



Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	1994/0099(COD) Procedure completed
Contractual netting (amend. Directive 89/647/EEC)	
Subject 2.50.04 Banks and credit	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs, Citizens' Rights	FE FLORIO Luigi Andrea	26/07/1994
Council of the European Union	Council configuration	Meeting	Date
	General Affairs	1903	26/02/1996

Key events			
27/04/1994	Legislative proposal published	COM(1994)0105	Summary
06/05/1994	Committee referral announced in Parliament, 1st reading		
23/01/1995	Vote in committee, 1st reading		Summary
23/01/1995	Committee report tabled for plenary, 1st reading	A4-0009/1995	
15/02/1995	Debate in Parliament		
16/02/1995	Decision by Parliament, 1st reading	T4-0040/1995	Summary
10/05/1995	Modified legislative proposal published	COM(1995)0170	Summary
05/09/1995	Council position published	08355/2/1995	Summary
21/09/1995	Committee referral announced in Parliament, 2nd reading		
28/11/1995	Vote in committee, 2nd reading		Summary
28/11/1995	Committee recommendation tabled for plenary, 2nd reading	A4-0309/1995	
13/12/1995	Debate in Parliament		Summary
14/12/1995	Decision by Parliament, 2nd reading	T4-0616/1995	Summary

26/02/1996	Act approved by Council, 2nd reading		Summary
21/03/1996	Final act signed		
21/03/1996	End of procedure in Parliament		
03/04/1996	Final act published in Official Journal		

Technical information

Procedure reference	1994/0099(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC before Amsterdam E 057-p2
Stage reached in procedure	Procedure completed
Committee dossier	JURI/4/07032

Documentation gateway

Legislative proposal	COM(1994)0105 OJ C 142 25.05.1994, p. 0008	27/04/1994	EC	Summary
Economic and Social Committee: opinion, report	CES1001/1994 OJ C 393 31.12.1994, p. 0030	14/09/1994	ESC	Summary
Committee report tabled for plenary, 1st reading/single reading	A4-0009/1995 OJ C 056 06.03.1995, p. 0003	23/01/1995	EP	
Text adopted by Parliament, 1st reading/single reading	T4-0040/1995 OJ C 056 06.03.1995, p. 0067-0077	16/02/1995	EP	Summary
Modified legislative proposal	COM(1995)0170 OJ C 165 01.07.1995, p. 0006	10/05/1995	EC	Summary
Council position	08355/2/1995 OJ C 288 30.10.1995, p. 0030	05/09/1995	CSL	Summary
Commission communication on Council's position	SEC(1995)1431	18/09/1995	EC	Summary
Committee recommendation tabled for plenary, 2nd reading	A4-0309/1995 OJ C 017 22.01.1996, p. 0006	28/11/1995	EP	
Text adopted by Parliament, 2nd reading	T4-0616/1995 OJ C 017 22.01.1996, p. 0135-0166	14/12/1995	EP	Summary
Commission opinion on Parliament's position at 2nd reading	COM(1996)0027	29/01/1996	EC	Summary

Additional information

European Commission	EUR-Lex
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Final act

Directive 1996/10 OJ L 085 03.04.1996, p. 0017 Summary

Contractual netting (amend. Directive 89/647/EEC)

This proposal aimed to amend Annex II of Directive 89/647/EEC on a solvency ratio for credit institutions, which defined the way in which off-balance-sheet items relating to interest and exchange rates were to be treated. The aim of this was to give wider recognition to the risk-reducing effects of bilateral netting agreements. The only type of netting recognised by the current text as risk-reducing was bilateral netting for novation. The proposed amendment would enable the national supervisory authorities to recognise this quality among more types of bilateral netting and, in particular, bilateral netting for "close-out", provided that the legal validity of the netting agreement was established. The proposal gave significant consideration to the work carried out in this area at international level, by supervisory bodies, which ensured coherence with the major international prudential provisions. Since Directive 89/647/EEC was included in the annex to the EEA Agreement as a text that applied to them, the current proposal would naturally be extended to the EEA signatory countries. ?

Contractual netting (amend. Directive 89/647/EEC)

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Contractual netting (amend. Directive 89/647/EEC)

The Committee on Legal Affairs and Citizens' Rights adopted the report by Mr FLORIO on the proposal to amend Directive 89/647/EEC on novation and contractual netting. The main recommendations in the report are as follows: * the Member States should introduce the provisions needed to recognise contractual netting still not recognised as quickly as possible; * the supervisory authorities are defined more restrictively as the regulatory authorities in the Member States responsible for the credit institutions and investments firms involved in the operation. The report also gives them the task, within their discretionary powers, of simplifying the operations and verifications for which they are responsible. Finally, the report reduces the administrative burden on the credit institution to supplying the regulatory authorities with all the documentation specific to each netting agreement: self-certification of the presence of all the documents needed and the facility to consult them should suffice, according to the report, for the purposes of this guarantee; * the concept of "counterparty" is redefined in order to avoid overly restrictive interpretations: it applies both to credit institutions and to all persons legally able to conclude netting agreements; * Member States should ensure that the effects of interpretations adopted during the uniform application of agreements do not contradict the principle of free competition.?

Contractual netting (amend. Directive 89/647/EEC)

Parliament approved the Commission proposal subject to nine amendments, the purpose of which is to: - reiterate that the rules planned for recognizing netting would reduce the level of banks' compulsory cover through their own resources; - draw Member States' attention to the advisability of introducing the provisions needed to guarantee such recognition as quickly as possible; - stipulate that supervision would be carried out by the regulatory authorities in the Member States responsible for the credit institutions and investment firms involved; - extend the definition of counterparty to include all persons legally able to conclude "contractual netting" agreements under the legislation in their Member State of origin; - limit the obligation of credit institutions in contractual netting to self-certification of the presence of all the documents needed and to the facility for the regulatory authority to consult them if it so wishes; - make provision for the regulatory authorities to simplify the operations and verifications relating to the obligations made by the parties referred to in point 3 b) ii of Annex II; - stipulate that action by the competent authorities should not cause distortion of competition; The Commission accepted all the amendments.?

Contractual netting (amend. Directive 89/647/EEC)

The amended proposal incorporated the essence of the European Parliament's amendments, which aimed to: - clarify that the rules envisaged would reduce the level of banks' compulsory cover through their own resources; - call on the Member States to introduce provisions to ensure that the validity of contractual netting was legally recognised; - designate more clearly the authorities responsible for the prudential recognition of contractual netting agreements: the national authorities which were legally authorised to supervise investment firms, in accordance with a specific law or regulation; - introduce a definition of "counterparties": bilateral contractual netting agreements could be concluded not only by credit institutions, but also by all entities which were legally able to conclude such agreements; - make written and reasoned legal opinions on the validity of contractual netting agreements available to the authorities; - clarify that the action by the competent authorities when striving for a uniform assessment of the contractual netting agreements should not be responsible for distorting competition. ?

Contractual netting (amend. Directive 89/647/EEC)

The common position took over four of the nine amendment adopted by the European Parliament at first reading. It was based for the most part on the Commission's initial proposal and added certain elements aimed at clarifying the text and making it more transparent. * With regard to the preamble, the Council added two recitals which: - stated that Member States were obliged to strive for uniform assessment of contracts for novation and contractual netting agreements by their competent authorities with a view to the smooth functioning of the internal market; - stated that the calculation of add-ons should be based on effective rather than apparent notional amounts. * With regard to the provisions, the common position took account of fact that Member States could decide whether or not they recognised the contracts for novation or contractual netting agreements. * With regard to the annex, which was intended to replace Annex II of Directive 89/647/EEC, the Council made the following amendments: - definition of the term "counterparty"; - removal of the references to "aggregate books"; - legal opinions should be made available to the competent authorities but need not necessarily be forwarded to them; - reasoned legal opinions may be drawn up by

types of contractual netting; - definition of the term "walkaway clause". * The Council did not retain Parliament's amendments aimed at: - highlighting that the directive would in fact reduce the level of banks' compulsory cover through their own resources; - calling on the Member States to incorporate in their national legislation the necessary provisions to ensure the legal validity of contractual netting (Recital 5a); - including in Annex II of the directive on capital adequacy (Directive 93/6/EC) a definition of the competent authorities in cases where Annex II of Directive 89/467/EEC was applied to investment firms, in accordance with those provisions. ?

Contractual netting (amend. Directive 89/647/EEC)

The Commission felt that the text of the common position retained the key points of the initial proposal. With regard to the removal of Recital 5a (provisions necessary to ensure the legal validity of contractual netting), the Commission had decided to include the contents of this recital in the minutes of the Council's meeting in the form of a unilateral declaration. The Commission also incorporated a second unilateral declaration in the Council's minutes: this dealt with the problem of consulting the competent authorities in the context of examining cross-border contractual netting. ?

Contractual netting (amend. Directive 89/647/EEC)

The committee unanimously adopted the recommendation for second reading concerning the directive on contracts for novation and contractual netting (rapporteur: Mr Luigi Andrea FLORIO - UPE, I). The proposal aimed to amend Annex II of Directive 89/647/EEC on a solvency ratio for credit institutions and the way in which off-balance-sheet items relating to interest and exchange rates are treated. The purpose was to give wider recognition to contractual netting agreements in order to reduce the risks involved; the level of banks' compulsory cover through their own resources would be reduced. The Council incorporated three of the nine amendments put forward by Parliament at first reading in its common position of 5 September 1995. They related to: - the definition of "counterparty" in relation to contractual netting agreements; - the availability of written and reasoned legal opinions for the competent authorities; - the opportunity for the competent authorities to accept the legal opinions drawn up by types of contracts. However, the members of the committee disagreed with a key point in the common position. They regretted the fact that the Council had gone back on its initial position in the common position: the text would no longer be compulsory but would instead be optional. According to the committee, it was interesting to note that, in the new way of looking at things, both the Council and the Commission were reacting as though the text of the directive had always been optional. The committee thus approved the proposal by the rapporteur, Mr FLORIO, to reintroduce the compulsory nature of the directive. The rapporteur felt that the overall objective was to re-establish the binding and universal character of the proposal for a directive since the issue here was to ensure the uniform application of Community law. A second point of contention related to the lack of transparency in the Council's attitude. The explanatory statement to the Commission's proposal indicated that unilateral declarations of interpretation were annexed to the provisions of the Council's text. The practice of adding declarations to legislation came from the technique used in international agreements and there was no reason why it should be applied in the case of derived Community law since the Court of Justice in Luxembourg was the only body responsible for its interpretation. Indeed, Parliament had recently spoken out against the use of these declarations, which lacked any legal value and risked causing confusion, uncertainty and a lack of transparency in the Community legislative process (Resolution of 12 October 1995 on unilateral Council declarations annexed to legislative texts). Furthermore, since the codecision procedure involved legislative acts being adopted jointly by Parliament and the Council, the committee decided to ask Chairman HÄNSCH to write to the Council requesting a copy of these unilateral declarations. ?

Contractual netting (amend. Directive 89/647/EEC)

The rapporteur, Mr Florio (UPE, I), pointed out that the Council had incorporated in its common position 3 of Parliament's 9 amendments. The Committee on Legal Affairs adopted 4 new amendments tabled by the rapporteur: the most important of these was Amendment No 3, which re-established the compulsory nature of the Directive in question, while the Council had opted in its common position for an optional approach. According to Mr Florio, it would be possible to avoid the lengthy conciliation procedure if the Commission confirmed that it was prepared to take over Amendment No 3 and Parliament, in accordance with the opinion of its Committee on Legal Affairs, withdrew Amendments Nos 1, 2 and 4. Finally, the rapporteur pointed to the opportunity to eliminate the linguistic differences in the most current terminology in the text of the Directive, particularly for the terms "contrats de novation" and "conventions de compensation" (contractual netting). Commissioner MONTI stressed the importance of the Directive in question for investment companies and banks since the financial partners in third countries already benefited from regulations on contractual netting. With regard to Amendment No 3, it agreed to support the compulsory nature of the Directive.

Contractual netting (amend. Directive 89/647/EEC)

In adopting the recommendation for second reading by Mr FLORIO (FE, I), the European Parliament approved the common position of the Council on contractual netting with just one amendment: it called on the Member States to comply with the directive after its entry into force and not later than 30 June 1996. ?

Contractual netting (amend. Directive 89/647/EEC)

The Commission accepted the EP's only amendment to the text of the common position which aimed to make the transposition of the directive compulsory in all the Member States. ?

Contractual netting (amend. Directive 89/647/EEC)

At the end of the co-decision procedure, the Council unanimously adopted the Directive.?

Contractual netting (amend. Directive 89/647/EEC)

OBJECTIVE: to amend Annex II to Directive 89/647/EEC on a solvency ratio for credit institutions, which defines the way in which off-balance-sheet items relating to interest and exchange rates are to be treated. **COMMUNITY MEASURE:** European Parliament and Council Directive 96/10/EC amending Directive 89/647/EEC as regards the recognition of contractual netting by the competent authorities.

SUBSTANCE: The purpose of the proposed directive is to give wider recognition than in the past, for supervisory purposes, to the risk-reducing effects of bilateral netting agreements, provided that their legal validity is established. The directive takes extensive account of the work done in this area at an international level by the Basle Committee on Banking Supervision, which ensures its coherence with the major international prudential provisions. The rules envisaged for prudential recognition of compensation at a wider international level will allow credit institutions and groups of credit institutions pursuing their activities at an international level in a large number of third countries whose establishments are in competition with Community credit institutions to benefit from a reduction in own funds requirements. **ENTRY INTO FORCE:** 23/04/1996 **DEADLINE FOR TRANSPOSITION:** 30/06/96 ?