

Company law: takeover bids

2002/0240(COD) - 16/12/2003 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Klaus- Heiner LEHNE (EPP-ED, D) and reached agreement on a package of compromise amendments regarding the takeover directive, with a number of strategic amendments that make key provisions of the legislation optional. (Please see the summary of 27/11/03.) The resolution was adopted by 321 votes in favour, 219 against with 9 abstentions. The main amendments adopted concern the use of defensive measures, restrictions on votes and multiple voting rights, and especially the introduction of optional arrangements. A key point is that minority shareholders will be better protected. The Commission's text already proposed forcing any company launching a takeover bid to offer to buy all the target company's shares at an "equitable price", defined as "the highest price paid for the same securities by the offeror" over a period of 6-12 months prior to the bid. Under the new compromise amendment, the definition of an equitable price becomes more generous to minority shareholders. 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. Parliament also voted to ensure that multiple voting rights would be treated in the same way as restrictions on voting rights. However, opt-outs for Member States, as well as opt-ins for companies, will be available as in the case of defensive measures. Another amendment states that where such rights are being removed, "equitable compensation" must be provided for any loss the holders incur. The precise terms of this compensation are to be decided by each Member State. Commissioner Frits Bolkestein disagreed with the introduction of optional arrangements, saying this would send the wrong message to the markets. Members generally agreed that the directive as now amended represented little progress towards a genuine level playing field on takeovers in the EU, but most also supported rapporteur's position that "half a loaf is better than none" and that it was time to "put an end to this never-ending story". Although PES, EUL/NGL and Greens/EFA members wanted better information and consultation rights for employees, Commissioner Bolkestein insisted that the existing safeguards were sufficient. It should be noted that the new directive does not cover the "golden shares" held in major companies by many EU governments and sometimes used to block takeover bids. These are to be the subject of a separate directive.