DIRECTIVE 96/10/EC OF THE EUROPEAN PARLAMENT AND OF THE COUNCIL

of 21 March 1996

amending Directive 89/647/EEC as regards recognition of contractual netting by the competent authorities

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 57 (2) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Having regard to the opinion of the European Monetary Institute [3],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [4],

Whereas Annex II to Council Directive 89/647/EEC of 18 December 1989 on a solvency ratio for credit institutions [5] lays down the treatment of off-balance-sheet items concerning interest and foreign-exchange rates in the context of the calculation of credit institutions' capital requirements;

Whereas with a view to the smooth functioning of the internal market and in particular with a view to ensuring a level playing field Member States are obliged to strive for uniform assessment of contractual netting agreements by their competent authorities;

Whereas this Directive is in accordance with the work of an international forum of banking supervisors on the supervisory recognition of bilateral netting, in particular the possibility of calculating the own-funds requirements for certain transactions on the basis of a net rather than a gross amount provided that there are legally binding agreements which ensure that the credit risk is confined to the net amount;

Whereas the rules contemplated for the supervisory recognition of netting at the wider international level will lead to the possibility of reducing the capital requirements for internationally active credit institutions and groups of credit institutions in a wide range of non-member countries credit institutions which compete with Community credit institutions;

Whereas for credit institutions incorporated in the Member States, only an amendment of Directive 89/647/EEC can create a similar possibility for the recognition of bilateral netting by the competent authorities and thereby offer them equal conditions of competition; whereas the rules are both well balanced and appropriate for the further reinforcement of the application of prudential supervisory measures to credit institutions;

Whereas the competent authorities in the Member States should ensure that the calculation of add-ons is based on effective rather than apparent notional amounts;

Whereas, having regard to this situation, this Directive complies with the principle of subsidiarity, since the aim of this Directive can be achieved only by means of the harmonized amendment of existing Community legislation,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Annex II to Directive 89/647/EEC shall be replaced by the Annex hereto.

Article 2

Article 1 shall be without prejudice to the competent authorities' recognition of bilateral contracts for novation concluded before the entry into force of the laws, regulations and administrative provisions necessary for the implementation of this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive after its entry into force and no later than 30 June 1996. They shall forthwith inform the Commission thereof.

When the Member States adopt those measures they shall contain references to this Directive or shall be accompanied by such references on the occasion of their official publication. The methods of making such references shall be laid down by the Member States.

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[1] OJ No C 142, 25. 5. 1994, p. 8, and OJ No C 165, 1. 7. 1995, p. 6.
[2] OJ No C 393, 31. 12. 1994, p. 30.
[3] Opinion delivered on 16 January 1995 (not yet published in the Official Journal).
[4] Opinion of the European Parliament of 16 February 1995 (OJ No C 56, 6. 3. 1995, p. 79), Council common position of 5 September 1995 (OJ No C 288, 30. 10. 1995, p. 30) and Decision of the European Parliament of 14 December 1995 (OJ No C 17, 22. 1. 1996). Council Decision of 26 February 1996.
[5] OJ No L 386, 30. 12. 1989, p. 14. Directive as last amended by Commission Directive 95/15/EC (OJ No L 125, 8. 6. 1995, p. 23).

2. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 4

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 21 March 1996.

For the European Parliament	*For the Council*
The President	*The President*
K. HÄNSCH	A. GAMBINO