

Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) Directive</p> <p>1995/0341(COD)</p>	Procedure rejected
<p>Company law: takeover bids, protection of shareholders, workers rights to information, 13th directive</p>	
<p>Subject</p> <p>2.60.04 Economic concentration, mergers, takeover bids, holding companies</p> <p>4.15.12 Workers protection and rights, labour law</p> <p>4.60.06 Consumers' economic and legal interests</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	DELE EP Delegation to Conciliation Committee		19/03/2001
		PPE-DE LEHNE Klaus-Heiner	
	Former committee responsible		
	JURI Legal Affairs, Citizens' Rights		19/03/1996
		PPE FONTAINE Nicole	
	JURI Legal Affairs and Internal Market		23/09/1999
		PPE-DE LEHNE Klaus-Heiner	
	Former committee for opinion		
ECON Economic and Monetary Affairs, Industrial Policy	The committee decided not to give an opinion.		
Council of the European Union	Council configuration	Meeting	Date
	Agriculture and Fisheries	2339	19/03/2001
	Agriculture and Fisheries	2276	19/06/2000
	Competitiveness (Internal Market, Industry, Research and Space)	2148	16/03/2000
	Competitiveness (Internal Market, Industry, Research and Space)	2210	28/10/1999
	Competitiveness (Internal Market, Industry, Research and Space)	2193	21/06/1999

Key events			
07/02/1996	Legislative proposal published	COM(1995)0655	Summary
16/02/1996	Committee referral announced in Parliament, 1st reading		
21/05/1997	Vote in committee, 1st reading		Summary

21/05/1997	Committee report tabled for plenary, 1st reading	A4-0204/1997	
25/06/1997	Debate in Parliament		
26/06/1997	Decision by Parliament, 1st reading	T4-0349/1997	Summary
10/11/1997	Modified legislative proposal published	COM(1997)0565	Summary
27/10/1999	Debate in Parliament		Summary
28/10/1999	Debate in Council	2210	
16/03/2000	Debate in Council	2148	Summary
19/06/2000	Council position published	08129/1/2000	Summary
07/09/2000	Committee referral announced in Parliament, 2nd reading		
28/11/2000	Vote in committee, 2nd reading		Summary
28/11/2000	Committee recommendation tabled for plenary, 2nd reading	A5-0368/2000	
12/12/2000	Debate in Parliament		
13/12/2000	Decision by Parliament, 2nd reading	T5-0559/2000	Summary
19/03/2001	Parliament's amendments rejected by Council		
10/04/2001	Formal meeting of Conciliation Committee		
06/06/2001	Final decision by Conciliation Committee		Summary
19/06/2001	Joint text approved by Conciliation Committee co-chairs	03629/1/2001	
22/06/2001	Report tabled for plenary, 3rd reading	A5-0237/2001	
03/07/2001	Debate in Parliament		
04/07/2001	Decision by Parliament, 3rd reading	T5-0378/2001	Summary

Technical information

Procedure reference	1995/0341(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (after Amsterdam) EC 044
Stage reached in procedure	Procedure rejected
Committee dossier	CODE/5/14567

Documentation gateway

Legislative proposal		COM(1995)0655 OJ C 162 06.06.1996, p. 0005	07/02/1996	EC	Summary

Economic and Social Committee: opinion, report	CES0876/1996 OJ C 295 07.10.1996, p. 0001	11/07/1996	ESC	Summary
Committee report tabled for plenary, 1st reading/single reading	A4-0204/1997 OJ C 222 21.07.1997, p. 0003	21/05/1997	EP	
Text adopted by Parliament, 1st reading/single reading	T4-0349/1997 OJ C 222 21.07.1997, p. 0012-0020	26/06/1997	EP	Summary
Modified legislative proposal	COM(1997)0565 OJ C 378 13.12.1997, p. 0010	10/11/1997	EC	Summary
Council position	08129/1/2000 OJ C 023 24.01.2001, p. 0001	19/06/2000	CSL	Summary
Commission communication on Council's position	SEC(2000)1300	26/07/2000	EC	Summary
Committee recommendation tabled for plenary, 2nd reading	A5-0368/2000 OJ C 232 17.08.2001, p. 0010	28/11/2000	EP	
Text adopted by Parliament, 2nd reading	T5-0559/2000 OJ C 232 17.08.2001, p. 0078-0168	13/12/2000	EP	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2001)0077	12/02/2001	EC	Summary
Joint text approved by Conciliation Committee co-chairs	03629/1/2001	19/06/2001	CSL/EP	
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading	A5-0237/2001	22/06/2001	EP	
Text adopted by Parliament, 3rd reading	T5-0378/2001 OJ C 065 14.03.2002, p. 0057-0112 E	04/07/2001	EP	Summary

Additional information

European Commission

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

OBJECTIVE: the purpose of the proposal for a Directive is to ensure adequate protection of shareholders throughout the European Union by laying down minimum rules for the conduct of public takeover bids. SUBSTANCE: the new proposal lays down the same general principles for the conduct of takeover bids as the previous proposal, but no longer contains detailed provisions harmonizing the application of these principles. Thus Member States may apply the provisions of the Directive on the basis of their own rules, in accordance with their systems and traditions. The proposal simply requires the Member States' own rules concerning takeover bids to comply with the following principles: - equal treatment for all holders of shares in the offeree company who are in the same position; - the persons to whom a bid is addressed must be allowed the necessary time and information to take a sufficiently well-founded decision on the bid; - the administrative or management board of the offeree company must act in the interests of the company as a whole, and must in particular take account of the interests of shareholders; - it is prohibited to create false markets in the securities of the offeree company, the offeror or any other company which the bid concerns; - offeree companies must not be hampered in the conduct of their business for any longer than is reasonably necessary for a bid to purchase their shares. More specifically, the proposal: - requires Member States to designate a supervisory authority and ensure that the general principles laid down in the Directive are applied in practice; - requires specific national rules to be adopted to guarantee protection of minority shareholders in the event of the acquisition or acquisition of control of a listed company. This protection may be ensured by means of a mandatory bid or by any other equivalent means; - requires Member States to ensure a minimum level of publicity and information so that the conduct of bids is transparent; - requires Member States to designate one or more authorities with the necessary powers to ensure that the rules on acquisition are complied with. The Directive does not exclude the possibility that supervision may be exercised by professional bodies in the sector concerned which are competent to deal with complaints concerning bids. ?

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

The Committee is pleased to note that the text of the new proposal for a 13th Directive takes account of substantive comments made by the ESC in its Opinions of 27 September 1989 and 28 February 1991. It regrets however that its comments with respect to the necessity of adequate information and consultation of the workers' representatives of the involved companies have not been taken into account. The Committee proposes wording for individual provisions to clarify their scope and content and to take better account of actual situations, and in particular the different laws of the Member States. The Committee also attaches importance to the proper protection of minority shareholders in cases where bids do not fall within normal stock market operations but are made through an operation on the future market. The Committee also advocates the highest possible degree of legal certainty in such transactions because only in this way can the individual shareholder be effectively protected. With regard to disclosure during the procedure, the Committee advocates a shorter deadline for acceptance of an offer. The Committee calls for the rule governing the obligations of the offeree company to be clarified and points out that the offeree company's bodies must always act responsibly and in the interests of shareholders.?

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

The Committee has approved almost unopposed (minus one vote) limited harmonization of the rules on takeover bids (codecision - first reading). Following its rapporteur Nicole FONTAINE (EPP, F), the Legal Affairs Committee endorsed the thinking behind the new Council proposal - a framework directive with many provisions that are not binding in nature. There are two arguments in favour of harmonization, however limited, of the rules on takeover bids in the internal market. Firstly the substantial differences in national laws mean that takeover operations cannot be carried out with the necessary degree of legal certainty to guarantee stock market transparency and the protection of minority shareholders. Secondly only harmonization can discourage purely speculative raids launched by the strongest players, often to the detriment of national interests. Under the Commission proposal the Member States would be free to choose between a binding arrangement (compulsory takeover bids) and other systems of their choice which only need to meet one requirement: the protection of minority shareholders in the company in question. The amendments adopted included one clarifying the definition of the 'offerer'. In addition Member States must take measures to protect minority shareholders when the immediate or deferred acquisition of securities results in the holder acquiring control of the company. The 'supervisory authority' referred to in Article 4 must supervise the 'entire bid procedure'. The report also clarifies the legal remedies available to the injured party to obtain redress. The board of the offeree company must act in the interests of the company as a whole. The Legal Affairs Committee stated that this also entailed protecting jobs. Other amendments are designed to strengthen the rights of staff or their representatives. They should be informed within 24 hours of the takeover bid being made public. They should also be informed of the offer document. Mr DE CLERCQ welcomed the substantial consensus on the report in committee. He said company law had been suffering from a lack of harmonization for 20 years and it was important to do something to ease the situation. The proposal for a directive was a practical step, which respected the principle of subsidiarity and was likely to meet with agreement in the Council. The committee had adopted amendments that improved the proposal without challenging its general principles.?

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

In adopting the report by Mrs Nicole FONTAINE (EPP, F) Parliament approved the Commission proposal subject to the following amendments: - the coordination measures prescribed by the directive also apply to other mechanisms or arrangements laid down by organizations officially authorized to regulate markets relating to takeover bids; - the definition of 'offerer' is made more precise; - Member States must take steps to protect the minority shareholders when the immediate or short-term acquisition of securities would confer on the holder of these securities control of that company; - the supervisory authority must verify the entire bid procedure (and not all aspects of the bid); - clarification is made to the legal options open to the injured party to secure redress for any damage suffered; - the board of an offeree company is to act in the interests of the company as a whole, including safeguarding jobs; - additional protection is called for, through a consultation procedure, for pensioners who represent a particularly vulnerable category of shareholder; - the supervisory authority must ensure the publication of a report, annually for a period of five years following a takeover showing the workforce size of the company prior to and following a successful bid; it must ensure that investment fund managers who manage portfolio fund investments in either offerer or offeree companies and also hold personal shares in either company are excluded from proceedings. Other amendments seek to strengthen the rights of employees or their representatives: they must be informed within 24 hours of the takeover bid being made public; they must also be informed of the offer document which must indicate any changes to the terms and conditions of employment and any envisaged dismissals. The period for acceptance of the bid may not be less than two weeks from the date on which the document is made public. ?

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

The Commission's amended proposal incorporates most of the amendments adopted by Parliament at first reading, in particular those which: - define certain concepts more precisely, without contradicting the spirit of the directive, which is to ensure a minimum level of harmonization while respecting the principle of subsidiarity; - make provision for informing workers once a bid is made public and ensure that the offer document is made available to them; - extend to the workforce the principle of disclosure to shareholders. The amended proposal does not incorporate the amendments designed to: - require the company management to consult the workforce before giving its opinion on the bid; - oblige the supervisory authority to publish, for a period of five years, a report showing the workforce size of both offerer and offeree companies; - introduce a special system for consulting persons who become shareholders in either the offerer or offeree company through investments made in the context of the management of their pension funds, and define the role of institutional investment managers; - reduce the period for acceptance of the bid from a minimum of four weeks to two weeks, so that there is sufficient time for a general meeting of shareholders to be convened during the procedure. ?

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

The European Parliament confirmed as first reading the text voted on 26.06.1997 on the proposal for a 13th European Parliament and Council Directive on company law concerning take-over bids, the numbering of the legal base of which has changed due to the entry into force of the Amsterdam Treaty.?

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

The Council heard a progress report from the Spanish and United Kingdom delegations concerning their negotiations on the issue of Gibraltar in the context of the draft Directive for rules for take-over bids. The Council took note of the information by these delegations and encouraged them to pursue their negotiations with a view to enabling the Council to reach early agreement on this dossier. It is recalled that a political agreement on a common position, with the exception of its territorial application, was reached at the Council meeting on 21 June 1999. This aspect is connected to the designation by the Member States of a competent authority to supervise take-over bids governed by the Directive. To this effect, the position of Gibraltar remains to be defined in a satisfactory way for both delegations concerned, Spain and the United Kingdom. These delegations are currently pursuing negotiations in order to reach an overall solution applicable to all such Community legislation where the Gibraltar issue could arise.

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

The Council considers that the common position, which incorporates 13 out of the 22 amendments of the European Parliament, fully complies with the objectives of the Commission proposal. The changes introduced aim primarily at increasing the protection of minority shareholders, at reinforcing legal certainty, at introducing certain flexibility in the application of the Directive and at ensuring consistency within Community legislation concerning the financial sector. Firstly, the amendments accepted by the Council include those which aim to: - make clear that the obligation to launch a bid does not apply those controlling holdings already in existence at the date when legislation implementing this Directive enters into force; - make it possible for Member States to extend the obligation to launch a bid to the acquisition of securities other than those defined in article 2(e); - clarify the concept of "regulated market"; - provide for the mutual recognition of the offer document in the other Member States on whose markets the offeree company is listed, provided that the offer document is subject to prior approval by the supervisory authority and has been approved in one Member State. Supervisory authorities, however, may require some additional information specific to the market of the Member States where the offeree is listed. In relation to the amendments which have not been incorporated in the Council's common position, the most important relate in particular to: - the requirement that take-over bids should have as their objective the acquisition of control. The Council agreed that the Directive should not cover bids that neither aim at control nor are an obligation resulting from obtaining control.?

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

The Commission has endeavoured to take account as far as possible of Parliament's point of view as expressed at the first reading and has amended its proposal to incorporate the proposed amendments. It is aware of certain differences between its amended proposal and the Council's common position. It has, however, cooperated with the Council on the amendments to the wording of its proposal following discussions and endeavours throughout several presidencies and considers that the proposal as presently worded already constitutes progress in the harmonisation of takeover bids in Europe. It is pleased that a compromise has eventually been reached on the text of the common position and hopes that its definitive adoption will follow quickly.?

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

The committee adopted the recommendation for second reading (codecision procedure) by Klaus-Heiner LEHNE (EPP-ED, D) amending the Council's common position. On the question of how the board of a target (or "offeree") company could proceed in the event of a takeover bid, the committee wanted provision to be made for various alternatives. The competent supervisory authority should be allowed, in conformity with national law, to adopt guidelines as to the permissibility of defensive measures other than those laid down in the proposal. Member States should also be able to opt for one of a number of models, including making it compulsory for the board of the target company to obtain prior authorisation from the supervisory authority for defensive measures other than increases in share capital or defensive measures other than those allowed under the guidelines drawn up by the Member State in question. In addition, any defensive measures which had the prior authorisation of the general meeting of the shareholders given for this purpose, during the period of acceptance of the bid, should be permissible. The committee also wanted to strengthen workers' rights to information in the event of a takeover bid and introduced a clear definition of the meaning of an 'equitable price' of a bid, saying it should, under certain conditions, be payable in cash. It also proposed a uniform takeover threshold of 30%.?

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

directive

The European Parliament has approved, subject to a number of amendments, the text by Mr Klaus-Heiner LEHNE (EPP/ED, D) amending the Council's common position. The amendments adopted are designed to strengthen the hand of companies facing a hostile bid. While the common position bans a company from taking defensive actions in the face of a hostile bid without the approval of shareholders, one amendment adopted introduces a number of options, one of which would allow the board, in conformity with national law, to take other defensive measures without consulting shareholders. Other amendments are designed to strengthen workers' rights, in particular with regard to access to information in the event of a bid and seek to oblige the company making the bid to state its intentions with regard to jobs and possible relocations. Another amendment seeks to allow defensive measures which had the prior authorisation of the general meeting of the shareholders given for this purpose, during the period of acceptance of the bid. Another amendment introduced a clear definition of the meaning of an 'equitable price' of a bid, saying it should, under certain conditions, be payable in cash. ?

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

This Commission opinion pursuant to Article 251 (2) (c) of the EC Treaty on the European Parliament's amendments to the Council's common position regarding the proposal for a Directive of the European Parliament and the Council on company law concerning takeover bids, amends the original Commission proposal. The European Parliament adopted (second reading) 15 amendments to the Council's common position. The Commission accepted 3 of those amendments in full and one in part but rejected the others. The amendments accepted by the Commission relate to the following: limitation of derogations; specifications in the bid document; period for transposing the Directive and finally, extension of the "principle of neutrality". As regards the amendments of the European Parliament rejected by the Commission, these relate to the clarification of words and terms as well as the scope of the Directive. Others amendments rejected by the Commission concern contributing new ideas, employees' rights and finally, amendments of principle. In accordance with Article 250(2) of the Treaty, the Commission is altering its proposal as indicated above.?

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

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.?

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

The European Parliament in its resolution rejected the joint text approved by the Conciliation Committee on takeover bids. The vote was tied 273 in favour, 273 against and 22 abstentions. The Parliament's Rules of Procedure state that where there is a tied vote, the text shall be deemed rejected. Parliament has therefore followed the recommendation by its rapporteur Klaus-Heiner LEHNE (EPP/ED, Germany) who opposed the conciliation agreement mainly on the grounds that the requirement for the board of a company which is the object of a takeover bid to refrain from taking defensive action until it has consulted its shareholders could only be justified if a "level playing field" existed. Since, according to Mr. Lehne, there is no level playing field either at international or European level and the joint text did not resolve this problem, he argued that the conciliation agreement should be rejected. ?