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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

By 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 electricity market. Following an exchange of information, on 28 June 2004 the Council adopted Directive 2004/85/EC amending Directive 2003/54/EC as regards the application of certain provisions to Estonia, which granted the requested extended derogation until 31 December 2012.

By judgment of 26 November 2006 the Court of Justice partially annulled Directive 2004/85/EC. That partial annulment was not motivated by reasons concerning the substance of Directive 2004/85/EC, but was due to the choice of legal basis by the Council (Article 57 of the Treaty of Accession instead of Article 95 of the EC Treaty). Since the reasons for granting Estonia a derogation from the application of Article 21(1)(b) and (c) (market opening) 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 appropriate legal basis.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**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 Commission¹,

Having regard to the Opinion of the European Economic and Social Committee²,

Having consulted the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

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 electricity⁵.
- (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 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/EC⁶, which had to be

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OJ L 27, 30.1.1997, p. 20.

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OJ L 176, 15.7.2003, p. 37. Directive as amended by Directive 2004/85/EC (OJ L 236, 7.7.2004, p. 10).

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, which granted the requested derogation.
- (10) By judgment of 28 November 2006 in Case C-413/04, *Parliament/Council*⁷, 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 motivated by 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 appropriate basis,

HAVE ADOPTED THIS DIRECTIVE:

⁷ ECR [2006] I-11221.

Article 1

Article 26(3) of Directive 2003/54/EC is 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 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 2007 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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 Brussels,

For the European Parliament
The President

For the Council
The President