

Basic information	
<p><b>2002/0240(COD)</b></p> <p>COD - Ordinary legislative procedure (ex-codecision procedure) Directive</p>	Procedure completed
<p>Company law: takeover bids</p> <p>Amended by <a href="#">2012/0150(COD)</a> Amended by <a href="#">2016/0362(COD)</a> Amended by <a href="#">2021/0296(COD)</a> See also <a href="#">2012/2262(INI)</a></p> <p><b>Subject</b></p> <p>2.60.04 Economic concentration, mergers, takeover bids, holding companies 3.45.01 Company law</p>	

Key players				
European Parliament	<b>Committee responsible</b>		<b>Rapporteur</b>	<b>Appointed</b>
	<a href="#">JURI</a>	Legal Affairs and Internal Market	LEHNE Klaus-Heiner (PPE-DE)	15/04/2002
	<b>Committee for opinion</b>		<b>Rapporteur for opinion</b>	<b>Appointed</b>
	<a href="#">ECON</a>	Economic and Monetary Affairs (Associated committee)	HUHNE Christopher (ELDR)	27/11/2002
	<a href="#">ITRE</a>	Industry, External Trade, Research, Energy	CHICHESTER Giles (PPE-DE)	23/01/2003
	<a href="#">EMPL</a>	Employment and Social Affairs	VAN DEN BURG Ieke (PSE)	12/11/2002
	Council of the European Union	<b>Council configuration</b>		<b>Meetings</b>
Justice and Home Affairs (JHA)		2574	2003-12-22	
Competitiveness (Internal Market, Industry, Research and Space)		2510	2003-05-19	
Competitiveness (Internal Market, Industry, Research and Space)		2490	2003-03-03	
Competitiveness (Internal Market, Industry, Research and Space)		2462	2002-11-14	
Environment		2556	2003-12-22	
European Commission	<b>Commission DG</b>		<b>Commissioner</b>	

## Key events

Date	Event	Reference	Summary
01/10/2002	Additional information		<a href="#">Summary</a>
02/10/2002	Legislative proposal published	COM(2002)0534 	<a href="#">Summary</a>
21/10/2002	Committee referral announced in Parliament, 1st reading		
14/11/2002	Debate in Council		
03/03/2003	Debate in Council		<a href="#">Summary</a>
19/05/2003	Debate in Council		<a href="#">Summary</a>
27/11/2003	Vote in committee, 1st reading		<a href="#">Summary</a>
27/11/2003	Committee report tabled for plenary, 1st reading	A5-0469/2003	
15/12/2003	Debate in Parliament		
16/12/2003	Decision by Parliament, 1st reading	T5-0571/2003	<a href="#">Summary</a>
22/12/2003	Act adopted by Council after Parliament's 1st reading		
21/04/2004	Final act signed		
21/04/2004	End of procedure in Parliament		
30/04/2004	Final act published in Official Journal		

## Technical information

<b>Procedure reference</b>	2002/0240(COD)
<b>Procedure type</b>	COD - Ordinary legislative procedure (ex-codecision procedure)
<b>Procedure subtype</b>	Legislation
<b>Legislative instrument</b>	Directive
<b>Amendments and repeals</b>	Amended by <a href="#">2012/0150(COD)</a> Amended by <a href="#">2016/0362(COD)</a> Amended by <a href="#">2021/0296(COD)</a> See also <a href="#">2012/2262(INI)</a>
<b>Legal basis</b>	EC Treaty (after Amsterdam) EC 044-p1 Rules of Procedure EP 57_o
<b>Stage reached in procedure</b>	Procedure completed

## Documentation gateway

## European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single				

reading		<a href="#">A5-0469/2003</a>	27/11/2003	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T5-0571/2003</a> OJ C 091 15.04.2004, p. 0029-0109 E	16/12/2003	<a href="#">Summary</a>

#### European Commission

Document type	Reference	Date	Summary
Legislative proposal	<a href="#">COM(2002)0534</a>  OJ C 045 25.02.2003, p. 0001-0017 E	02/10/2002	<a href="#">Summary</a>
Follow-up document	<a href="#">COM(2012)0347</a> 	28/06/2012	<a href="#">Summary</a>

#### Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	<a href="#">CES0589/2003</a> OJ C 208 03.09.2003, p. 0055-0057	14/05/2003	

#### Additional information

Source	Document	Date
European Commission	<a href="#">EUR-Lex</a>	

#### Final act

<a href="#">Directive 2004/0025</a> <a href="#">OJ L 142 30.04.2004, p. 0012-0023</a>	<a href="#">Summary</a>
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## Company law: takeover bids

2002/0240(COD) - 03/03/2003

The Council took note of the presidency's report on the progress made so far on the proposal for a Directive on take-over bids as well as of Delegations' concern on individual aspects of a presidency compromise proposal, in particular with regard to the balancing of Article 9 and 11, notably the question of multiple voting rights. The Council instructed the Permanent Representative Committee to pursue its work on this file as a matter of priority. Following the European Parliament's rejection of the outcome of the Conciliation Procedure in July 2001 on a previous proposal, the new text makes a fresh attempt at establishing a level playing field of take-over bids in the Community. However, broad agreement exists with the Council preparatory bodies not to re-open the debate on those Articles which appeared already in the text agreed upon by the Conciliation Committee and which have not changed substantially. Taking account of delegations' comments and building upon previous compromise proposal put forward by the Danish Presidency, the Greek Presidency tabled on 14 February 2003 a compromise proposal on most of the Article under discussion. No formal agreement has yet been reached on any of the Articles under examination. However, considerable progress has been achieved in building substantial consensus around a number of issues. The core outstanding issues in search of a global compromise is the appropriate balance to strike between, on the one hand, Article 9 which aims at ensuring that it is for the shareholders to decide on defensive measures once a take-over bid has been made public, and, on the other hand, Article 11 which provides for the neutralisation, both during and following a successful take-over bid, of measures that could be seen as pre-bid preferences (restrictions on transfer of securities, restrictions on voting rights).

# Company law: takeover bids

2002/0240(COD) - 19/05/2003

The Council held an extensive exchange of views on the proposal for a Directive on take-over bids, in particular on the scope of and the appropriate relationship between Articles 9 and 11 of the proposal. It discussed various possible solutions for this issue and instructed the Permanent Representatives Committee to pursue the examination with the aim of paving the way for a rapid adoption of the Directive. The intensive preparatory work so far has resulted in a broad convergence of views both on the main thrust and the ultimate objectives of the draft Directive as well as on individual provisions. However, no agreement has yet been reached on the key provisions of the draft Directive, that is a fair and balanced solution for Articles 9 and 11, related to defensive measures once a take-over bid has been made public and provisions for neutralisations of a number of agreements which could frustrate or unduly inhibit the launching or the successful conclusions of the bid.

# 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.

# Company law: takeover bids

2002/0240(COD) - 02/10/2002 - Legislative proposal

**PURPOSE** : proposal for a new regulation on takeover bids **CONTENT** : the Commission's previous proposal (COD950341) on takeover bids was rejected at third reading by the European Parliament on 4 July 2001, for the following reasons: - it rejected the principle whereby, in order to take defensive measures in the face of the bid, the board of the offerree company must first obtain the approval of shareholders once the bid has been made, and this until such time as a level playing field is created for European companies facing a takeover bid - the protection for employees of companies involved in a bid was insufficient; - the proposal failed to achieve a level playing field with the United States. This new proposal pursues the same objectives as its predecessor. It aims to strengthen the legal certainty of cross-border takeover bids in the interests of all concerned and to ensure protection for minority shareholders in the course of such transactions. The following provisions are the main ones which differ from the Commission's previous proposal: - there is a definition of the price to be paid in the case of a mandatory bid. To ensure that minority shareholders obtain the best price in all cases and to afford the offeror legal certainty, the highest price paid for the same securities by the offeror over a period of between six and twelve months prior to the bid is regarded as an equitable price. Member States may authorise the adjustment of that price in circumstances and according to criteria that are clearly determined; - the new proposal retains the principle that it is for shareholders to decide on defensive measures once a bid has been made public but there is greater transparency of the defensive structures and mechanisms in the companies affected. The relevant article lists the particulars that the companies covered by the Directive should publish at least in their annual report, with special reference to the structures and measures that could hinder the acquisition and exercise of control over the company by the offeror. Shareholders must take a decision every two years on the structural measures and defensive mechanisms; - there are restrictions on transfers of securities (e.g. the imposition of a ceiling on shareholdings or restrictions on the transferability of shares) and restrictions on voting rights (e.g. restrictions on the exercise of voting rights and deferral of voting rights) are rendered unenforceable against the offeror or cease to have effect once a bid has been made public. Following a successful bid, the offeror should also have the right to call a general meeting at short notice with a view to amending the articles of association and replacing members of the board, without any restrictions on the transfers of securities or the exercise of voting rights being imposed on the offeror. The Commission feels that the combination of greater transparency with the unenforceability of measures resulting in management entrenchment should enable progress towards a more level playing field with the US. - there is a new article on information and consultation of employees, responding to concerns of MEPs. It confirms that the close involvement of companies' employees' via their representatives, is an important factor. It stresses that, in addition to the national rules which may be applicable, certain provisions of community law may be relevant in this context. This information and consultation is in addition to the specific procedure to be followed in the event of a takeover bid as provided in the proposal; - the introduction of a common squeeze-out procedure enabling a shareholder holding a given percentage of securities of a company to require the

remaining minority shareholders to sell him their securities at a fair price. The proposal limits this right to cases where the percentage of securities was acquired following a takeover bid; - the introduction of a sell-out right, which provides that, following a takeover bid, a minority shareholder can require the majority shareholder to buy his securities from him. - there is a procedure for revision of the provisions.

## 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 bids where a company's securities are, at the holder's request, repurchased or redeemed, directly or 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 their 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 that 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 of 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 nor 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.

# Company law: takeover bids

2002/0240(COD) - 28/06/2012 - Follow-up document

The Commission presents a review of the application of Directive 2004/25/EC1 on takeover bids, in accordance with Article 20 of the Directive. The report:

- describes the impact of the Takeover Bids Directive and how it has been complied with;
- identifies the main issues emerging from the application of the Directive and draws a number of conclusions.

The review of the operation of the Takeover Bids Directive shows that, generally, **the regime created by the Directive is working satisfactory**. No structural compliance issues have emerged in relation to the application of the legal framework in Member States. Stakeholders are generally satisfied with the clarity of the rules included in the Directive and the adequacy of their enforcement and consider the Directive be useful for the proper and efficient functioning of the market. The external study commissioned considers that the Takeover Bids Directive has contributed to improvements in relation to its objectives.

Nevertheless, there are areas where the rules of the Takeover Bids Directive merit some clarification in order to improve legal certainty for the parties concerned and the effective exercise of (minority) shareholder rights.

**The concept of "acting in concert":** this could be clarified on EU level, in order to provide more legal certainty to international investors as to the extent to which they can cooperate with each other without being regarded as "acting in concert" and running the risk of having to launch a mandatory bid. Clarification could, for instance, be provided through the development of guidelines, from the Commission and/or ESMA. Such clarification would give greater opportunity to shareholders to hold boards accountable for their actions and promote good corporate governance standards in listed companies in the EU. However it should not limit the ability of competent authorities to oblige control seeking concert parties to accept the legal consequences of their concerted action. Possible initiatives in this area would be in line with the goals of the Commission's Green Paper on the EU Corporate Governance Framework and its [Communication "Towards a Single Market Act"](#) to promote longer term, sustainable ownership to the benefit of sustainable growth of the European market. The Commission intends to announce what measures it intends to take in this area in October 2012.

**National derogations to the mandatory bid rule:** the review shows that there is a wide variety of national derogations to the mandatory bid rule and that it is not always clear how the general principle of the Directive, which requires the protection of minority shareholders in situations of change of control, is respected when a national derogation applies. As a possible way forward, the Commission intends to carry out further investigation on how minority shareholders are protected when a national derogation to the mandatory bid rule applies. More information is indeed needed on the scope of application of national derogations to the mandatory bid rule, on the extent to which national derogations limit the protection of minority shareholders in situations of change of control and, when relevant, what alternative mechanisms exist in national law to protect minority shareholders in situations of change of control. If, following the investigation, the protection of minority shareholders proves to be inadequate, the Commission will take the necessary steps (e.g. through infringement procedures) to restore the effective application of this general principle of the Directive.

**Exemption to the mandatory bid rule:** the review shows that the exemption to the mandatory bid rule included in the Takeover Bids Directive, for situations where control has been acquired following a voluntary bid for all shares of the company, has created a possibility for offerors of getting round the mandatory bid rule by acquiring a stake close to the mandatory bid threshold and then launching a voluntary bid for a low price. As a consequence, the offeror would cross the mandatory bid threshold without giving minority shareholders a fair chance to exit the company and share in the control premium. This technique is clearly not in line with the objective of the Directive to protect minority shareholders in situations of change of control, although it does not appear to breach the letter of the Directive. Examples in national legislation, such as additional mandatory bid thresholds or minimum acceptance conditions to takeover offers, show that there are ways to prevent the use of this technique. The Commission will take the appropriate steps to discourage the use of this technique across the EU, such as through bilateral discussions with the Member States concerned or Commission Recommendations.

**Board neutrality and breakthrough rules:** with regard to the optional Articles 9 and 11 of the Takeover Bids Directive, the review shows that although the board neutrality rule (Article 9) is transposed by a relatively large number of the Member States, this is not the case for the breakthrough rule (Article 11). However, the lack of application of the optional rules does not seem to have been a major obstacle to takeover bids in the EU, given that stakeholders have indicated that there are sufficient possibilities of breaking through takeover defences. In light of this and considering also the lack of economic evidence available to justify changing the situation, it does not, therefore, seem appropriate at this stage to propose to make the optional articles of the Directive mandatory.

**Inadequate protection of employees:** employee representatives have indicated that they are not satisfied with how the Takeover Bids Directive protects the rights of employees in a takeover situation, in particular with respect to the risk of changes in work conditions and job availability. The Commission will pursue its dialogue with employee representatives with a view to exploring possible future improvements. It will also investigate further the experience gained in practice with the provisions of the Directive which require disclosure of the offeror's intentions as regards the future business of the company and its employment conditions and the view of the offeree company's board on this, as well as disclosure of information concerning the financing of the bid and the identity of the offeror.

Member States, the European Parliament, the European Economic and Social Committee and other interested parties are invited to submit their views on this review.