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

1994/0099(COD) - 05/09/1995 - Council position

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.