer to the fair value of the restricted shares, not the fair value of other, unrestricted shares.

Scope

6. IFRS 2 applies to transactions in which an entity or an entity's shareholders have granted equity instruments (**) or incurred a liability to transfer cash or other assets for amounts that are based on the price (or value) of the entity's shares or other equity instruments of the entity. This Interpretation applies to such transactions when the identifiable consideration received (or to be received) by the entity, including cash and the fair value of identifiable non-cash consideration (if any), appears to be less than the fair value of the equity instruments granted or liability incurred. However, this Interpretation does not apply to transactions excluded from the scope of IFRS 2 in accordance with paragraphs 3 to 6 of that IFRS.

Issue

7. The issue addressed in the Interpretation is whether IFRS 2 applies to transactions in which the entity cannot identify specifically some or all of the goods or services received.

(*) Under IFRS 2, all references to employees include others providing similar services.
(**) These include equity instruments of the entity, the entity's parent and other entities in the same group as the entity.

Consensus

8. IFRS 2 applies to particular transactions in which goods or services are received, such as transactions in which an entity receives goods or services as consideration for equity instruments of the entity. This includes transactions in which the entity cannot identify specifically some or all of the goods or services received.

9. In the absence of specifically identifiable goods or services, other circumstances may indicate that goods or services have been (or will be) received, in which case IFRS 2 applies. In particular, if the identifiable consideration received (if any) appears to be less than the fair value of the equity instruments granted or liability incurred, typically this circumstance indicates that other consideration (i.e. unidentifiable goods or services) has been (or will be) received.

10. The entity shall measure the identifiable goods or services received in accordance with IFRS 2.

11. The entity shall measure the unidentifiable goods or services received (or to be received) as the difference between the fair value of the share-based payment and the fair value of any identifiable goods or services received (or to be received).

12. The entity shall measure the unidentifiable goods or services received at the grant date. However, for cash-settled transactions, the liability shall be remeasured at each reporting date until it is settled.

Effective date

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

Transition

14. An entity shall apply this Interpretation retrospectively in accordance with the requirements of IAS 8, subject to the transitional provisions of IFRS 2.