DIRECTIVES

DIRECTIVE 2008/3/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 January 2008

amending Directive 2003/54/EC as regards the application of certain provisions to Estonia

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), Article 55 and Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) During the accession negotiations, Estonia invoked the specific characteristics of its electricity sector to request a transitional period for the application of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity [3].

(2) In Annex VI to the 2003 Act of Accession, Estonia was granted a transitional period until 31 December 2008 for the application of Article 19(2) of Directive 96/92/EC, relating to the gradual opening of the market.

(3) Declaration No 8 annexed to the Final Act to the 2003 Treaty of Accession recognised moreover that the specific situation relating to the restructuring of the oil shale sector in Estonia was going to require particular efforts until the end of 2012.

(4) Directive 96/92/EC was replaced by Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC [4], which had to be implemented by 1 July 2004 and which had the effect of speeding up the opening of the electricity market.

(5) By letter of 17 September 2003, Estonia transmitted a request aimed at not applying Article 21(1)(b) of Directive 2003/54/EC, on the opening of the market to non-household customers, until 31 December 2012. In a further letter of 5 December 2003, Estonia indicated that it was planning to achieve the complete opening of the market provided for in Article 21(1)(c) of that Directive by 31 December 2015.

(6) The request by Estonia was based on a credible restructuring plan for the oil shale sector extending until 31 December 2012.

(7) Oil shale is the only real indigenous energy resource in Estonia and national production represents almost 84 % of world production. 90 % of the electricity produced in Estonia is from this solid fuel. It is therefore of great strategic importance for security of supply in Estonia.

(8) The granting of a further derogation for the period 2009 to 2012 appeared necessary to guarantee security of investments in generating plants and security of supply in Estonia while allowing the serious environmental problems created by those plants to be resolved.

(9) On 28 June 2004 the Council adopted Directive 2004/85/EC amending Directive 2003/54/EC of the European Parliament and of the Council as regards the application of certain provisions to Estonia [5], which granted the requested derogation.

---

[1] Opinion delivered on 24 October 2007 (not yet published in the Official Journal).

[2] Opinion of the European Parliament of 29 November 2007 (not yet published in the Official Journal) and Council Decision of 17 December 2007.

[3] OJ L 27, 30.1.1997, p. 20. Directive repealed by Directive 2003/54/EC (OJ L 176, 15.7.2003, p. 37).

[4] OJ L 176, 15.7.2003, p. 37. Directive as last amended by Commission Decision 2006/653/EC (OJ L 270, 29.9.2006, p. 72).

[5] OJ L 236, 7.7.2004, p. 10.

(10) By judgment of 28 November 2006 in Case C-413/04, Parliament v. Council [1], the Court of Justice annulled Directive 2004/85/EC, in so far as it granted Estonia a derogation from the application of Article 21(1)(b) and (c) of Directive 2003/54/EC going beyond 31 December 2008 and imposed a corresponding obligation to ensure only a partial opening of the market representing 35 % of consumption on 1 January 2009 and an obligation to communicate annually the consumption thresholds extending eligibility to final customers.

(11) That partial annulment was not founded on reasons concerning the substance of Directive 2004/85/EC, but was due to the wrong choice of legal basis.

(12) Since the reasons for granting Estonia a derogation from the application of Article 21(1)(b) and (c) of Directive 2003/54/EC going beyond 31 December 2008 remain valid, that Directive should be amended accordingly, with the same wording as in Directive 2004/85/EC but on the correct legal basis,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Article 26(3) of Directive 2003/54/EC shall be replaced by the following:

'3. Estonia shall be granted a temporary derogation from the application of Article 21(1)(b) and (c) until 31 December 2012. Estonia shall take the measures necessary to ensure the opening of its electricity market. This shall be carried out gradually over the reference period with the aim of complete opening of the market by 1 January 2013. On 1 January 2009, the opening of the market shall represent at least 35 % of consumption. Estonia shall communicate annually to the Commission the consumption thresholds extending eligibility to final customers.'

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 January 2008. They shall forthwith inform the Commission thereof.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Strasbourg, 15 January 2008.

For the European Parliament	*For the Council*
The President	*The President*
H.-G. PÖTTERING	J. LENARČIČ

[1] ECR [2006] I-11221.