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

1994/0099(COD) - 28/11/1995

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.