

Wednesday 13 December 2000

9. Takeover bids ***II

A5-0368/2000

European Parliament legislative resolution on the Council common position for adopting a directive of the European Parliament and of the Council on company law concerning takeover bids (8129/1/2000 – C5-0327/2000 – 1995/0341(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (8129/1/2000 – C5-0327/2000),
- having regard to its position at first reading⁽¹⁾ on the Commission proposal to Parliament and the Council (COM(1995) 655)⁽²⁾,
- having regard to the Commission's amended proposal (COM(1997) 565)⁽³⁾,
- having regard to Article 251(2) of the EC Treaty,
- having regard to Rule 80 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on Legal Affairs and the Internal Market (A5-0368/2000),

1. Amends the common position as follows;
2. Instructs its President to forward its position to the Council and Commission.

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(Amendment 1)

Recital 5

(5) Member States should take the necessary steps in order to protect holders of securities having *minority* holdings after the acquisition of control of their company. Such protection should be ensured by obliging the person who acquired control of a company to make a bid to all holders of securities for all of their holdings. *It should be allowed, during a transitional period, to ensure this protection through other appropriate and at-least-equivalent means on condition that these means are specific to the transfer of control and include specific financial compensation for the minority shareholders. Member States may, in addition to the protection provided for by a mandatory bid or other equivalent means, provide for further instruments aimed at the protection of the interests of holders of securities.*

(5) Member States should take the necessary steps in order to protect holders of securities having holdings after the acquisition of control of their company. Such protection should be ensured by obliging the person who acquired control of a company to make a bid to all holders of securities for all of their holdings.

⁽¹⁾ OJ C 222, 21.7.1997, p. 20.

⁽²⁾ OJ C 162, 6.6.1995, p. 5.

⁽³⁾ OJ C 378, 13.12.1997, p. 10.

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(Amendment 2)

Article 2(a)

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| <p>(a) 'takeover bid' and 'bid' 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 part of such securities. A bid <i>may be either mandatory or voluntary, and must follow or have as its objective the acquisition of control;</i></p> | <p>(a) 'takeover bid' and 'bid' mean an offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or part of such securities. A bid must have as its objective the acquisition of control;</p> |
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(Amendment 3)

Article 2(e)

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| <p>(e) 'securities' means transferable securities carrying voting rights in a company;</p> | <p>(e) 'securities' means transferable securities carrying voting rights in a company or which may carry such rights as a consequence of their being exercised or converted;</p> |
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(Amendment 4)

Article 3(1)(b)

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| <p>(b) holders of securities of an offeree company are to have sufficient time and information to enable them to reach a properly informed decision on the bid;</p> | <p>(b) holders of securities of an offeree company and its employees or their representatives are to have sufficient time and information to enable them to reach a properly informed decision on the bid;</p> |
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(Amendment 5)

Article 3(1)(c)

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| <p>(c) the board of an offeree company is to 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;</p> | <p>(c) the board of an offeree company is to act in the interests of the company as a whole, in particular in the interests of corporate policy and its continuation, shareholders and staff, and with a view to safeguarding jobs, and must not deny the holders of securities the opportunity to decide on the merits of the bid;</p> |
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(Amendment 7)

Article 4(5), second subparagraph

Provided that the general principles referred to in Article 3(1) are respected, Member States may provide in their rules made or introduced pursuant to this Directive that their supervisory authorities may in particular types of cases and, on the basis of a reasoned decision, *in specific appropriate cases grant derogation from these rules.*

Provided that the general principles referred to in Article 3(1) are respected, Member States may provide in their rules made or introduced pursuant to this Directive that their supervisory authorities may in particular types of cases **grant derogation from these rules and that in such cases they do so** on the basis of a reasoned decision.

(Amendment 8)

Article 5(1)

1. Where a natural person or legal entity who, as a result of his own acquisition or the acquisition by persons acting in concert with him, holds securities of a company referred to in

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Article 1(1) which, added to any existing holdings and the holdings of persons acting in concert with him, directly or indirectly give him a specified percentage of voting rights in that company, conferring on him the control of that company, Member States shall ensure that rules are in force which oblige this person to make a bid as a means to protect the minority shareholders of that company. This bid shall be addressed to all holders of securities for all their holdings at an equitable price. When the consideration offered by the offeror does not consist of liquid securities admitted to trading on a regulated market, such consideration has to include a cash consideration at least as an alternative.

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The equitable price must be paid in cash if the offeror, alone or in conjunction with a person acting in concert with him, has, in the six months before the bid was made, acquired more than 5 % of the shares or voting rights in the offeree company or does so after publication of the bid and before expiry of the period for acceptance.

(Amendment 12)

Article 5a (new)

Article 5a

Consolidating the position of the offeror

If, as a result of a takeover bid, the offeror receives possession of more than 95 % of the securities with voting rights, he is entitled, no later than six months after conclusion of the bid, to take over in cash the remaining securities with voting rights at the fixed price in the takeover bid.

However, he must at least pay the maximum price paid for securities of the company in question in the three months prior to notification of the offer.

(Amendment 13)

Article 6(3) (h)

(h) the offeror's intentions with regard to the future business of the offeree company, its employees and its management, including any material change in the conditions of employment;

(h) the offeror's intentions with regard to the future business of **both the offeror and** the offeree company, **and the future of** the employees and management, **as well as the supervisory authority**, including any material change in the conditions of employment. **This relates in particular to the offeror's strategic planning for the offeree company, the effect of such plans on jobs and locations, their impact on labour law standards, social**

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standards and collective undertakings and the consequences for bodies representing the interests of the workers;

(Amendment 14)

Article 6(3)(la) (new)

(la) the law which governs the contracts between the offeror and the holders of securities of an offeree company which arise as a result of the bid.

(Amendment 15)

Article 6(4)

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

4. Member States shall ensure that rules are in force requiring the parties to a bid to provide the supervisory authorities of their Member State, **the board of the offeree company and the workers' representatives** at any time on request with all information in their possession concerning the bid which is necessary for **them** to discharge **their** functions.

(Amendment 16)

Article 7

1. Member States shall provide that the period for acceptance of the bid to be specified by the offeror in the offer document in accordance with Article 6(3)(i) may not be less than two weeks or more than *ten weeks* from the date of publication of the offer document. *Member States may provide that the period of ten weeks may be prolonged on the condition that the offeror gives at least two weeks prior notice of its intention to close the bid.*

1. Member States shall provide that the period for acceptance of the bid to be specified by the offeror in the offer document in accordance with Article 6(3)(i) may not be less than two weeks or more than **three months** from the date of publication of the offer document.

2. *Member States may provide for rules modifying the period mentioned in paragraph 1 in specific appropriate cases. Member States may authorise the supervisory authority to grant a derogation from the period mentioned in paragraph 1 in order to allow the offeree company to organise a general meeting to consider the bid.*

2. **The period laid down in paragraph 1 may be extended by the competent supervisory body only in the event of alternative take-over bids by up to a maximum of three months, starting when the documentation concerning the most recent alternative bid is made public.**

(Amendment 20)

Article 9(1)(a) and (b)

(a) at the latest after receiving the information referred to in Article 6(1), first sentence, concerning the bid and until the result of the bid is made public or the bid lapses, the board of the offeree company shall abstain from completing any action other than seeking alternative bids which may result in the frustration of the bid, and notably from the issuing of shares which may result in a lasting impediment to the offeror obtaining control over the offeree company, unless it has the prior authorisation of the general meeting of the shareholders given for this purpose, during the period of acceptance of the bid;

(a) at the latest **from the time when, by whatever means, the existence of a bid becomes known and at all events** after receiving the information referred to in Article 6(1), first sentence, concerning the bid and until the result of the bid is made public or the bid lapses, the board of the offeree company shall abstain from completing any action other than seeking alternative bids which may result in the frustration of the offer, and notably from the issuing of shares which may result in a lasting impediment to the offeror to obtain control over the offeree company, unless it has the prior authorisation of the general meeting of the shareholders **and the supervisory board (if any)** given for this purpose, during the period of acceptance of the bid;

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(b) the board of the offeree company shall draw up and make public a document setting out its opinion on the bid, together with the reasons on which it is based, including its views on the effects of implementation on all the interests of the company, including employment.

(b) the board of the offeree company shall draw up and make public a document setting out its opinion on the bid, together with the reasons on which it is based, including its views on the effects of implementation on all the interests of the company, including employment. **Where a separate opinion of the employees' representative body is available it shall be enclosed.**

(Amendment 17)

Article 9(2a) (new)

2a. If the board proposes any action other than that provided for in the foregoing articles it must act according to one of the following alternatives.

(a) **Supervisory authorities may, in conformity with national law, adopt guidelines as to the permissibility of any other defensive measures.**

(b) **In addition, Member States may opt for one of the following models:**

(i) **the board must obtain prior authorisation by the competent supervisory authority of defensive measures other than those provided for in this article or under the guidelines established according to subparagraph (a);**

(ii) **the competent supervisory authority may, upon request from holders of securities representing at least 1% of the voting rights, forbid defensive measures if they are covered neither by this article nor by guidelines drawn up according to subparagraph (a).**

(c) **In any event, holders of securities may also arrange for the courts to determine whether the limits of the room for manoeuvre have been wilfully exceeded and whether the company is entitled to claim compensation from the members of the board.**

(d) **In any event, all defensive measures which have the prior authorisation of the general meeting of the shareholders given for this purpose, during the period of acceptance of the bid, are permissible and can in particular not be forbidden by the competent supervisory authority.**

(Amendment 18)

Article 15(1), first subparagraph

1. Member States shall ensure that the laws, regulations, administrative provisions or other arrangements necessary for them to comply with this Directive are in force before ... (*). They shall forthwith inform the Commission thereof.

1. Member States shall ensure that the laws, regulations, administrative provisions or other arrangements necessary for them to comply with this Directive are in force before ... (*). They shall forthwith inform the Commission thereof.

(*) Four years after the entry into force of this Directive.

(*) **Two** years after the entry into force of this Directive.