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I

(Acts whose publication is obligatory)

**REGULATION (EC) No 851/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 21 April 2004
establishing a European centre for disease prevention and control**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152(4) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The Community is committed as a priority to protect and to improve human health by prevention of human disease, in particular communicable diseases, and to counter potential threats to health with a view to ensuring a high level of protection of health of European citizens. Effective response to disease outbreaks requires a coherent approach among Member States and input from experienced public health experts, coordinated at Community level.
- (2) The Community should address European citizens' concerns about public health threats in a coordinated and coherent way. As the protection of health can mean various actions ranging from preparedness and control measures to prevention of human diseases, the scope of actions should be kept broad. The danger of deliberate release of agents also requires a coherent Community response.
- (3) Member States must provide information on communicable diseases through the appropriate designated structures and/or authorities, in accordance with Article 4 of Decision No 2119/98/EC of the European Parliament and

of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community ⁽³⁾, which requires timely scientific analysis in order for effective Community action to be undertaken.

- (4) Decision No 2119/98/EC expressly calls for the improvement of the coverage and effectiveness of existing dedicated networks between Member States for the surveillance of communicable diseases on which Community actions should be built and the need to foster cooperation with third countries and international organisations competent in the field of public health, and in particular to pursue closer collaboration with the World Health Organisation (WHO). The Centre for Disease Prevention and Control should therefore establish clear procedures for cooperation with the WHO.
- (5) An independent agency, named the European Centre for Disease Prevention and Control should serve as a Community source of independent scientific advice, assistance and expertise from trained medical, scientific and epidemiological staff from its own resources or from those of recognised competent bodies acting on behalf of Member States' authorities responsible for human health.
- (6) This Regulation does not confer any regulatory powers on the Centre.
- (7) The Centre's mission should be to identify, assess and communicate current and emerging threats to human health from communicable diseases. In the case of outbreaks of illness of unknown origin which may spread within or to the Community, the Centre should be empowered to act on its own initiative until the source of the outbreak is known and then in cooperation with the relevant competent authorities at national or Community level as appropriate.
- (8) In this way, the Centre will enhance the capacity of the scientific expertise in the European Community and support

⁽¹⁾ OJ C 32, 5.2.2004, p. 57.

⁽²⁾ Opinion of the European Parliament of 10 February 2004 (not yet published in the Official Journal) and decision of the Council of 30 March 2004.

⁽³⁾ OJ L 268, 3.10.1998, p. 1. Decision as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

Community preparedness planning. It should support existing activities, such as relevant Community action programmes in the public health sector, with regard to the prevention and control of communicable diseases, epidemiological surveillance, training programmes and early warning and response mechanisms, and should foster the exchange of best practices and experience with regard to vaccination programmes.

- (9) As emerging health threats may have mental as well as physical health consequences, the Centre should in the fields within its mission gather and analyse data and information on emerging public health threats and developments for the purpose of protecting public health in the European Community by preparedness. It should assist and coordinate with Member States in developing and maintaining the capacity to react in a timely way. In public health emergencies the Centre should operate in close collaboration with Commission services and other agencies, Member States and international organisations.
- (10) The Centre should seek to maintain scientific excellence at all times through its own expertise and the expertise in the Member States and should foster, develop and steer applied scientific studies. In this way, it will enhance the visibility and credibility of scientific expertise in the Community. Moreover, it will support Community preparedness planning, strengthening links with and between the clinical and public health sectors, reinforcing the public health laboratory capacity for rapid diagnosis and supporting and coordinating training programmes.
- (11) The Management Board should be selected in such a way as to secure the highest standards of competence and a broad range of relevant experience available amongst the representatives of the Member States, the European Parliament and the Commission.
- (12) The Management Board should have the necessary powers to establish the budget, check its implementation, draw up internal rules, ensure coherence with Community policies, adopt the Centre's financial regulation in accordance with the provisions of the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, hereinafter referred to as the 'Financial Regulation', and appoint the director following a parliamentary hearing of the selected candidate.
- (13) An advisory forum should advise the director in the performance of his/her duties. It should be composed of representatives of competent bodies in the Member States which undertake tasks similar to those of the Centre and representatives of interested parties at European level, such as non-governmental organisations, professional bodies or academia. The Advisory Forum constitutes a mechanism for an exchange of information on potential risks and the pooling of knowledge and for monitoring the scientific excellence and independence of the Centre's work.
- (14) The confidence of the Community institutions, the general public and interested parties in the Centre is essential. For this reason, it is vital to ensure its independence, high scientific quality, transparency and efficiency.
- (15) The independence of the Centre and its role in informing the public mean that it should be able to communicate on its own initiative in the fields within its mission, its purpose being to provide objective, reliable and easily understandable information to improve citizens' confidence.
- (16) The Centre should be financed by the general budget of the European Union, without prejudice to the priorities agreed by the budgetary authority within the financial perspective. The Community budgetary procedure remains applicable as regards any subsidies chargeable to the general budget of the European Union and their annual evaluation. Moreover, the Court of Auditors should undertake the auditing of accounts.
- (17) It is necessary to allow for the participation of countries which are not members of the European Union and which have concluded agreements obliging them to transpose and implement the body of Community law in the field covered by this Regulation.
- (18) An independent external evaluation should be undertaken to assess the impact of the Centre on the prevention and control of human disease and the possible need to extend the scope of the Centre's mission to other relevant Community-level activities in public health, in particular to health monitoring.
- (19) The Centre should also be able to initiate scientific studies necessary for the accomplishment of its duties, while ensuring that the links established by it with the Commission and the Member States will avoid duplication of effort. This should be done in an open and transparent fashion and the Centre should take into account Community expertise, structures and agencies already in place.

⁽¹⁾ Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation establishes an independent European agency for disease prevention and control, its mission, tasks and organisation.
2. The Agency shall be named the European Centre for Disease Prevention and Control, hereinafter referred to as the 'Centre'.

Article 2

Definitions

For the purposes of this Regulation:

- (a) 'competent body' shall mean any structure, institute, agent or other scientific body recognised by Member States authorities as providing independent scientific and technical advice or capacity for action in the field of the prevention and control of human disease;
- (b) "prevention and control of human disease" shall mean the range of measures taken by the competent public health authorities in the Member States to prevent and stop the spread of disease;
- (c) "dedicated surveillance network" shall mean any specific network on diseases or special health issues selected for epidemiological surveillance between accredited structures and authorities of the Member States;
- (d) "communicable diseases" shall mean the categories of disease listed in the Annex to Decision No 2119/98/EC;
- (e) "health threat" shall mean a condition, agent or incident which may cause, directly or indirectly, ill health;
- (f) "epidemiological surveillance" shall have the meaning ascribed to it in Decision No 2119/98/EC.
- (g) "Community network" shall have the meaning ascribed to it in Decision No 2119/98/EC;
- (h) "early warning and response system" shall mean the network in accordance with Decision No 2119/98/EC for the prevention and control of communicable diseases, formed by bringing the Commission and the competent public health authorities in each Member State into permanent communication with one another through appropriate means

specified in Commission Decision 2000/57/EC of 22 December 1999 on the early warning and response system for the prevention and control of communicable diseases under Decision No 2119/98/EC of the European Parliament and of the Council ⁽¹⁾.

Article 3

Mission and tasks of the Centre

1. In order to enhance the capacity of the Community and the Member States to protect human health through the prevention and control of human disease, the mission of the Centre shall be to identify, assess and communicate current and emerging threats to human health from communicable diseases. In the case of other outbreaks of illness of unknown origin which may spread within or to the Community, the Centre shall act on its own initiative until the source of the outbreak is known. In the case of an outbreak which clearly is not caused by a communicable disease, the Centre shall act only in cooperation with the competent authority upon request from that authority. In pursuing its mission the Centre shall take full account of the responsibilities of the Member States, the Commission and other Community agencies, and of the responsibilities of international organisations active within the field of public health, in order to ensure comprehensiveness, coherence and complementarity of action.
2. Within the field of its mission, the Centre shall:
 - (a) search for, collect, collate, evaluate and disseminate relevant scientific and technical data;
 - (b) provide scientific opinions and scientific and technical assistance including training;
 - (c) provide timely information to the Commission, the Member States, Community agencies and international organisations active within the field of public health;
 - (d) coordinate the European networking of bodies operating in the fields within the Centre's mission, including networks arising from public health activities supported by the Commission and operating the dedicated surveillance networks;

and

 - (e) exchange information, expertise and best practices, and facilitate the development and implementation of joint actions.

⁽¹⁾ OJ L 21, 26.1.2000, p. 32.

3. The Centre, the Commission and the Member States shall cooperate to promote effective coherence between their respective activities.

Article 4

Obligations of the Member States

Member States shall:

- (a) provide to the Centre in a timely manner available scientific and technical data relevant to its mission;
 - (b) communicate to the Centre any messages forwarded to the Community network via the early warning and response system;
- and
- (c) identify, within the field of operation of the mission of the Centre, recognised competent bodies and public health experts who could be made available to assist in Community responses to health threats, such as field investigations in the event of disease clusters or outbreaks.

CHAPTER 2

OPERATIONAL PROCEDURES

Article 5

Operation of dedicated surveillance networks and networking activities

1. The Centre, through the operation of the dedicated surveillance networks and the provision of technical and scientific expertise to the Commission and Member States, shall support the networking activities of the competent bodies recognised by the Member States.
2. The Centre shall ensure the integrated operation of dedicated surveillance networks of authorities and structures designated under Decision No 2119/98/EC, where necessary with the assistance of one or more of the surveillance networks. It shall in particular:
 - (a) provide quality assurance by monitoring and evaluating surveillance activities of such dedicated surveillance networks to ensure optimal operation;
 - (b) maintain the database(s) for such epidemiological surveillance;
 - (c) communicate the results of the analysis of data to the Community network; and
 - (d) harmonise and rationalise the operating methodologies.
3. By encouraging cooperation between expert and reference laboratories, the Centre shall foster the development of sufficient capacity within the Community for the diagnosis, detection,

identification and characterisation of infectious agents which may threaten public health. The Centre shall maintain and extend such cooperation and support the implementation of quality assurance schemes.

4. The Centre shall cooperate with the competent bodies recognised by the Member States, particularly on preparatory work for scientific opinions, scientific and technical assistance, collection of data and identification of emerging health threats.

Article 6

Scientific opinions and studies

1. The Centre shall provide independent scientific opinions, expert advice, data and information.
2. The Centre shall seek to maintain scientific excellence at all times through the best expertise available. Where independent scientific expertise is not available from existing dedicated surveillance networks, the Centre may set up independent ad hoc scientific panels.
3. The Centre may promote and initiate scientific studies necessary for the performance of its mission and applied scientific studies and projects on the feasibility, development and preparation of its activities. The Centre shall avoid duplication with Member States' or Community research programmes.
4. The Centre shall consult the Commission with regard to the planning and priority setting of research and public health studies.

Article 7

Procedure for scientific opinions

1. The Centre shall issue a scientific opinion:
 - (a) at the request of the Commission, in respect of any matter within its mission, and in all cases where Community legislation makes provision for the Centre to be consulted;
 - (b) at the request of the European Parliament or a Member State, on matters falling within its mission;

and

 - (c) on its own initiative, on matters falling within its mission.
2. Requests referred to in paragraph 1 shall be accompanied by background information explaining the scientific issue to be addressed and the Community interest.
3. The Centre shall issue scientific opinions within a mutually agreed time frame.

4. Where different requests are made on the same issues or where the request is not in accordance with paragraph 2, or is unclear, the Centre may either refuse, or propose amendments to a request for an opinion in consultation with the institution or Member State(s) that made the request. Justifications for the refusal shall be given to the institution or Member States(s) that made the request.

5. Where the Centre has already delivered a scientific opinion on the specific topic in a request and it concludes that there are no scientific elements justifying the re-examination, information supporting that conclusion shall be given to the institution or Member State(s) that made the request.

6. The Centre's internal rules shall specify requirements regarding the format, explanatory background and publication of a scientific opinion.

Article 8

Operation of the early warning and response system

1. The Centre shall support and assist the Commission by operating the early warning and response system and by ensuring with the Member States the capacity to respond in a coordinated manner.

2. The Centre shall analyse the content of messages received by it via the early warning and response system. The Centre shall provide information, expertise, advice and risk assessment. The Centre shall also take action to ensure that the early warning and response system is efficiently and effectively linked with other Community alert systems (e.g. animal health, food and feed and civil protection).

Article 9

Scientific and technical assistance and training

1. The Centre shall provide scientific and technical expertise to the Member States, the Commission and other Community agencies in the development, regular review and updating of preparedness plans, and also in the development of intervention strategies in the fields within its mission.

2. The Centre may be requested by the Commission, the Member States, third countries and international organisations (in particular the WHO) to provide scientific or technical assistance in any field within its mission. Scientific and technical assistance provided by the Centre shall be based on evidence-based science and technology. Such assistance may include aiding the Commission and Member States to develop technical guidelines on good practice and on protective measures to be taken in response to human health threats, providing expert assistance and mobilising

and coordinating investigation teams. The Centre shall respond within its financial capacity and mandate.

3. Requests for scientific or technical assistance to the Centre shall be accompanied by a set deadline which must be agreed with the Centre.

4. In the event of such a request for assistance from the Commission, a Member State, a third country or an international organisation, where the financial capacity of the Centre is not adequate to deal with that request, the Centre shall assess the request and explore possibilities for response directly or through other Community mechanisms.

5. The Centre shall inform Member States authorities and the Commission without delay, within the framework of the Community network set up by Decision No 2119/98/EC, of any such request and of its intentions.

6. The Centre shall, as appropriate, support and coordinate training programmes in order to assist Member States and the Commission to have sufficient numbers of trained specialists, in particular in epidemiological surveillance and field investigations, and to have a capability to define health measures to control disease outbreaks.

Article 10

Identification of emerging health threats

1. The Centre shall in the fields within its mission establish, in cooperation with the Member States, procedures for systematically searching for, collecting, collating and analysing information and data with a view to the identification of emerging health threats which may have mental as well as physical health consequences and which could affect the Community.

2. The Centre shall forward to the European Parliament, the Council and the Commission an annual evaluation of the current and emerging threats to health in the Community.

3. The Centre shall also inform the Commission and Member States as soon as possible about findings which require their immediate attention.

Article 11

Collection and analysis of data

1. The Centre shall coordinate data collection, validation, analysis and dissemination of data at Community level, including on vaccination strategies. The statistical element of this data collection will be developed in collaboration with Member States using, as necessary, the Community statistical programme, to promote synergy and avoid duplication.

2. For the purposes of paragraph 1, the Centre shall:
- develop with the competent bodies of the Member States and the Commission appropriate procedures to facilitate consultation and data transmission and access;
 - carry out technical and scientific evaluation of prevention and control measures at Community level;
- and
- work in close cooperation with the competent bodies of the organisations operating in the field of data collection from the Community, third countries, the WHO, and other international organisations.
3. The Centre shall make available relevant information collected as referred to in paragraphs 1 and 2 to the Member States in an objective, reliable and easily accessible way.

Article 12

Communications on the activities of the Centre

1. The Centre shall communicate on its own initiative in the fields within its mission, after having given prior information to the Member States and to the Commission. It shall ensure that the public and any interested parties are rapidly given objective, reliable and easily accessible information with regard to the results of its work. In order to achieve these objectives, the Centre shall make available information for the general public, including through a dedicated website. It shall also publish its opinions produced in accordance with Article 6.
2. The Centre shall act in close collaboration with the Member States and the Commission to promote the necessary coherence in the risk communication process on health threats.
3. The Centre shall cooperate as appropriate with the competent bodies in the Member States and other interested parties with regard to public information campaigns.

CHAPTER 3

ORGANISATION

Article 13

Bodies of the Centre

The Centre shall comprise:

- (a) a management board;
- (b) a director and his/her staff;
- (c) an advisory forum.

Article 14

Management Board

1. The Management Board shall be composed of one member designated by each Member State, two members designated by the European Parliament and three members representing and appointed by the Commission.
2. The members of the Board shall be appointed in such a way as to secure the highest standards of competence and a broad range of relevant expertise.

Alternates who represent the member in his/her absence shall be appointed by the same procedure.

Members' term of office shall be four years and can be extended.

3. The Management Board shall adopt the Centre's internal rules on the basis of a proposal by the director. These rules shall be made public.

The Management Board shall elect one of its members as its Chair for a two-year period, which shall be extendable.

The Management Board shall meet at least twice a year at the invitation of the Chair, or at the request of at least a third of its members.

4. The Management Board shall adopt its Rules of Procedure.
5. The Management Board shall:
 - (a) exercise disciplinary authority over the director and appoint or dismiss him/her pursuant to Article 17;
 - (b) ensure that the Centre carries out its mission and performs the tasks assigned to it under the conditions laid down in this Regulation including on the basis of regular independent and external evaluations to be carried out every five years;
 - (c) compile a list of competent bodies referred to in Article 5 and make it public;
 - (d) adopt, before 31 January each year, the Centre's programme of work for the coming year. It shall also adopt a revisable multiannual programme. The Management Board shall ensure that these programmes are consistent with the Community's legislative and policy priorities in the area of its mission. Before 30 March each year, the Management Board shall adopt the general report on the Centre's activities for the previous year;
 - (e) adopt the financial rules applicable to the Centre after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of

23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, unless specifically required for the Centre's operation and with the Commission's prior consent;

(f) determine by unanimity of its members the rules governing the languages of the Centre, including the possibility of a distinction between the internal workings of the Centre and the external communication, taking into account the need to ensure access to, and participation in, the work of the Centre by all interested parties in both cases.

6. The director shall take part in the meetings of the Management Board, without voting rights, and shall provide the secretariat.

Article 15

Voting

1. The Management Board shall take its decisions by a simple majority of all members. A two-thirds majority of all members shall be required for the adoption of its Rules of Procedure, the Centre's internal rules of operation, the budget, the annual work programme and the appointment and removal of the director.

2. Each of these members shall have one vote. The director of the Centre shall not vote.

3. In the absence of a member, his/her alternate shall be entitled to exercise his/her right to vote.

4. The Rules of Procedure shall establish the more detailed voting arrangements, in particular, the conditions for a member to act on behalf of another member.

Article 16

Director

1. The Centre shall be managed by its director, who shall be completely independent in the performance in his/her duties, without prejudice to the respective competencies of the Commission and the Management Board.

2. The director shall be the legal representative of the Centre and shall be responsible for:

- (a) the day-to-day administration of the Centre;
- (b) drawing up draft work programmes;
- (c) preparation of discussions within the Management Board;

⁽¹⁾ OJ L 357, 31.12.2002, p. 72.

(d) implementing the work programmes and the decisions adopted by the Management Board;

(e) ensuring the provision of appropriate scientific, technical and administrative support for the Advisory Forum;

(f) ensuring that the Centre carries out its tasks in accordance with the requirements of its users, in particular with regard to the scientific excellence and independence of activities and opinions, the adequacy of the services provided and the time taken;

(g) preparing the statement of revenue and expenditure and executing the budget of the Centre;

(h) all staff matters, and in particular the exercise of powers laid down in Article 29(2).

3. Each year, the director shall submit to the Management Board for approval:

(a) a draft general report covering all the activities of the Centre in the previous year;

(b) draft work programmes;

(c) the draft annual accounts for the previous year;

(d) the draft budget for the coming year.

4. The director shall, following adoption by the Management Board, by 15 June at the latest forward the annual report on the Centre's activities to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions. The Centre shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.

5. The director shall report on the Centre's activities to the Management Board.

Article 17

Appointment of the director

1. The director shall be appointed by the Management Board on the basis of a list of candidates proposed by the Commission after an open competition, following publication in the *Official Journal of the European Union* and elsewhere of a call for expressions of interest, for a period of five years, which may be extended once for a further period of up to five years.

2. Before appointment, the candidate nominated by the Management Board shall be invited without delay to make a statement before the European Parliament and to answer questions put by members of that institution.

*Article 18***Advisory Forum**

1. The Advisory Forum shall be composed of members from technically competent bodies in the Member States which undertake tasks similar to those of the Centre, on the basis of one representative designated by each Member State recognised for his/her scientific competence, as well as three members without the right to vote nominated by the Commission and representing interested parties at European level, such as non-governmental organisations representing patients, professional bodies or academia. Representatives may be replaced by alternates, appointed at the same time.
2. Members of the Advisory Forum shall not be members of the Management Board.
3. The Advisory Forum shall support the director in ensuring the scientific excellence and independence of activities and opinions of the Centre.
4. The Advisory Forum shall constitute a mechanism for an exchange of information on health threats and the pooling of knowledge. It shall ensure close cooperation between the Centre and the competent bodies in the Member States in particular on the following items:
 - (a) coherence of the Centre's scientific studies with Member States;
 - (b) in those circumstances where the Centre and a national body cooperate;
 - (c) the promoting, starting up and supervising of the European networks within the fields of the Centre's mission;
 - (d) where the Centre or a Member State identifies an emerging public health threat;
 - (e) the setting up of scientific panels by the Centre;
 - (f) scientific and public health priorities to be addressed in the work programme.
5. The Advisory Forum shall be chaired by the director or, in his/her absence, by a deputy from within the Centre. It shall meet regularly at the invitation of the director, or at the request of at least a third of its members, and not less than four times per year. Its operational procedures shall be specified in the Centre's internal rules and shall be made public.
6. Representatives of the Commission's departments may participate in the work of the Advisory Forum.
7. The Centre shall provide the technical and logistic support necessary for the Advisory Forum and provide a secretariat for its meetings.
8. The director may invite experts or representatives of professional or scientific bodies, or non-governmental organisations with recognised experience in disciplines related to the work of

the Centre to cooperate in specific tasks and to take part in the relevant activities of the Advisory Forum.

CHAPTER 4

TRANSPARENCY AND CONFIDENTIALITY*Article 19***Declaration of interest**

1. The members of the Management Board, the members of the Advisory Forum, scientific panels and the director shall undertake to act in the public interest.
2. The members of the Management Board, the director, the members of the Advisory Forum, as well as external experts participating in scientific panels shall make a declaration of commitment and a declaration of interests indicating either the absence of any interests which might be considered prejudicial to their independence or any direct or indirect interests which might be considered prejudicial to their independence. Those declarations shall be made annually in writing.
3. The director, the members of the Advisory Forum, as well as external experts participating in scientific panels, shall declare at each meeting any interests which might be considered prejudicial to their independence in relation to the items on the agenda. In such cases these persons have to disqualify themselves from relevant discussions and decisions.

*Article 20***Transparency and protection of information**

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾ shall apply to documents held by the Centre.
2. The Management Board shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.
3. Decisions taken by the Centre pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Communities, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.
4. Personal data shall not be processed or communicated except in cases where this is strictly necessary for the fulfilment of the mission of the Centre. In such cases, Regulation (EC) No 45/2001 of the European Parliament and of the Council of

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾ shall apply.

Article 21

Confidentiality

1. Without prejudice to Article 20, the Centre shall not divulge to third parties confidential information that it receives for which confidential treatment has been requested and justified, except for information which must be made public if circumstances so require, in order to protect public health. Without prejudice to Decision No 2119/98/EC, if the confidential information has been submitted by a Member State, this information cannot be disclosed without the prior consent of that Member State.

2. Members of the Management Board, the director, as well as external experts participating in the scientific panels, members of the Advisory Forum, and members of the staff of the Centre, even after their duties have ceased, shall be subject to the requirements of confidentiality pursuant to Article 287 of the Treaty.

3. The conclusions of the scientific opinions delivered by the Centre relating to foreseeable health effects shall on no account be kept confidential.

4. The Centre shall lay down in its internal rules the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

CHAPTER 5

FINANCIAL PROVISIONS

Article 22

Drawing-up of the budget

1. Estimates of all the revenue and expenditure of the Centre shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Centre.

2. The revenue and expenditure shown in the budget of the Centre shall be in balance.

3. The revenue of the Centre shall, without prejudice to other resources, comprise:

- (a) a subsidy from the Community entered in the general budget of the European Union (Commission section);
- (b) payments received for services rendered;
- (c) any financial contributions from the competent bodies referred to in Article 5;

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

(d) any voluntary contribution from the Member States.

4. The expenditure of the Centre shall include staff remuneration, administrative and infrastructure costs, operating expenses and expenses resulting from contracts entered into with the institutions or with third parties.

5. Each year the Management Board, on the basis of a draft drawn up by the director, shall produce an estimate of revenue and expenditure for the Centre for the following financial year. This estimate, which shall include a draft establishment plan, shall be forwarded by the Management Board to the Commission by 31 March at the latest.

6. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of European Union.

7. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.

8. The budgetary authority shall authorise the appropriations for the subsidy to the Centre. The budgetary authority shall adopt the establishment plan for the Centre.

9. The budget of the Centre shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

10. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

Article 23

Implementation of the Centre's budget

1. The director shall implement the Centre's budget.

2. By 1 March at the latest following each financial year, the Centre's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the Financial Regulation.

3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Centre's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be forwarded to the European Parliament and the Council.

4. On receipt of the Court of Auditors' observations on the Centre's provisional accounts, pursuant to Article 129 of the Financial Regulation, the director shall draw up the Centre's final accounts under his/her own responsibility and forward them to the Management Board for an opinion.

5. The Management Board shall deliver an opinion on the Centre's final accounts.

6. The director shall, by 1 July at the latest following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

7. The final accounts shall be published.

8. The director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He/she shall also send this reply to the Management Board.

9. The director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the Financial Regulation.

10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the director in respect of the implementation of the budget for year N.

Article 24

Application of the Financial Regulation

Article 185 of the Financial Regulation shall apply to the discharge of the Centre's budget, its audits and accounting rules.

Article 25

Combating fraud

1. In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) ⁽¹⁾ shall apply without restriction to the Centre.

2. The Centre shall accede to the Inter-institutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (OLAF) ⁽²⁾ and shall issue, without delay, the appropriate provisions applicable to all of its staff.

3. The decisions concerning funding and the implementing agreements and instruments resulting therefrom shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks of the recipients of the Centre's funding and the agents responsible for allocating it.

CHAPTER 6

GENERAL PROVISIONS

Article 26

Legal personality and privileges

1. The Centre shall have legal personality. In all Member States it shall enjoy the widest powers granted by law to legal persons. In particular, it may acquire and dispose of movable and immovable property and institute legal proceedings.

2. The Protocol on the privileges and immunities of the European Communities shall apply to the Centre.

Article 27

Liability

1. The contractual liability of the Centre shall be governed by the law applicable to the contract in question. The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Centre.

2. In the case of non-contractual liability, the Centre shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or its servants in the performance of their duties. The Court of Justice shall have jurisdiction in any dispute relating to compensation for such damage.

3. The personal liability of its servants towards the Centre shall be governed by the relevant provisions applying to the staff of the Centre.

Article 28

Examination of legality

1. Member States, members of the Management Board and third parties directly and personally involved may refer to the Commission any act of the Centre, whether express or implied, for the Commission to examine the legality of that act.

⁽¹⁾ OJ L 136, 31.5.1999, p. 1.

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

2. Referral shall be made to the Commission within 15 days of the day on which the party concerned first became aware of the act in question.

3. The Commission shall take a decision within one month. If no decision has been taken within this period, the case shall be deemed to have been dismissed.

4. An action for annulment of the Commission's explicit or implicit decision referred to in paragraph 3 to reject the administrative appeal may be brought before the Court of Justice in accordance with Article 230 of the Treaty.

Article 29

Staff

1. The staff of the Centre shall be subject to the rules and the regulations applicable to officials and other staff of the European Communities.

2. In respect of its staff, the Centre shall exercise the powers which have been devolved to the appointing authority.

3. Secondment to the Centre of public health experts, including epidemiologists, for a defined period of time, for the achievement of certain specified tasks of the Centre will be encouraged within the framework of existing regulations.

Article 30

Participation of third countries

1. The Centre shall be open to the participation of countries, which have concluded agreements with the Community by virtue of which they have adopted and apply legislation of equivalent effect to Community legislation in the field covered by this Regulation.

2. Arrangements shall be made under the relevant provisions of those agreements, specifying in particular the nature, extent and manner in which these countries are to participate in the Centre's work, including provisions relating to participation in the networks operated by the Centre, inclusion in the list of competent organisations to which certain tasks may be entrusted by the Centre, financial contributions and staff.

CHAPTER 7

FINAL PROVISIONS

Article 31

Review clause

1. By 20 May 2007, the Centre shall commission an independent external evaluation of its achievements on the basis of terms of reference issued by the Management Board in agreement with the Commission. The evaluation shall assess:

(a) the possible need to extend the scope of the Centre's mission to other relevant Community-level activities in the field of public health, in particular to health monitoring;

and

(b) the timing of further such reviews.

This assessment shall take into account the tasks of the Centre, the working practices and the impact of the Centre on the prevention and control of human disease, and shall include an analysis of the synergy effects and the financial implications of such an extension. The evaluation shall take into account the views of the stakeholders, at both Community and national level.

2. The Management Board shall examine the conclusions of the evaluation and issue to the Commission such recommendations as may be necessary regarding changes in the Centre, its working practices and the scope of its mission. The Commission shall forward the evaluation report and the recommendations to the European Parliament and the Council and make them public. After assessment of the evaluation report and the recommendations, the Commission may submit any proposals for amendments to this Regulation which it deems necessary.

Article 32

Commencement of the Centre's operation

The Centre shall be operational by 20 May 2005.

Article 33

Entry into force

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

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

Done at Strasbourg, 21 April 2004.

For the European Parliament

P. COX

The President

For the Council

D. ROCHE

The President

**DIRECTIVE 2004/25/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 21 April 2004
on takeover bids**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44(1) thereof,

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

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) In accordance with Article 44(2)(g) of the Treaty, it is necessary to coordinate certain safeguards which, for the protection of the interests of members and others, Member States require of companies governed by the law of a Member State the securities of which are admitted to trading on a regulated market in a Member State, with a view to making such safeguards equivalent throughout the Community.
- (2) It is necessary to protect the interests of holders of the securities of companies governed by the law of a Member State when those companies are the subject of takeover bids or of changes of control and at least some of their securities are admitted to trading on a regulated market in a Member State.
- (3) It is necessary to create Community-wide clarity and transparency in respect of legal issues to be settled in the event of takeover bids and to prevent patterns of corporate restructuring within the Community from being distorted by arbitrary differences in governance and management cultures.
- (4) In view of the public-interest purposes served by the central banks of the Member States, it seems inconceivable that they should be the targets of takeover bids. Since, for historical reasons, the securities of some of those central banks are listed on regulated markets in Member States, it is necessary to exclude them explicitly from the scope of this Directive.
- (5) Each Member State should designate an authority or authorities to supervise those aspects of bids that are

governed by this Directive and to ensure that parties to takeover bids comply with the rules made pursuant to this Directive. All those authorities should cooperate with one another.

- (6) In order to be effective, takeover regulation should be flexible and capable of dealing with new circumstances as they arise and should accordingly provide for the possibility of exceptions and derogations. However, in applying any rules or exceptions laid down or in granting any derogations, supervisory authorities should respect certain general principles.
- (7) Self-regulatory bodies should be able to exercise supervision.
- (8) In accordance with general principles of Community law, and in particular the right to a fair hearing, decisions of a supervisory authority should in appropriate circumstances be susceptible to review by an independent court or tribunal. However, Member States should be left to determine whether rights are to be made available which may be asserted in administrative or judicial proceedings, either in proceedings against a supervisory authority or in proceedings between parties to a bid.
- (9) Member States should take the necessary steps to protect the holders of securities, in particular those with minority holdings, when control of their companies has been acquired. The Member States should ensure such protection by obliging the person who has acquired control of a company to make an offer to all the holders of that company's securities for all of their holdings at an equitable price in accordance with a common definition. Member States should be free to establish further instruments for the protection of the interests of the holders of securities, such as the obligation to make a partial bid where the offeror does not acquire control of the company or the obligation to announce a bid at the same time as control of the company is acquired.
- (10) The obligation to make a bid to all the holders of securities should not apply to those controlling holdings already in existence on the date on which the national legislation transposing this Directive enters into force.
- (11) The obligation to launch a bid should not apply in the case of the acquisition of securities which do not carry the right to vote at ordinary general meetings of shareholders. Member States should, however, be able to provide that the obligation to make a bid to all the holders of securities

⁽¹⁾ OJ C 45 E, 25.2.2003, p. 1.

⁽²⁾ OJ C 208, 3.9.2003, p. 55.

⁽³⁾ Opinion of the European Parliament of 16 December 2003 (not yet published in the Official Journal) and Council decision of 30 March 2004.

relates not only to securities carrying voting rights but also to securities which carry voting rights only in specific circumstances or which do not carry voting rights.

- (12) To reduce the scope for insider dealing, an offeror should be required to announce his/her decision to launch a bid as soon as possible and to inform the supervisory authority of the bid.
- (13) The holders of securities should be properly informed of the terms of a bid by means of an offer document. Appropriate information should also be given to the representatives of the company's employees or, failing that, to the employees directly.
- (14) The time allowed for the acceptance of a bid should be regulated.
- (15) To be able to perform their functions satisfactorily, supervisory authorities should at all times be able to require the parties to a bid to provide information concerning themselves and should cooperate and supply information in an efficient and effective manner, without delay, to other authorities supervising capital markets.
- (16) In order to prevent operations which could frustrate a bid, the powers of the board of an offeree company to engage in operations of an exceptional nature should be limited, without unduly hindering the offeree company in carrying on its normal business activities.
- (17) The board of an offeree company should be required to make public a document setting out its opinion of the bid and the reasons on which that opinion is based, including its views on the effects of implementation on all the company's interests, and specifically on employment.
- (18) In order to reinforce the effectiveness of existing provisions concerning the freedom to deal in the securities of companies covered by this Directive and the freedom to exercise voting rights, it is essential that the defensive structures and mechanisms envisaged by such companies be transparent and that they be regularly presented in reports to general meetings of shareholders.
- (19) Member States should take the necessary measures to afford any offeror the possibility of acquiring majority interests in other companies and of fully exercising control of them. To that end, restrictions on the transfer of securities, restrictions on voting rights, extraordinary appointment rights and multiple voting rights should be removed or suspended during the time allowed for the acceptance of a bid and when the general meeting of shareholders decides on defensive measures, on amendments to the articles of association or on the removal or appointment of board members at the first general meeting of shareholders following closure of the bid. Where the holders of securities have suffered losses as a result of the

removal of rights, equitable compensation should be provided for in accordance with the technical arrangements laid down by Member States.

- (20) All special rights held by Member States in companies should be viewed in the framework of the free movement of capital and the relevant provisions of the Treaty. Special rights held by Member States in companies which are provided for in private or public national law should be exempted from the 'breakthrough' rule if they are compatible with the Treaty.
- (21) Taking into account existing differences in Member States' company law mechanisms and structures, Member States should be allowed not to require companies established within their territories to apply the provisions of this Directive limiting the powers of the board of an offeree company during the time allowed for the acceptance of a bid and those rendering ineffective barriers, provided for in the articles of association or in specific agreements. In that event Member States should at least allow companies established within their territories to make the choice, which must be reversible, to apply those provisions. Without prejudice to international agreements to which the European Community is a party, Member States should be allowed not to require companies which apply those provisions in accordance with the optional arrangements to apply them when they become the subject of offers launched by companies which do not apply the same provisions, as a consequence of the use of those optional arrangements.
- (22) Member States should lay down rules to cover the possibility of a bid's lapsing, the offeror's right to revise his/her bid, the possibility of competing bids for a company's securities, the disclosure of the result of a bid, the irrevocability of a bid and the conditions permitted.
- (23) The disclosure of information to and the consultation of representatives of the employees of the offeror and the offeree company should be governed by the relevant national provisions, in particular those adopted pursuant to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees⁽¹⁾, Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies⁽²⁾, Council Directive 2001/86/EC of 8 October 2001 supplementing the statute for a European Company with regard to the involvement of employees⁽³⁾ and Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general

⁽¹⁾ OJ L 254, 30.9.1994, p. 64. Directive as amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22).

⁽²⁾ OJ L 225, 12.8.1998, p. 16.

⁽³⁾ OJ L 294, 10.11.2001, p. 22.

framework for informing and consulting employees in the European Community — Joint declaration of the European Parliament, the Council and the Commission on employee representation ⁽¹⁾. The employees of the companies concerned, or their representatives, should nevertheless be given an opportunity to state their views on the foreseeable effects of the bid on employment. Without prejudice to the rules of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ⁽²⁾, Member States may always apply or introduce national provisions concerning the disclosure of information to and the consultation of representatives of the employees of the offeror before an offer is launched.

- (24) Member States should take the necessary measures to enable an offeror who, following a takeover bid, has acquired a certain percentage of a company's capital carrying voting rights to require the holders of the remaining securities to sell him/her their securities. Likewise, where, following a takeover bid, an offeror has acquired a certain percentage of a company's capital carrying voting rights, the holders of the remaining securities should be able to require him/her to buy their securities. These squeeze-out and sell-out procedures should apply only under specific conditions linked to takeover bids. Member States may continue to apply national rules to squeeze-out and sell-out procedures in other circumstances.
- (25) Since the objectives of the action envisaged, namely to establish minimum guidelines for the conduct of takeover bids and ensure an adequate level of protection for holders of securities throughout the Community, cannot be sufficiently achieved by the Member States because of the need for transparency and legal certainty in the case of cross-border takeovers and acquisitions of control, and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.
- (26) The adoption of a Directive is the appropriate procedure for the establishment of a framework consisting of certain common principles and a limited number of general requirements which Member States are to implement through more detailed rules in accordance with their national systems and their cultural contexts.

- (27) Member States should, however, provide for sanctions for any infringement of the national measures transposing this Directive.
- (28) Technical guidance and implementing measures for the rules laid down in this Directive may from time to time be necessary, to take account of new developments on financial markets. For certain provisions, the Commission should accordingly be empowered to adopt implementing measures, provided that these do not modify the essential elements of this Directive and the Commission acts in accordance with the principles set out in this Directive, after consulting the European Securities Committee established by Commission Decision 2001/528/EC ⁽³⁾. The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁴⁾ and with due regard to the declaration made by the Commission in the European Parliament on 5 February 2002 concerning the implementation of financial services legislation. For the other provisions, it is important to entrust a contact committee with the task of assisting Member States and the supervisory authorities in the implementation of this Directive and of advising the Commission, if necessary, on additions or amendments to this Directive. In so doing, the contact committee may make use of the information which Member States are to provide on the basis of this Directive concerning takeover bids that have taken place on their regulated markets.
- (29) The Commission should facilitate movement towards the fair and balanced harmonisation of rules on takeovers in the European Union. To that end, the Commission should be able to submit proposals for the timely revision of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive lays down measures coordinating the laws, regulations, administrative provisions, codes of practice and other arrangements of the Member States, including arrangements established by organisations officially authorised to regulate the markets (hereinafter referred to as 'rules'), relating to takeover bids for the securities of companies governed by the laws of Member

⁽¹⁾ OJ L 80, 23.3.2002, p. 29.

⁽²⁾ OJ L 96, 12.4.2003, p. 16.

⁽³⁾ OJ L 191, 13.7.2001, p. 45. Decision as amended by Decision 2004/8/EC (OJ L 3, 7.1.2004, p. 33).

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

States, where all or some of those securities are admitted to trading on a regulated market within the meaning of Directive 93/22/EEC ⁽¹⁾ in one or more Member States (hereinafter referred to as a 'regulated market').

2. This Directive shall not apply to takeover bids for securities issued by companies, the object of which is the collective investment of capital provided by the public, which operate on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of those companies. Action taken by such companies to ensure that the stock exchange value of their units does not vary significantly from their net asset value shall be regarded as equivalent to such repurchase or redemption.

3. This Directive shall not apply to takeover bids for securities issued by the Member States' central banks.

Article 2

Definitions

1. For the purposes of this Directive:

- (a) 'takeover bid' or 'bid' shall mean a public offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company in accordance with national law;
- (b) 'offeree company' shall mean a company, the securities of which are the subject of a bid;
- (c) 'offeror' shall mean any natural or legal person governed by public or private law making a bid;
- (d) 'persons acting in concert' shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid;
- (e) 'securities' shall mean transferable securities carrying voting rights in a company;
- (f) 'parties to the bid' shall mean the offeror, the members of the offeror's board if the offeror is a company, the offeree company, holders of securities of the offeree company and the

members of the board of the offeree company, and persons acting in concert with such parties;

- (g) 'multiple-vote securities' shall mean securities included in a distinct and separate class and carrying more than one vote each.

2. For the purposes of paragraph 1(d), persons controlled by another person within the meaning of Article 87 of Directive 2001/34/EC ⁽²⁾ shall be deemed to be persons acting in concert with that other person and with each other.

Article 3

General principles

1. For the purpose of implementing this Directive, Member States shall ensure that the following principles are complied with:

- (a) all holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected;
- (b) the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;
- (c) the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;
- (d) false markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
- (e) an offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration;
- (f) an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

⁽¹⁾ Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 141, 11.6.1993, p. 27). Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

⁽²⁾ Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1). Directive as last amended by Directive 2003/71/EC (OJ L 345, 31.12.2003, p. 64).

2. With a view to ensuring compliance with the principles laid down in paragraph 1, Member States:

- (a) shall ensure that the minimum requirements set out in this Directive are observed;
- (b) may lay down additional conditions and provisions more stringent than those of this Directive for the regulation of bids.

Article 4

Supervisory authority and applicable law

1. Member States shall designate the authority or authorities competent to supervise bids for the purposes of the rules which they make or introduce pursuant to this Directive. The authorities thus designated shall be either public authorities, associations or private bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. Member States shall inform the Commission of those designations, specifying any divisions of functions that may be made. They shall ensure that those authorities exercise their functions impartially and independently of all parties to a bid.

- 2. (a) The authority competent to supervise a bid shall be that of the Member State in which the offeree company has its registered office if that company's securities are admitted to trading on a regulated market in that Member State.
- (b) If the offeree company's securities are not admitted to trading on a regulated market in the Member State in which the company has its registered office, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the company's securities are admitted to trading.

If the offeree company's securities are admitted to trading on regulated markets in more than one Member State, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the securities were first admitted to trading.

- (c) If the offeree company's securities were first admitted to trading on regulated markets in more than one Member State simultaneously, the offeree company shall determine which of the supervisory authorities of those Member States shall be the authority competent to supervise the bid by notifying those regulated markets and their supervisory authorities on the first day of trading.

If the offeree company's securities have already been admitted to trading on regulated markets in more than one Member State on the date laid down in Article 21(1) and were admitted simultaneously, the supervisory

authorities of those Member States shall agree which one of them shall be the authority competent to supervise the bid within four weeks of the date laid down in Article 21(1). Otherwise, the offeree company shall determine which of those authorities shall be the competent authority on the first day of trading following that four-week period.

- (d) Member States shall ensure that the decisions referred to in (c) are made public.
- (e) In the cases referred to in (b) and (c), matters relating to the consideration offered in the case of a bid, in particular the price, and matters relating to the bid procedure, in particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid, shall be dealt with in accordance with the rules of the Member State of the competent authority. In matters relating to the information to be provided to the employees of the offeree company and in matters relating to company law, in particular the percentage of voting rights which confers control and any derogation from the obligation to launch a bid, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of the bid, the applicable rules and the competent authority shall be those of the Member State in which the offeree company has its registered office.

3. Member States shall ensure that all persons employed or formerly employed by their supervisory authorities are bound by professional secrecy. No information covered by professional secrecy may be divulged to any person or authority except under provisions laid down by law.

4. The supervisory authorities of the Member States for the purposes of this Directive and other authorities supervising capital markets, in particular in accordance with Directive 93/22/EEC, Directive 2001/34/EC, Directive 2003/6/EC and Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading shall cooperate and supply each other with information wherever necessary for the application of the rules drawn up in accordance with this Directive and in particular in cases covered by paragraph 2(b), (c) and (e). Information thus exchanged shall be covered by the obligation of professional secrecy to which persons employed or formerly employed by the supervisory authorities receiving the information are subject. Cooperation shall include the ability to serve the legal documents necessary to enforce measures taken by the competent authorities in connection with bids, as well as such other assistance as may reasonably be requested by the supervisory authorities concerned for the purpose of investigating any actual or alleged breaches of the rules made or introduced pursuant to this Directive.

5. The supervisory authorities shall be vested with all the powers necessary for the purpose of carrying out their duties, including that of ensuring that the parties to a bid comply with the rules made or introduced pursuant to this Directive.

Provided that the general principles laid down in Article 3(1) are respected, Member States may provide in the rules that they make or introduce pursuant to this Directive for derogations from those rules:

(i) by including such derogations in their national rules, in order to take account of circumstances determined at national level

and/or

(ii) by granting their supervisory authorities, where they are competent, powers to waive such national rules, to take account of the circumstances referred to in (i) or in other specific circumstances, in which case a reasoned decision must be required.

6. This Directive shall not affect the power of the Member States to designate judicial or other authorities responsible for dealing with disputes and for deciding on irregularities committed in the course of bids or the power of Member States to regulate whether and under which circumstances parties to a bid are entitled to bring administrative or judicial proceedings. In particular, this Directive shall not affect the power which courts may have in a Member State to decline to hear legal proceedings and to decide whether or not such proceedings affect the outcome of a bid. This Directive shall not affect the power of the Member States to determine the legal position concerning the liability of supervisory authorities or concerning litigation between the parties to a bid.

Article 5

Protection of minority shareholders, the mandatory bid and the equitable price

1. Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company as referred to in Article 1(1) which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price as defined in paragraph 4.

2. Where control has been acquired following a voluntary bid made in accordance with this Directive to all the holders of securities for all their holdings, the obligation laid down in paragraph 1 to launch a bid shall no longer apply.

3. The percentage of voting rights which confers control for the purposes of paragraph 1 and the method of its calculation shall be determined by the rules of the Member State in which the company has its registered office.

4. The highest price paid for the same securities by the offeror, or by persons acting in concert with him/her, over a period, to be determined by Member States, of not less than six months and not more than 12 before the bid referred to in paragraph 1 shall be regarded as the equitable price. If, after the bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with him/her purchases securities at a price higher than the offer price, the offeror shall increase his/her offer so that it is not less than the highest price paid for the securities so acquired.

Provided that the general principles laid down in Article 3(1) are respected, Member States may authorise their supervisory authorities to adjust the price referred to in the first subparagraph in circumstances and in accordance with criteria that are clearly determined. To that end, they may draw up a list of circumstances in which the highest price may be adjusted either upwards or downwards, for example where the highest price was set by agreement between the purchaser and a seller, where the market prices of the securities in question have been manipulated, where market prices in general or certain market prices in particular have been affected by exceptional occurrences, or in order to enable a firm in difficulty to be rescued. They may also determine the criteria to be applied in such cases, for example the average market value over a particular period, the break-up value of the company or other objective valuation criteria generally used in financial analysis.

Any decision by a supervisory authority to adjust the equitable price shall be substantiated and made public.

5. By way of consideration the offeror may offer securities, cash or a combination of both.

However, where the consideration offered by the offeror does not consist of liquid securities admitted to trading on a regulated market, it shall include a cash alternative.

In any event, the offeror shall offer a cash consideration at least as an alternative where he/she or persons acting in concert with him/her, over a period beginning at the same time as the period determined by the Member State in accordance with paragraph 4 and ending when the offer closes for acceptance, has purchased for cash securities carrying 5 % or more of the voting rights in the offeree company.

Member States may provide that a cash consideration must be offered, at least as an alternative, in all cases.

6. In addition to the protection provided for in paragraph 1, Member States may provide for further instruments intended to protect the interests of the holders of securities in so far as those instruments do not hinder the normal course of a bid.

Article 6

Information concerning bids

1. Member States shall ensure that a decision to make a bid is made public without delay and that the supervisory authority is informed of the bid. They may require that the supervisory authority must be informed before such a decision is made public. As soon as the bid has been made public, the boards of the offeree company and of the offeror shall inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.

2. Member States shall ensure that an offeror is required to draw up and make public in good time an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid. Before the offer document is made public, the offeror shall communicate it to the supervisory authority. When it is made public, the boards of the offeree company and of the offeror shall communicate it to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.

Where the offer document referred to in the first subparagraph is subject to the prior approval of the supervisory authority and has been approved, it shall be recognised, subject to any translation required, in any other Member State on the market of which the offeree company's securities are admitted to trading, without its being necessary to obtain the approval of the supervisory authorities of that Member State. Those authorities may require the inclusion of additional information in the offer document only if such information is specific to the market of a Member State or Member States on which the offeree company's securities are admitted to trading and relates to the formalities to be complied with to accept the bid and to receive the consideration due at the close of the bid as well as to the tax arrangements to which the consideration offered to the holders of the securities will be subject.

3. The offer document referred to in paragraph 2 shall state at least:

- (a) the terms of the bid;
- (b) the identity of the offeror and, where the offeror is a company, the type, name and registered office of that company;
- (c) the securities or, where appropriate, the class or classes of securities for which the bid is made;
- (d) the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid;
- (e) the compensation offered for the rights which might be removed as a result of the breakthrough rule laid down in Article 11(4), with particulars of the way in which that compensation is to be paid and the method employed in determining it;

- (f) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire;
- (g) details of any existing holdings of the offeror, and of persons acting in concert with him/her, in the offeree company;
- (h) all the conditions to which the bid is subject;
- (i) the offeror's intentions with regard to the future business of the offeree company and, in so far as it is affected by the bid, the offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and in particular the offeror's strategic plans for the two companies and the likely repercussions on employment and the locations of the companies' places of business;
- (j) the time allowed for acceptance of the bid;
- (k) where the consideration offered by the offeror includes securities of any kind, information concerning those securities;
- (l) information concerning the financing for the bid;
- (m) the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, their types, names, registered offices and relationships with the offeror and, where possible, with the offeree company;
- (n) the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid and the competent courts.

4. The Commission shall adopt rules for the application of paragraph 3 in accordance with the procedure referred to in Article 18(2).

5. Member States shall ensure that the parties to a bid are required to provide the supervisory authorities of their Member State at any time on request with all the information in their possession concerning the bid that is necessary for the supervisory authority to discharge its functions.

Article 7

Time allowed for acceptance

1. Member States shall provide that the time allowed for the acceptance of a bid may not be less than two weeks nor more than 10 weeks from the date of publication of the offer document. Provided that the general principle laid down in Article 3(1)(f) is respected, Member States may provide that the period of 10 weeks may be extended on condition that the offeror gives at least two weeks' notice of his/her intention of closing the bid.

2. Member States may provide for rules changing the period referred to in paragraph 1 in specific cases. A Member State may authorise a supervisory authority to grant a derogation from the period referred to in paragraph 1 in order to allow the offeree company to call a general meeting of shareholders to consider the bid.

Article 8

Disclosure

1. Member States shall ensure that a bid is made public in such a way as to ensure market transparency and integrity for the securities of the offeree company, of the offeror or of any other company affected by the bid, in particular in order to prevent the publication or dissemination of false or misleading information.

2. Member States shall provide for the disclosure of all information and documents required by Article 6 in such a manner as to ensure that they are both readily and promptly available to the holders of securities at least in those Member States on the regulated markets of which the offeree company's securities are admitted to trading and to the representatives of the employees of the offeree company and the offeror or, where there are no such representatives, to the employees themselves.

Article 9

Obligations of the board of the offeree company

1. Member States shall ensure that the rules laid down in paragraphs 2 to 5 are complied with.

2. During the period referred to in the second subparagraph, the board of the offeree company shall obtain the prior authorisation of the general meeting of shareholders given for this purpose before taking any action, other than seeking alternative bids, which may result in the frustration of the bid and in particular before issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the offeree company.

Such authorisation shall be mandatory at least from the time the board of the offeree company receives the information referred to in the first sentence of Article 6(1) concerning the bid and until the result of the bid is made public or the bid lapses. Member States may require that such authorisation be obtained at an earlier stage, for example as soon as the board of the offeree company becomes aware that the bid is imminent.

3. As regards decisions taken before the beginning of the period referred to in the second subparagraph of paragraph 2 and not yet partly or fully implemented, the general meeting of shareholders shall approve or confirm any decision which does not form part of the normal course of the company's business and the implementation of which may result in the frustration of the bid.

4. For the purpose of obtaining the prior authorisation, approval or confirmation of the holders of securities referred to in paragraphs 2 and 3, Member States may adopt rules allowing a general meeting of shareholders to be called at short notice, provided that the meeting does not take place within two weeks of notification's being given.

5. The board of the offeree company shall draw up and make public a document setting out its opinion of the bid and the reasons on which it is based, including its views on the effects of implementation of the bid on all the company's interests and specifically employment, and on the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the company's places of business as set out in the offer document in accordance with Article 6(3)(i). The board of the offeree company shall at the same time communicate that opinion to the representatives of its employees or, where there are no such representatives, to the employees themselves. Where the board of the offeree company receives in good time a separate opinion from the representatives of its employees on the effects of the bid on employment, that opinion shall be appended to the document.

6. For the purposes of paragraph 2, where a company has a two-tier board structure 'board' shall mean both the management board and the supervisory board.

Article 10

Information on companies as referred to in Article 1(1)

1. Member States shall ensure that companies as referred to in Article 1(1) publish detailed information on the following:

- (a) the structure of their capital, including securities which are not admitted to trading on a regulated market in a Member State, where appropriate with an indication of the different classes of shares and, for each class of shares, the rights and obligations attaching to it and the percentage of total share capital that it represents;
- (b) any restrictions on the transfer of securities, such as limitations on the holding of securities or the need to obtain the approval of the company or other holders of securities, without prejudice to Article 46 of Directive 2001/34/EC;
- (c) significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings) within the meaning of Article 85 of Directive 2001/34/EC;
- (d) the holders of any securities with special control rights and a description of those rights;
- (e) the system of control of any employee share scheme where the control rights are not exercised directly by the employees;
- (f) any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of

votes, deadlines for exercising voting rights, or systems whereby, with the company's cooperation, the financial rights attaching to securities are separated from the holding of securities;

- (g) any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities and/or voting rights within the meaning of Directive 2001/34/EC;
- (h) the rules governing the appointment and replacement of board members and the amendment of the articles of association;
- (i) the powers of board members, and in particular the power to issue or buy back shares;
- (j) any significant agreements to which the company is a party and which take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects thereof, except where their nature is such that their disclosure would be seriously prejudicial to the company; this exception shall not apply where the company is specifically obliged to disclose such information on the basis of other legal requirements;
- (k) any agreements between the company and its board members or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases because of a takeover bid.

2. The information referred to in paragraph 1 shall be published in the company's annual report as provided for in Article 46 of Directive 78/660/EEC ⁽¹⁾ and Article 36 of Directive 83/349/EEC ⁽²⁾.

3. Member States shall ensure, in the case of companies the securities of which are admitted to trading on a regulated market in a Member State, that the board presents an explanatory report to the annual general meeting of shareholders on the matters referred to in paragraph 1.

Article 11

Breakthrough

1. Without prejudice to other rights and obligations provided for in Community law for the companies referred to in Article 1(1), Member States shall ensure that the provisions laid down in paragraphs 2 to 7 apply when a bid has been made public.

- (1) Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies (OJ L 222, 14.8.1978, p. 11). Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).
- (2) Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts (OJ L 193, 18.7.1983, p.1). Directive as last amended by Directive 2003/51/EC.

2. Any restrictions on the transfer of securities provided for in the articles of association of the offeree company shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).

Any restrictions on the transfer of securities provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the adoption of this Directive, shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).

3. Restrictions on voting rights provided for in the articles of association of the offeree company shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

Restrictions on voting rights provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the adoption of this Directive, shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

Multiple-vote securities shall carry only one vote each at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

4. Where, following a bid, the offeror holds 75 % or more of the capital carrying voting rights, no restrictions on the transfer of securities or on voting rights referred to in paragraphs 2 and 3 nor any extraordinary rights of shareholders concerning the appointment or removal of board members provided for in the articles of association of the offeree company shall apply; multiple-vote securities shall carry only one vote each at the first general meeting of shareholders following closure of the bid, called by the offeror in order to amend the articles of association or to remove or appoint board members.

To that end, the offeror shall have the right to convene a general meeting of shareholders at short notice, provided that the meeting does not take place within two weeks of notification.

5. Where rights are removed on the basis of paragraphs 2, 3, or 4 and/or Article 12, equitable compensation shall be provided for any loss suffered by the holders of those rights. The terms for determining such compensation and the arrangements for its payment shall be set by Member States.

6. Paragraphs 3 and 4 shall not apply to securities where the restrictions on voting rights are compensated for by specific pecuniary advantages.

7. This Article shall not apply either where Member States hold securities in the offeree company which confer special rights

on the Member States which are compatible with the Treaty, or to special rights provided for in national law which are compatible with the Treaty or to cooperatives.

Article 12

Optional arrangements

1. Member States may reserve the right not to require companies as referred to in Article 1(1) which have their registered offices within their territories to apply Article 9(2) and (3) and/or Article 11.

2. Where Member States make use of the option provided for in paragraph 1, they shall nevertheless grant companies which have their registered offices within their territories the option, which shall be reversible, of applying Article 9(2) and (3) and/or Article 11, without prejudice to Article 11(7).

The decision of the company shall be taken by the general meeting of shareholders, in accordance with the law of the Member State in which the company has its registered office in accordance with the rules applicable to amendment of the articles of association. The decision shall be communicated to the supervisory authority of the Member State in which the company has its registered office and to all the supervisory authorities of Member States in which its securities are admitted to trading on regulated markets or where such admission has been requested.

3. Member States may, under the conditions determined by national law, exempt companies which apply Article 9(2) and (3) and/or Article 11 from applying Article 9(2) and (3) and/or Article 11 if they become the subject of an offer launched by a company which does not apply the same Articles as they do, or by a company controlled, directly or indirectly, by the latter, pursuant to Article 1 of Directive 83/349/EEC.

4. Member States shall ensure that the provisions applicable to the respective companies are disclosed without delay.

5. Any measure applied in accordance with paragraph 3 shall be subject to the authorisation of the general meeting of shareholders of the offeree company, which must be granted no earlier than 18 months before the bid was made public in accordance with Article 6(1).

Article 13

Other rules applicable to the conduct of bids

Member States shall also lay down rules which govern the conduct of bids, at least as regards the following:

- (a) the lapsing of bids;
- (b) the revision of bids;
- (c) competing bids;

(d) the disclosure of the results of bids;

(e) the irrevocability of bids and the conditions permitted.

Article 14

Information for and consultation of employees' representatives

This Directive shall be without prejudice to the rules relating to information and to consultation of representatives of and, if Member States so provide, co-determination with the employees of the offeror and the offeree company governed by the relevant national provisions, and in particular those adopted pursuant to Directives 94/45/EC, 98/59/EC, 2001/86/EC and 2002/14/EC.

Article 15

The right of squeeze-out

1. Member States shall ensure that, following a bid made to all the holders of the offeree company's securities for all of their securities, paragraphs 2 to 5 apply.

2. Member States shall ensure that an offeror is able to require all the holders of the remaining securities to sell him/her those securities at a fair price. Member States shall introduce that right in one of the following situations:

(a) where the offeror holds securities representing not less than 90 % of the capital carrying voting rights and 90 % of the voting rights in the offeree company,

or

(b) where, following acceptance of the bid, he/she has acquired or has firmly contracted to acquire securities representing not less than 90 % of the offeree company's capital carrying voting rights and 90 % of the voting rights comprised in the bid.

In the case referred to in (a), Member States may set a higher threshold that may not, however, be higher than 95 % of the capital carrying voting rights and 95 % of the voting rights.

3. Member States shall ensure that rules are in force that make it possible to calculate when the threshold is reached.

Where the offeree company has issued more than one class of securities, Member States may provide that the right of squeeze-out can be exercised only in the class in which the threshold laid down in paragraph 2 has been reached.

4. If the offeror wishes to exercise the right of squeeze-out he/she shall do so within three months of the end of the time allowed for acceptance of the bid referred to in Article 7.

5. Member States shall ensure that a fair price is guaranteed. That price shall take the same form as the consideration offered

in the bid or shall be in cash. Member States may provide that cash shall be offered at least as an alternative.

Following a voluntary bid, in both of the cases referred to in paragraph 2(a) and (b), the consideration offered in the bid shall be presumed to be fair where, through acceptance of the bid, the offeror has acquired securities representing not less than 90 % of the capital carrying voting rights comprised in the bid.

Following a mandatory bid, the consideration offered in the bid shall be presumed to be fair.

Article 16

The right of sell-out

1. Member States shall ensure that, following a bid made to all the holders of the offeree company's securities for all of their securities, paragraphs 2 and 3 apply.
2. Member States shall ensure that a holder of remaining securities is able to require the offeror to buy his/her securities from him/her at a fair price under the same circumstances as provided for in Article 15(2).
3. Article 15(3) to (5) shall apply *mutatis mutandis*.

Article 17

Sanctions

Member States shall determine the sanctions to be imposed for infringement of the national measures adopted pursuant to this Directive and shall take all necessary steps to ensure that they are put into effect. The sanctions thus provided for shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those measures no later than the date laid down in Article 21(1) and of any subsequent change thereto at the earliest opportunity.

Article 18

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Decision 2001/528/EC (hereinafter referred to as 'the Committee').
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to Article 8 thereof, provided that the implementing measures adopted in accordance with this procedure do not modify the essential provisions of this Directive.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be three months.

3. Without prejudice to the implementing measures already adopted, four years after the entry into force of this Directive, the application of those of its provisions that require the adoption of technical rules and decisions in accordance with paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, they shall review them before the end of the period referred to above.

Article 19

Contact committee

1. A contact committee shall be set up which has as its functions:
 - (a) to facilitate, without prejudice to Articles 226 and 227 of the Treaty, the harmonised application of this Directive through regular meetings dealing with practical problems arising in connection with its application;
 - (b) to advise the Commission, if necessary, on additions or amendments to this Directive.
2. It shall not be the function of the contact committee to appraise the merits of decisions taken by the supervisory authorities in individual cases.

Article 20

Revision

Five years after the date laid down in Article 21(1), the Commission shall examine this Directive in the light of the experience acquired in applying it and, if necessary, propose its revision. That examination shall include a survey of the control structures and barriers to takeover bids that are not covered by this Directive.

To that end, Member States shall provide the Commission annually with information on the takeover bids which have been launched against companies the securities of which are admitted to trading on their regulated markets. That information shall include the nationalities of the companies involved, the results of the offers and any other information relevant to the understanding of how takeover bids operate in practice.

Article 21

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 20 May 2006. They shall forthwith inform the Commission thereof.

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

2. Member States shall communicate to the Commission the text of the main provisions of national law that they adopt in the fields covered by this Directive.

Article 22

Entry into force

This Directive shall enter into force on the 20th day after that of its publication in the *Official Journal of the European Union*.

Article 23

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 21 April 2004.

For the European Parliament

The President

P. COX

For the Council

The President

D. ROCHE
