COUNCIL DIRECTIVE 2004/85/EC
of 28 June 2004
amending Directive 2003/54/EC of the European Parliament and of the Council as regards the
application of certain provisions to Estonia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty concerning the accession of the
Czech Republic, the Republic of Estonia, the Republic of
Cyprus, the Republic of Latvia, the Republic of Lithuania, the
Republic of Hungary, the Republic of Malta, the Republic of
Poland, the Republic of Slovenia and the Slovak Republic to the
European Union (Treaty of Accession) and in particular Article
2(3) thereof,

Having regard to the Act concerning the conditions of accession
of the Czech Republic, the Republic of Estonia, the Republic of
Cyprus, the Republic of Latvia, the Republic of Lithuania, the
Republic of Hungary, the Republic of Malta, the Republic of
Poland, the Republic of Slovenia and the Slovak Republic and
the adjustments to the Treaties on which the European Union is
founded, (Act of Accession), and in particular Article 57 thereof,

Having regard to the request of Estonia,

Having regard to the proposal from the Commission,

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 (1).

(2) In Annex VI of the 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 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 which has to be implemented by 1 July 2004 and
which has 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 is based on a credible restruc-
turing 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 will 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) The request made by Estonia should be granted and
Directive 2003/54/EC amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Article 26 of Directive 2003/54/EC, the following paragraph
shall be added:

‘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 must 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 1 July 2004. They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt these measures, they 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 that of its publication in the Official Journal of the European Union.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 28 June 2004.

For the Council

The President

M. CULLEN