

Application of Directive 2004/25/EC on takeover bids

2012/2262(INI) - 21/05/2013 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution on the application of Directive 2004/25/EC on takeover bids.

Members stress that the effects of the Directive are not limited to the core provisions on takeover bids but need to be **assessed in the wider context of company law**, including corporate governance, capital market law and also employment law. They reiterate that the objectives of the Directive, in particular providing a **level playing field for takeover bids** while protecting the interests of shareholders, employees and other stakeholders, are crucial cornerstones for a well-functioning market for corporate control.

Parliament notes the Commission's conclusion that the Directive is working satisfactorily. It is concerned, however, as regards the dissatisfaction of employees' representatives when it comes to the **protection of employees' rights**, and calls on the Commission to enhance the dialogue with the employee's representatives on how pressing issues can be tackled in a better way.

In addition, Parliament:

- is convinced that, in the long term, further improvements could be envisaged to **strengthen the level playing field for takeover bids in Europe**;
- stresses that the **competent national authorities should remain responsible for the public oversight of takeover bids**. However, it believes that it is not necessary to arrange for supervision of takeover bids at EU level;
- suggests that a more detailed analysis is undertaken in order to identify possible means by which the **concept of 'acting in concert' could be further clarified and harmonised**. This concept is essential when calculating the threshold that triggers the launch of a **mandatory bid**;
- supports the Commission's intention to gather additional information with a view to determine whether the **widely used derogations are contrary to the protection of minority shareholders**. Members take the view that national competent authorities should discourage techniques designed to circumvent the mandatory bid rule and thus avoid paying the control premium to minority shareholders;
- notes that the **board neutrality rule relating to post-bid defences** has been transposed by the majority of Member States, while only a very limited number of Member States has transposed the breakthrough rule which neutralises pre-bid defences;
- underlines that the question of how to protect and strengthen workers' rights urgently requires further consideration and that the relevant provisions of the Directive on workers' rights are to be effectively applied and, where necessary, properly enforced.

Takeover bids during the crisis: the resolution emphasises that the period of transposition of the Directive coincides with the beginning of the financial crisis, which eventually developed into an economic and debt crisis. It underlines that, according to the External Study, **takeover activities have dramatically declined after the transposition date of the Directive as a result of the crisis**, including in the UK, where activities in the market for corporate control are traditionally more concentrated than in the rest of the Union.

As the market for corporate control has steadily been shrinking during this period of financial crisis, **Members consider that the assessment on whether and to what extent further harmonisation measures should be introduced with regard to takeover bids would be distorted.**

Lastly, the **Commission is asked therefore to continue to close-monitor the developments** in the market for corporate control and prepare a new assessment on the application of the Directive when takeover activities return to a more regular volume.