Company law: takeover bids

2002/0240(COD) - 21/04/2004 - Final act

PURPOSE : to lay down measures coordinating the rules on takeover bids relating to company securities in a regulated market.

LEGISLATIVE ACT : Directive 2004/25/EC of the European Parliament and the Council on takeover bids.

CONTENT : this Directive coordinates the rules on takeover bids for the securities of companies governed by the laws of the Member States, where all or some of those securities are admitted to trading on a regulated market. This directive does not apply to takeover bides where a company's securities are, at the holder's request, repurchased or redeemed, directly of indirectly, out of the assets of those companies. Action taken by such companies to ensure that the stock exchange value of their units do not vary significantly from heir net asset value will be regarded as equivalent to repurchase or redemption.

The directive lays down certain common principles and a number of general requirements which Member States will have to respect through detailed implementing rules.

The general rules are as follows :

- 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;

- 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 shareholders, the board of the offeree company must give its views on the effects of implementation of the bid on employment and location of the company's place of business;

- the board of the offeree company must not deny the shareholders the opportunity to decide on the merits of the bid;

- 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 shares become artificial and the normal functioning of the market is distorted;

- an offeror must announce a bid only after ensuring hat he can fulfil any cash consideration and after taking all reasonable measures to secure any other type of consideration;

- an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

The following points must be noted :

- minority shareholders must be protected when control of their companies has been acquired. The person who has acquired control of a company must make an offer to all the shareholders for all of their holdings at an equitable price in accordance with a common definition. The latter encompasses the following: if, after the bid is made public and before it closes for acceptance, the bidder buys any shares at above his offer price, he will have to increase his offer price to at least match the highest price he has paid;

- Member States are free to ensure more protection for shareholders, such as the obligation to make a partial bid where the offeror does not acquire control o the company or the obligation to announce a bid at the same time as control of the company is acquired;

- there are optional arrangements on the provisions on defensive measures by the offeree company and obligations of its board as well as the breakthrough provisions. Whereas an offeree board must obtain the prior authorisation of the general meeting of shareholders before taking any defensive action which may result in the frustration of the takeover bid, the opt-out means that a Member State may choose not to require companies to apply these provisions. At the same time, however, companies in that Member State are allowed to "opt in" and apply the provisions if they chose to do so;

- breakthrough provisions state that any restrictions on the transfer of securities by shareholders in the offeree company will not apply vis-à-vis the offeror during the time allowed for acceptance of the bid. Multiple voting securities will carry one vote only at the general meeting which decides on any defensive measures. Where rights are being removed under the breakthrough provisions of Article 11, equitable compensation must be provided for any loss incurred by the holders of those rights;

- where the company has a two-tier board structure, 'board' means both the management and supervisory board;

- the time allowed for acceptance of a bid may not be less than two weeks not more than ten weeks from the date of publication of the offer document. This can be extended under certain circumstances.

ENTRY INTO FORCE : 20/05/2004.

DATE FOR TRANSPOSITION : no later than 20/05/2006.