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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 576/96

of 21 March 1996

on the conclusion of the Protocol establishing the fishing possibilities and the financial compensation provided for in the Agreement between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of Guinea-Bissau for the period 16 June 1995 to 15 June 1997

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 in conjunction with the first subparagraph of Article 228 (3) thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Whereas, pursuant to the Agreement between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of Guinea-Bissau, the two Parties have conducted negotiations to determine any amendments and additions to be made to the Agreement at the end of the period of application of the Protocol annexed thereto;

Whereas, as a result of those negotiations, a new Protocol establishing the fishing possibilities and financial compensation provided for in the abovementioned Agreement for the period 16 June 1995 to 15 June 1997 was initialled on 7 June 1995;

Whereas it is in the Community's interest to approve the Protocol;

Whereas the allocation of fishing possibilities among the Member States should be determined on the basis of the traditional allocation of fishing possibilities under the fisheries agreement,

HAS ADOPTED THIS REGULATION:

Article 1

The Protocol establishing the fishing possibilities and the financial compensation provided for in the Agreement

between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of Guinea-Bissau for the period 16 June 1995 to 15 June 1997 is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation.

Article 2

The fishing possibilities provided for in the Protocol shall be allocated among the Member States as follows:

- Italy: 3 200 GRT,
- Portugal: 3 200 GRT,
- Spain: 2 400 GRT.

However, for the first year for which the Protocol applies, the allocation shall be as follows:

- Italy: 3 800 GRT,
- Portugal: 3 000 GRT,
- Spain: 2 000 GRT.

If licence applications from these Member States do not exhaust the fishing possibilities provided for in the Protocol, the Commission may entertain licence applications from any other Member State.

Article 3

The President of the Council is hereby authorized to designate the persons empowered to sign the Protocol in order to bind the Community.

Article 4

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

⁽¹⁾ OJ No C 327, 7. 12. 1995, p. 12.

⁽²⁾ OJ No C 17, 22. 1. 1996.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 March 1996.

For the Council

The President

A. GAMBINO

PROTOCOL

establishing the fishing possibilities and the financial compensation provided for in the agreement between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of Guinea-Bissau for the period 16 June 1995 to 15 June 1997

Article 1

For a period of two years from 16 June 1995, the fishing possibilities granted pursuant to Article 4 of the Agreement shall be as follows:

1. (a) freezer shrimp trawlers: 8 800 gross registered tonne (grt) per month, annual average;
(b) freezer fin-fish and cephalopod trawlers: 4 000 grt per month, annual average;
2. freezer tuna seiners: 26 vessels;
3. pole-and-line tuna vessels and surface longliners: 16 vessels.

Article 2

1. The financial compensation referred to in Article 9 of the Agreement shall be, for the period referred to in Article 1, ECU 10 800 000, payable in two annual instalments of ECU 6 000 000 and ECU 4 800 000 respectively.

2. If the target agreed between the two Parties is reached, the Community shall pay additional financial compensation of ECU 1 200 000 in the second annual period.

3. The use to which this compensation is put shall be the sole responsibility of the Government of the Republic of Guinea-Bissau.

4. The compensation shall be paid into an account opened with a financial institution or any other body designated by Guinea-Bissau.

Article 3

At the request of the Community, the fishing possibilities referred to in Article 1 (1) may be increased by successive instalments of 1 000 grt per month, calculated on an annual average basis, if fishing resources permit. In this case, the financial compensation referred to in Article 2 shall be increased proportionately, *pro rata temporis*.

Article 4

The Community shall also contribute during the period referred to in Article 1 the sum of ECU 150 000 towards the financing of a Guinea-Bissau scientific or technical programme to improve information on the fishery resources within the exclusive economic zone of Guinea-Bissau and the functioning of the marine biology laboratory.

The Guinea-Bissau authorities shall forward to the Commission departments a summary report on the way that amount is used.

This sum shall be made available to the Government of the Republic of Guinea-Bissau and paid into the account indicated by the Guinea-Bissau authorities.

Article 5

The two Parties agree that improving the skills of those involved in sea fishing is a vital element in the success of their cooperation. To that end, the Community shall make it easier for nationals of Guinea-Bissau to find places in establishments in its Member States and shall provide for that purpose, during the period referred to in Article 1, awards for study and practical training in the various scientific, technical and economic disciplines relating to fisheries. The awards may also be used in any State linked with the Community by a cooperation Agreement. The total cost of the awards may not exceed ECU 100 000. At the request of the Guinea-Bissau authorities, part of this sum may be used to cover the costs of participation in international meetings or training courses concerning fisheries or the organization of seminars on fishing in Guinea-Bissau. The sum shall be payable as and when it is used.

Article 6

The Community shall also contribute to funding the following programmes:

- institutional support for the Ministry of Fisheries: ECU 100 000,
- aid for small-scale fishing: ECU 150 000,
- marine surveillance: ECU 200 000.

The Guinea-Bissau authorities shall forward to the departments of the Commission of the European Communities a summary report on the way that amount is used.

This sum shall be made available to the Government of the Republic of Guinea-Bissau and paid into the account indicated by the Guinea-Bissau authorities.

Article 7

Should the Community fail to make the payments provided for in Articles 2, 4 and 6, the application of this Protocol may be suspended.

Guinea-Bissau is hereby repealed and replaced by the Annex to this Protocol.

*Article 9**Article 8*

The Annex to the Agreement between the European Economic Community and the Government of the Republic of Guinea-Bissau on fishing off the coast of

This Protocol shall enter into force on the date on which it is signed.

It shall apply from 16 June 1995.

ANNEX

CONDITIONS GOVERNING FISHING BY COMMUNITY VESSELS IN GUINEA-BISSAU'S FISHING ZONE

A. Licence application and issuing formalities

1. The relevant Community authorities shall present to the Ministry of Fisheries of the Republic of Guinea-Bissau, via the Commission Delegation in Guinea-Bissau, an application for each vessel wishing to fish under the Agreement, at least 20 days before the date on which the requested term of validity commences.

Applications shall be made on the forms provided for that purpose by the Government of the Republic of Guinea-Bissau, specimens of which are attached (Appendix 1).

2. Licence applications shall be accompanied by proof of payment of the fee for the licence's term of validity, the amount laid down in E2 below and, in the case of freezer trawlers, a copy of the document drawn up by the Member State certifying the vessel's tonnage in grt. The fee shall be paid into the account indicated by the Guinea-Bissau authorities. The original of the licence shall be issued to the master of the vessel or to his representative. The Delegation of the Commission of the European Communities in Bissau shall be notified of each licence issued.

3. The fees shall include all national and local taxes with the exception of port fees and charges for the provision of services.

4. The following twelve-month periods shall be used for determining the validity of the licences:

first year: 16 June 1995 to 15 June 1996,

Second year: 16 June 1996 to 15 June 1997.

No licence may begin during the first annual period and end during the second annual period.

5. Licences shall be issued for specific vessels and shall not be transferable. However, at the request of the Community and where *force majeure* is proven, a vessel's licence shall be replaced by a new licence for another vessel whose features are similar to those of the first vessel. The new licence shall take effect on the day that the vessel's owner returns the cancelled licence to the Ministry of Fisheries of the Republic of Guinea-Bissau. The Delegation of the Commission of the European Communities in Bissau shall be informed of the licence transfer.

6. *Provisions applicable to freezer trawlers*

- 6.1. Licences must be kept on board at all times.

- 6.2. Before licences are issued, vessels must put into the port of Bissau once in each twelve-month period so that the inspection required under the current legislation can be carried out. This inspection shall be carried out only by duly authorized persons and must take place within 48 working hours of the vessel's arrival in port if notice of arrival has been given at least 48 hours beforehand.

Should a new licence be allocated in that same twelve-month period, the vessel shall not be required to undergo inspection. Time spent in port for the purposes of obtaining a new licence must not exceed 48 hours and the costs and taxes involved must not exceed ECU 60. If the licence is not issued within the 48-hour limit, any costs arising shall be borne by the Ministry of Fisheries. If the vessel remains in port after the licence is issued, the shipowner shall bear the relevant costs and taxes.

- 6.3. Article 4 (3) of the Agreement notwithstanding, licences shall be issued for three, six or twelve months and shall be renewable.

6.4. The fees for trawlers shall be as follows:

- in the case of twelve-month licences:
 - ECU 188 per grt per year for fin-fish trawlers,
 - ECU 209 per grt per year for cephalopod trawlers,
 - ECU 266 per grt per year for shrimp trawlers,
- in the case of six-month licences:
 - ECU 97 per grt per year for fin-fish trawlers,
 - ECU 108 per grt per year for cephalopod trawlers,
 - ECU 137 per grt per year for shrimp trawlers,
- in the case of three-month licences:
 - ECU 50 per grt per year for fin-fish trawlers,
 - ECU 55 per grt per year for cephalopod trawlers,
 - ECU 70 per grt per year for shrimp trawlers.

7. *Provisions applicable to tuna vessels and surface longliners*

- 7.1. Licences must be kept on board at all times; however, once the Commission of the European Communities has informed the Guinea-Bissau authorities that the advance payment has been made, they shall enter the vessel in question in the register of vessels authorized to fish that is sent to the Guinea-Bissau surveillance authorities. Pending receipt of the original of the licence, a copy of the licence drawn up may be sent by fax for keeping on board.
- 7.2. Licences shall cover twelve-month periods. The fees shall be ECU 20 per tonne per year caught within Guinea-Bissau's fishing zone.
- 7.3. Licences shall be issued following payment to the Ministry of Fisheries of a lump sum of ECU 1 500 per twelve months for each tuna seiner and ECU 300 per twelve months for each pole-and-line tuna vessel and surface longliner, covering the fees for:
- 75 tonnes of tuna caught per year in the case of seiners,
 - 15 tonnes caught per year in the case of pole-and-line tuna vessels and surface longliners.
- 7.4. The final statement of the fees due for the fishing period shall be drawn up by the Commission of the European Communities at the end of each calendar year on the basis of the catch statements made by each shipowner and confirmed by the scientific institutes responsible for verifying catch data (Orstom and IEO — Spanish Institute of Oceanography). The statement shall be forwarded simultaneously to the Ministry of Fisheries and to the shipowners. Any additional charges shall be paid by the shipowners to the Guinea-Bissau Ministry of Fisheries by 31 May of the following year at the latest, into the account referred to in A.2 above. However, if the final statement is lower than the abovementioned amount, the resulting balance shall not be reimbursed.

B. Statements of catch

All Community vessels authorized under the Agreement to fish in Guinea-Bissau's fishing zone are required to forward a statement of their catches to the Ministry of Fisheries, with a copy to the Delegation of the Commission of the European Communities in Guinea-Bissau, in accordance with the following:

- for trawlers, a statement of catch shall be made out according to the specimen attached hereto (Appendix 2). Statements of catch shall be drawn up each month and presented at least once each quarter;
- for tuna seiners, pole-and-line tuna vessels and surface longliners, a fishing log shall be kept, in accordance with Appendix 3, for each fishing period spent in Guinea-Bissau's fishing zone. The form must be sent, within 45 days of the end of the fishing period spent in the Guinea-Bissau fishing zone, to the Ministry of Fisheries via the Delegation of the Commission of the European Communities in Guinea-Bissau;

- forms must be completed legibly and be signed by the master of the vessel.

Should this provision not be adhered to, the Government of Guinea-Bissau reserves the right to suspend the licence of the offending vessel until the formality has been complied with.

C. By-catches

1. Fin-fish trawlers may not hold on board crustaceans representing more than 10 % of their total catch in the Guinea-Bissau fishing zone.

Cephalopod trawlers may not hold on board crustaceans representing more than 5 % or fish representing more than 30 % of their total catch in the Guinea-Bissau fishing zone.

2. Pole-and-line tuna vessels shall be authorized to fish for live bait in order to carry out their fishing activities in the Guinea-Bissau fishing zone.

D. Signing-on of seamen

Owners who have been issued fishing licences under the Agreement shall contribute to the practical vocational training of Guinea-Bissau nationals, subject to the conditions and limits set out below:

1. each trawler owner shall undertake to employ:

- three seamen/fishermen on vessels of up to 300 grt,
- four seamen/fishermen on vessels of 300 to 400 grt,
- five seamen/fishermen on vessels of more than 400 grt.

However, Community shipowners shall strive to increase the complement of Guinea-Bissau seamen signed on to 33 % of the non-officer staff engaged in fishing activities;

2. owners of tuna vessels and surface longliners shall undertake to employ Guinea-Bissau nationals, subject to the conditions and limits set out below:

- for the fleet of tuna seiners, four Guinea-Bissau seamen shall be signed on permanently in the Guinea-Bissau fishing zone,
- for the fleet of pole-and-line tuna vessels and surface longliners, six Guinea-Bissau seamen shall be signed on for the tuna fishing season in the Guinea-Bissau fishing zone, all of them to be assigned to different vessels;

3. the wages of these seamen/fishermen shall be fixed, before licences are issued, by mutual agreement between the shipowners or their representatives and the Ministry of Fisheries; the wages shall be borne by the shipowners and must include the social security contributions to which the seaman is subject (including life insurance and accident and sickness insurance).

Should the seamen not be signed on, owners of tuna seiners, pole-and-line tuna vessels and surface longliners shall be obliged to pay a lump sum equivalent to the wages of seamen not signed on for the fishing period.

This sum shall be used for the training of seamen/fishermen in Guinea-Bissau and shall be paid into an account specified by the Guinea-Bissau authorities.

E. Observers on board

1. The observer's task shall be to check on fishing activities in the Guinea-Bissau fishing zone. He shall be offered every facility needed to carry out his duties, including access to premises and documents. He must not remain on board any longer than is necessary to carry out his duties. The master of the vessel shall facilitate the work of the observer, who shall be accorded the conditions enjoyed by officers of the vessel. The salary and the social security contributions of the observer shall be borne by the Government of Guinea-Bissau.

Should the observer be taken on board in a foreign port, his travelling costs shall be borne by the shipowner. Should a vessel with an observer from Guinea-Bissau on board leave the Guinea-Bissau fishing zone, all measures must be taken to ensure the observer's return to Bissau as soon as possible at the expense of the shipowner.

2. All trawlers shall take on board an observer designated by the Ministry of Fisheries. As a contribution to the costs arising from the presence of the observer on board, the shipowner shall pay the Guinea-Bissau authorities at the same time as the licence fee the sum of ECU 4 per grt per year *pro rata temporis* per vessel fishing in Guinea-Bissau waters.
3. Tuna vessels and surface longliners shall take an observer on board at the request of the Ministry of Fisheries.

In such cases, the port of embarkation shall be determined by mutual agreement between the Ministry of Fisheries and the shipowners or their representatives.

F. Inspection and monitoring

Community vessels fishing in Guinea-Bissau's fishing zone shall permit and assist any official of Guinea-Bissau responsible for inspection and monitoring to board the vessel and carry out his duties on board. The official must not remain on board any longer than is necessary for the verification of catches by random checks and for any other inspection relating to fishing activities.

G. Fishing zones

Freezer trawlers as referred to in Article 1 of the Protocol shall be authorized to fish in waters beyond 12 nautical miles from the base lines.

H. Meshes authorized

The minimum mesh size authorized for the trawl body (mesh fully extended) shall be:

- (a) 60 mm for fin-fish vessels;
- (b) 50 mm for cephalopod vessels;
- (c) 40 mm for shrimp vessels;
- (d) 16 mm for fishing for live bait.

Outrigger fishing shall be authorized.

I. Entering and leaving the zone

Community vessels fishing under the Agreement in the Guinea-Bissau fishing zone shall communicate to the radio station of the Ministry of Fisheries the date and time and their position when entering and leaving the Guinea-Bissau fishing zone.

The call sign, frequency and working hours of the station shall be communicated to the shipowners by the Ministry of Fisheries at the time the licence is issued.

In cases where this radio communication cannot be used, vessels may use alternative means, such as telex, telegram or telefax (Nos 20 11 57, 20 19 57, 20 16 84).

J. Procedure in case of boarding

The authorities of the Commission of the European Communities in Guinea-Bissau shall be notified within 48 hours of any fishing vessel flying the flag of a Member State of the Community boarded within the Guinea-Bissau fishing zone and shall at the same time receive a summary report of the circumstances and reasons leading to the boarding.

Before any judicial proceedings are initiated, an attempt shall be made to settle the alleged infringement through an administrative procedure. This procedure shall be completed no later than three working days after the boarding.

If the case cannot be settled by administrative procedure and has to be brought before a competent judicial body, the competent authority shall set a bank security within 48 hours of completion of the administrative procedure, pending the judicial decision. The security shall not exceed the maximum fine provided for under national legislation in respect of the alleged infringement.

The bank security shall be released by the competent authority once the master of the vessel has been acquitted by the judicial decision.

The vessel and its crew shall be released:

- either on fulfilment of the obligations arising from the administrative procedure, or
 - once the bank security has been lodged.
-

Appendix 1

APPLICATION FORM
FOR A
FISHING LICENCE

For official use only	Remarks
Nationality:	
Licence No:	
Date of signing:	
Date of issue:	

APPLICANT

Name of firm:

Trade register No:

First name and surname of applicant:

Date and place of birth:

Occupation:

Address:

.....

No of employees:

Name and address of co-signatory:

.....

VESSEL

Type of vessel: Registration No:

New name: Former name:

Date and place of construction:

Original nationality:

Length: Beam: Hold:

Gross tonnage: Net tonnage:

Type of building materials:

Make of main engine: Type: Rating:

Propeller: Fixed ☐ Variable ☐ Ducted ☐

Transit speed:

Call sign: Call frequency:

List of sounding, navigating and transmission instruments:

Radar	☐	Sonar	☐	Netsonde	☐
VHF	☐	SSB	☐	Netsonde satellite navigation	☐
					Other:

No of seamen:

CONSERVATION

Packed in ice ☐ Ice and refrigeration ☐
Freezing in brine ☐ Dry ☐ Refrigerated sea water ☐

Total refrigerating power:

Freezing capacity in tonnes/24 hours:

Hold capacity:

TYPE OF FISHING

A. Demersal

Inshore demersal ☐ Deep-sea demersal ☐

Type of trawl: ☐
Cephalopods ☐ Shrimps ☐ Fish ☐

Length of trawl: Headline:

Mesh size in the body:

Mesh size in the wings:

Speed of trawling:

B. Deep-sea pelagic (tuna)

Pole and line ☐ No of poles and lines ☐

Seine ☐ Length of net: Depth of net:

No of tanks: Capacity in tonnes:

C. Longlines and pots

Surface ☐ Bottom ☐

Length of lines: No of hooks:

No of lines:

No of pots:

SHORE INSTALLATIONS

Address and permit No:

.....

Name of firm:

Activities:

Domestic wholesale fish trade ☐Export ☐

Type and No of wholesale trader's card:

Description of processing and conservation plant:

.....

.....

.....

.....

.....

No of employees:

NB: Indicate affirmative answers by a tick in the appropriate box.

Technical remarks

Authorization of the Ministry

MINISTRY FOR FISHERIES

Name of vessel:	
Nationality (flag):	

Engine rating:	
Gross registered tonnage:	

Month:	Year:
Fishing method:	
Port of landing:	

Appendix 3

Tuna boats fishing log book

Tuna boats fishing log book									
Vessel name: Flag country: Registration No.: Company of owner: Address:		Gross tonnes: Capacity (TM): Captain: No of crew: Reporting date: Reported:		Boat LEFT: Boat RETURNED:		Month	Day	Year	Port
				No of fishing days:					
				No of days at sea:		No of sets made:			
Fishing modalities									
☐ Longline ☐ Bait boat ☐ Purse seiner ☐ Trawling ☐ Others									
								Trip number:	

[illegible]

DIRECTIVE 96/10/EC OF THE EUROPEAN PARLIAMENT 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.

⁽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

The President

K. HÄNSCH

For the Council

The President

A. GAMBINO

ANNEX

ANNEX II

THE TREATMENT OF OFF-BALANCE-SHEET ITEMS CONCERNING INTEREST AND FOREIGN-EXCHANGE RATES

1. SCOPE AND CHOICE OF METHOD

Subject to the consent of their competent authorities, credit institutions may choose one of the methods set out below to measure the risks associated with the transactions listed in Annex III. Interest-rate and foreign-exchange contracts traded on recognized exchanges where they are subject to daily margin requirements and foreign-exchange contracts with an original maturity of fourteen calendar days or less are excluded.

2. METHODS

Method 1: the "mark-to-market" approach

Step (a): by attaching current market values to contracts (mark to market) the current replacement cost of all contracts with positive values is obtained.

Step (b): to obtain a figure for the potential future credit exposure⁽¹⁾, the notional principal amounts or underlying values are multiplied by the following percentages:

TABLE 1

Residual maturity	Interest-rate contracts	Foreign-exchange contracts
One year or less	0 %	1 %
More than one year	0,5 %	5 %

Step (c): the sum of the current replacement cost and the potential future credit exposure is multiplied by the risk weightings allocated to the relevant counterparties in Article 6.

Method 2: the "original exposure" approach

Step (a): the notional principal amount of each instrument is multiplied by the percentages given below:

TABLE 2

Original maturity ⁽¹⁾	Interest-rate contracts	Foreign-exchange contracts
One year or less	0,5 %	2 %
More than one year but not exceeding two years	1 %	5 %
Additional allowance for each additional year	1 %	3 %

⁽¹⁾ In the case of interest-rate contracts, credit institutions may, subject to the consent of their competent authorities, choose either original or residual maturity.

Step (b): the original exposure thus obtained is multiplied by the risk weightings allocated to the relevant counterparties in Article 6.

⁽¹⁾ Except in the case of single-currency "floating/floating" interest-rate swaps in which only the current replacement cost will be calculated.

3. CONTRACTUAL NETTING (CONTRACTS FOR NOVATION AND OTHER NETTING AGREEMENTS)

(a) Types of netting that the competent authorities may recognize

For the purposes of this point 3 "counterparty" means any entity (including natural persons) that has the power to conclude a contractual netting agreement.

The competent authorities may recognize as risk-reducing the following types of contractual netting:

- (i) bilateral contracts for novation between a credit institution and its counterparty under which mutual claims and obligations are automatically amalgamated in such a way that this novation fixes one single net amount each time novation applies and thus creates a legally binding, single new contract extinguishing former contracts;
- (ii) other bilateral netting agreements between a credit institution and its counterparty.

(b) Conditions for recognition

The competent authorities may recognize contractual netting as risk-reducing only under the following conditions:

- (i) a credit institution must have a contractual netting agreement with its counterparty which creates a single legal obligation, covering all included transactions, such that, in the event of a counterparty's failure to perform owing to default, bankruptcy, liquidation or any other similar circumstance, the credit institution would have a claim to receive or an obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions;
- (ii) a credit institution must have made available to the competent authorities written and reasoned legal opinions to the effect that, in the event of a legal challenge, the relevant courts and administrative authorities would, in the cases described under (i), find that the credit institution's claims and obligations would be limited to the net sum, as described in (i), under:
 - the law of the jurisdiction in which the counterparty is incorporated and, if a foreign branch of an undertaking is involved, also under the law of the jurisdiction in which the branch is located,
 - the law that governs the individual transactions included, and
 - the law that governs any contract or agreement necessary to effect the contractual netting;
- (iii) a credit institution must have procedures in place to ensure that the legal validity of its contractual netting is kept under review in the light of possible changes in the relevant laws.

The competent authorities must be satisfied, if necessary after consulting the other competent authorities concerned, that the contractual netting is legally valid under the law of each of the relevant jurisdictions. If any of the competent authorities is not satisfied in that respect, the contractual netting agreement will not be recognized as risk-reducing for either of the counterparties.

The competent authorities may accept reasoned legal opinions drawn up by types of contractual netting.

No contract containing a provision which permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulter, even if the defaulter is a net creditor (a "walkaway" clause), may be recognized as risk-reducing.

(c) Effects of recognition

(i) *Contracts for novation*

The single net amounts fixed by contracts for novation, rather than the gross amounts involved, may be weighted. Thus, in the application of Method 1, in

- Step (a): the current replacement cost, and in
- Step (b): the notional principal amounts or underlying values

may be obtained taking account of the contract for novation. In the application of Method 2, in Step (a) the notional principal amount may be calculated taking account of the contract for novation; the percentages of Table 2 must apply.

(ii) *Other netting agreements*

In the application of Method 1, in Step (a) the current replacement cost for the contracts included in a netting agreement may be obtained by taking account of the current hypothetical net replacement cost which results from the agreement. In Step (b) the single net amounts may be taken into account only for forward foreign-exchange contracts and other similar contracts, in which notional principal is equivalent to cash flows, in cases where the amounts to be claimed or delivered fall due on the same value date and in the same currency.

In the application of Method 2, in Step (a)

- for forward foreign-exchange contracts and other similar contracts, in which notional principal is equivalent to cash flows, in cases where the amounts to be claimed or delivered fall due on the same value date and in the same currency, the notional principal amount may be calculated taking account of the netting agreement; to all these contracts Table 2 must apply,
- for all other contracts included in a netting agreement, the percentages applicable may be reduced as indicated in Table 3:

TABLE 3

Original maturity ⁽¹⁾	Interest-rate contracts	Foreign-exchange contracts
One year or less	0,35 %	1,50 %
More than one year but not more than two years	0,75 %	3,75 %
Additional allowance for each additional year	0,75 %	2,25 %

⁽¹⁾ In the case of interest-rate contracts, credit institutions may, subject to the consent of the competent authorities, choose either original or residual maturity.