

Company law: takeover bids, protection of shareholders, workers rights to information, 13th directive

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The Conciliation Committee finally reached agreement on the directive on takeover bids. The two key issues, namely defensive measures against hostile takeover bids and the question of workers' rights to information, were settled on the basis of compromise proposals. As regards defensive measures (Article 9 of the directive), i.e. measures that the board of an "offeree company" (one which is the target of a bid) will be able to take against a hostile bid, the agreement was based on an idea originally brought forward by members of Parliament's delegation and then reformulated and submitted as a compromise proposal by the Commission. The compromise introduces a new Article 15 into the directive, allowing Member States 4 years to transpose the directive into national law (by the end of 2005) with the possibility of a further one-year postponement (a "freeze") for implementing Article 9 (i.e. until the end of 2006). The Commission undertook, in a written declaration, to look more closely at three important questions: defining the "equitable price" that must be offered in the case of a mandatory bid, the right of the majority shareholder in a company to acquire the shares of minority shareholders ("squeezing out") and the equal treatment of shareholders in all Member States (a "level playing field"). It will do this by setting up a Group of Company Law Experts which will deliver an opinion by March 2002 on the three issues, including their bearing on Article 9 of the takeover directive. On the basis of this opinion the Commission will bring forward any proposals it deems appropriate. As regards workers' rights to information, agreement was again reached on the basis of a Commission compromise proposal which followed recommendations from Parliament and ensures that the workers of an offeree company will have sufficient information, in due time, on the terms of the bid, including its likely impact on jobs.