



COMMISSION OF THE EUROPEAN COMMUNITIES

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**PROPOSAL FOR A 13TH EUROPEAN PARLIAMENT AND COUNCIL
DIRECTIVE ON COMPANY LAW CONCERNING
TAKEOVER BIDS**

(presented by the Commission)

I. GENERAL

1. In 1985, in its White Paper on the completion of the Internal Market, the Commission announced its intention to propose a Directive on the approximation of Member States' regulations on takeover bids.

On 19 January 1989, the Commission presented to the Council a proposal for a Thirteenth Council Directive on company law, concerning takeover and other general bids.¹ The Economic and Social Committee delivered its opinion on 27 September 1989,² and the European Parliament delivered its favourable opinion on 17 January 1990.³

On 10 September 1990, the Commission adopted an amended proposal, in order to take into account these two opinions.⁴

2. Negotiations on this proposal in the Council Working group were suspended in June 1991 due to serious opposition from certain Member States. The most controversial issues were the requirement for a full mandatory bid as the only means to protect minority shareholders in the case of an acquisition or a change of control, the limitation of the powers of the board of the target company during the bid and the need for legally binding provisions governing the procedure for takeovers especially in the absence of measures to remove the structural obstacles to takeovers in several Member States.
3. In its declaration to the European Council in Edinburgh in December 1992 on the subject of subsidiarity, the Commission indicated its intention to revise its proposal and reconfirmed this at the European Council in Essen in December 1994.

After the Summit in Edinburgh, the Commission initiated, in June 1993, a detailed consultation with Member States in order to give them the opportunity to submit their current views on the proposal and in general on the need for harmonisation in the field of takeovers.

4. The present proposal for a "framework" Directive is made in the light of the results of the above mentioned consultation with Member States, in which a majority indicated their preference for a Directive which established general principles to govern takeovers, but which did not attempt a detailed harmonisation, as in the text originally proposed.

¹ OJ No C 64, 14.3.1989, p. 8; with explanatory memorandum, Suppl. 3/89 - Bull. EC.

² OJ No C 298, 27.11.1989, p.56.

³ OJ No C 38, 19.2.1990, p.41.

⁴ OJ No C 240, 26. 9.1990, p.7; with explanatory memorandum, COM(90) 416 final - SYN 186

5. The Commission's original proposal was an ambitious text put forward in the late '80s during a period of considerably increased international merger and takeover activity. The period of relative inactivity which followed due to the recession had negative consequences for the willingness of Member States to be bound by such a detailed text.

However, takeover activity appears to be once again on the increase in certain Member States, especially as the proposed Tenth company law Directive on cross-border mergers remains blocked. The conditions for takeovers remain very uneven in the meantime in the Member States, both as regards the regulation of this type of financial operation and as regards its feasibility and frequency.

6. The Commission's aim in proposing the Directive was not to encourage takeovers as an end in themselves. Its standpoint has always been that such operations may be viewed in a positive light in so far as they contribute to the expansion and reconstruction of European companies, which is indispensable in order to meet international competition. The Commission's aim is to ensure that when a takeover occurs, it takes place in a context of legal security where all the interested parties will have prior knowledge of the conditions under which they need to operate.

The Commission also considers that it is a legitimate concern for the Union (legal basis Art. 54 of the Treaty) to ensure that within the internal market shareholders of listed companies enjoy equivalent safeguards in the case of a change of control and that a certain level of transparency prevails during takeovers. Therefore, the aims of the Directive are to ensure an adequate level of protection for shareholders throughout the Union and to provide for minimum guidelines on the conduct of takeover bids.

7. The proposed Directive creates a framework consisting of certain principles and a limited number of general requirements, which Member States will be required to implement through more detailed rules. The new approach will allow Member States to deal with the detailed rules for the implementation of the Directive according to their national practices with considerably more room for manoeuvre than they would have had with the more detailed Directive originally proposed.

Thus, the Directive attempts to overcome many of the difficulties caused in the past by the wide differences between Member States as far as the attitudes to regulating takeovers are concerned. In fact, the framework Directive provides for a structure which permits the maintenance of existing national differences provided that these differences do not go as far as to undermine the common principles and requirements set out by the Directive at Community level.

8. The new proposal covers most of the field of the 1990 proposal but in a less-detailed way. There is an obligation for Member States to designate a supervisory authority and to ensure that effect is given through more detailed rules to the general principles and requirements set out in the Directive. Such requirements focus on the protection of minority shareholders, the necessary degree of information and disclosure during the procedure, and the role that the board of the offeree company should play during the bid.
9. In case of an acquisition or a change of control of a listed company, the proposal requires that specific national rules should be adopted to guarantee that minority shareholders are protected. The mandatory bid is no longer treated as the only means to protect minority shareholders as was the case in the previous proposal. That is the most important innovation in the present proposal for a framework Directive. This protection can be ensured either by a mandatory bid or by other means which should be equivalent. Member States are competent to determine the notion of control in terms of voting rights. If Member States provide for the mandatory bid, all the requirements of the Directive should be respected. If that is not the case, these requirements should apply to the bids which are launched on a voluntary basis and aimed at acquiring control of the offeree company.
10. The proposed Directive requires Member States to ensure a basic level of disclosure and information which will guarantee transparency during the takeover bid. It is left to Member States to determine how such transparency will be ensured. The process of informing the employees of the offeree company is not subject to a specific provision, which leaves Member States free to deal with this issue according to their usual practices.
11. The proposed Directive requires Member States to designate the authority or authorities which will have the power to supervise the respect of the takeover rules. New provisions have been introduced in order to allow the supervisory authority a degree of discretion in exercising its responsibilities. Moreover, the Directive does not exclude the possibility of control being exercised by a self regulatory body which will have the power to decide on complaints with regard to a takeover bid. The extent to which the Courts may intervene will be a matter for each Member State, provided that there is at least a right to bring proceedings to claim compensation. There is no requirement to suspend or interrupt the takeover process if a party takes the matter to Court.

II. SUBSIDIARITY

This proposal sets out to amend the 1990 proposal for a Thirteenth Directive specifically in order to take account of the principle of subsidiarity and the outcome of the Commission's consultations with the Member States.

The previous proposal made very detailed provision for the objectives to be pursued and the procedures to be followed.

The present proposal is for a framework Directive which would state the objectives to be achieved while leaving the Member States a wide measure of discretion to determine how this is to be done. Shareholders are often dispersed through different Member States, and the Directive aims in particular to give them a minimum level of protection which would be equivalent throughout the Community, as provided in Article 54(3)(g). In order to achieve this Member States have a choice between the mandatory bid and any other means which will secure the same result but which may be more closely in line with their own domestic legal traditions. As stated earlier, a framework Directive establishes a structure which allows national differences to be maintained as long as they do not undermine the common principles and objectives that the Directive defines at Community level.

The proposal is concerned with takeover bids, which are complex transactions with transnational implications. Any action taken by individual Member States will be limited in its territorial effect, and cannot achieve the objectives pursued here.

III. COMMENTARY ON THE ARTICLES

Article 1

Scope

The Directive applies to companies governed by the law of a Member State whose securities are admitted to trading wholly or partially on one or more Stock Exchanges in the Community. The words "*wholly or partially*" are the only innovation compared with the previous text and indicate that the Directive applies also in cases where only a proportion of the offeree company's securities conferring voting rights is listed. It is evident that, since the Directive lays down minimum requirements, the Member States are free to apply the terms of the Directive to companies whose securities are not listed on a stock exchange.

Article 2

Definitions

This Article defines in the same way as in the previous text the most important terms used in the Directive.

In particular, it is necessary to specify that the provisions of the Directive apply *both to mandatory and voluntary bids*. A bid may be mandatory where it is provided by Member States as a means to protect minority shareholders in case of a change of control. A bid may be voluntary when it is launched by a person without being obliged to, in order to acquire control of a company.

Article 3

Protection of minority shareholders

This article reflects the new approach of the Directive.

The aim is to ensure that every time a person or entity acquires control of a listed company as a result of acquisition, minority shareholders are protected. To that end, the Directive requires that national rules give proper safeguards to the minority shareholders.

Such safeguards can be ensured either by providing for a mandatory bid, as was required by the previous version of the Directive, or by other means. Member States which do not adopt the mandatory bid as a way to protect the minority shareholders must demonstrate that these other means really give minority shareholders a proper protection.

Such protection can be guaranteed by other means, as is the case in some Member States. In some cases, under the law on groups of companies, minority shareholders are protected after the purchase of a major holding in the company. For instance, minority shareholders of a company which becomes dependent on another company, within a contract based group, are entitled to recurrent payments or may withdraw from the dependent company on payment of an indemnity. Furthermore, claims for damages by the dependent company against members of the organs of the controlling company may also be made by minority shareholders of the dependent company. In addition, if the control changes, in the context of a de facto group, the controlling company must compensate the dependent company for any detrimental measures taken against it.

The new approach is necessary in order to accommodate certain Member States which were particularly opposed to the obligation to launch a bid in the case of the acquisition of control, as a means of protecting the minority shareholders. These Member States consider that such protection is ensured in their own jurisdiction by other effective means, such as those described above.

The Directive itself does not attempt to define the percentage of voting rights conferring control nor the method of its calculation, as was the case in the previous text. Given the difficulties which arose during the negotiations in relation to the previous text, these matters are to be defined by the Member State where the supervisory authority is situated according to article 4.

Article 4

Supervisory authority

Member States are required to designate a supervisory authority or authorities to supervise all aspects of the bid and to ensure compliance by all the parties to the bid with the rules made pursuant to this Directive.

In the case where the registered office of the offeree company is not in the State where the company is listed, the competent authority would be that of the Member State on whose regulated market the securities of the offeree company were first admitted to trading *and where they still are traded*.

In order to secure the *flexible application* of the Directive, while at the same time ensuring that flexibility does not go so far as to undermine its general principles, Member States may grant to their supervisory authorities a power to waive certain national rules adopted in accordance with this Directive. Nevertheless, in doing so the supervisory authority should always be guided by the general principles laid down in this Directive. Such flexibility may be necessary in order to enable the supervisory authority to cope with a great variety of circumstances which can arise in fast moving financial markets.

The paragraph 5 intends to solve the difficulties with regard to the *avoidance of litigation* during a Takeover bid. Member States may confer upon their supervisory authorities powers enabling them to order any measure which they deem necessary concerning a takeover bid. In addition, proceedings before these authorities may even be explicitly encouraged in order to avoid recourse to judicial action. Nevertheless, these proceedings cannot exclude the right of an injured party to have recourse to the Courts in order at least to claim compensation in case of damage .

Article 5

General principles

This article contains a series of general principles which must be respected by the national rules which implement the Directive. The objectives of the principles in the previous text are not affected.

The first principle is that holders of securities in the offeree company who are in the same position should be accorded equal treatment. Second, it is necessary to ensure that persons to whom the bid is addressed have sufficient time and all the necessary information to take a decision on the bid. The third is designed to ensure that the board of the offeree company acts in the interests of the company taken as a whole, having regard in particular to the interests of its shareholders. The objective of the fourth principle is to prevent the creation of false markets in the securities of companies concerned by the bid. Finally, the purpose of the fifth principle is to ensure that the affairs of the offeree company are not impeded for an unreasonable time.

Article 6 (Information)

National rules must ensure that the addressees of a bid dispose of sufficient information about the terms of the bid. Moreover, as soon as the offeror decides to make the bid he must announce his intention to the supervisory authority and to the board of the offeree company.

The offeror must also be required by national rules to prepare and make public in good time an offer document containing all the necessary information to enable the addressees of the bid to reach a properly informed decision. The offer document must be forwarded to the supervisory authority before its publication. All parties to the bid should also provide the supervisory authority, at its request, with all the necessary information for the discharge of its duties.

Article 7 (Disclosure)

Member States must ensure that information capable of having an influence on the market in the securities concerned should be made public in such a way as to reduce the possibility of the creation of false markets and insider dealing.

The Directive does not enumerate the forms of disclosure as was the case in the previous text. It leaves a wide discretionary power to Member States to decide the requisite forms of disclosure, provided that all the necessary information is both clear and promptly available to the addressees of the bid.

Article 8 (Obligations of the board of the offeree company)

The Article requires Member States to ensure that the board of the offeree company will refrain from adopting defensive measures which may result in the frustration of the offer without the authorisation of the general meeting of the shareholders.

In the context of a change of control of a company it is important to ensure that the fate of the offeree company will be decided by its shareholders. The Directive does not define the measures which can frustrate for a bid. In general, such measures may be all operations which are not carried out in the normal course of the company's business or not in conformity with normal market practices. The authorisation of the general meeting should be given explicitly for the purposes of a bid.

This ban should take effect from the time that the offeror informs the board of the offeree company that he intends to make a bid until the result of the bid is made public according to national rules.

The board of the offeree company must also be required by national rules to give its view of the bid in a report setting out the arguments for and against acceptance of the offer.

Article 9

Rules applicable for the conduct of bids

This Article lists a number of matters which Member States' rules must cover, without going into any detail. This approach leaves to Member States a substantial discretionary power as regards the content of these rules. Such rules should state a) the circumstances under which a bid can be withdrawn, once it is made public, b) the procedure that the offeror should respect if he wants to revise the terms of his bid, c) the way competing bids should be treated and d) the moment, when and the way in which the parties should be informed of the outcome of the bid.

Member States should ensure that the general principles, and especially the one which states that the offeree company should not be hindered in the conduct of its affairs for longer than is reasonable, are respected by the national rules made pursuant to this Article.

Since the general principles which ought to govern the national rules which deal with the conduct of takeover bids are harmonised by this Directive, the Directive does not attempt to harmonise the detailed procedures which implement those principles.

Article 10

Mandatory bid

The mandatory bid is no longer the only means to protect minority shareholders under this Directive. Nevertheless, where Member States do provide for a mandatory bid, Article 10 applies. Pursuant to this Article, Member States are allowed to provide for either a full or a partial mandatory bid.

According to the rule applicable to the full mandatory bid, the person who acquires control of a listed company should be obliged to launch a takeover bid for all the company's remaining shares. The objective of this rule is to give a right of exit from the company to all the remaining shareholders who do not welcome the change of control.

The full mandatory bid was the exclusive rule in the previous text to guarantee that all shareholders are treated equally to those shareholders who sold the controlling stake. There were serious objections to the imposition of the full mandatory bid on all Member States. The requirement for a full mandatory bid was criticised as a burden on business which would undermine market mechanisms and be liable to upset the financial markets.

The present text allows for partial bids provided that they fulfil the objective of the equal treatment of shareholders and they are not purely speculative.

According to the rule applicable to the partial mandatory bid, the person who acquires control of a listed company should be obliged to make a bid for a substantial percentage of the remaining shares; such a percentage should be high enough to meet the objective of the protection of minorities. The principle of equal treatment in cases of partial mandatory bids is met by the requirement for the pro rata purchase of the holdings of the remaining shareholders.

In both cases, full or partial, the bid shall be addressed to all shareholders, who must be given the opportunity to sell their shares at a price which meets the objective of protecting their interests.

**PROPOSAL FOR A 13TH EUROPEAN PARLIAMENT AND COUNCIL
DIRECTIVE ON COMPANY LAW CONCERNING
TAKEOVER BIDS**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 54 thereof;

Having regard to the proposal from the Commission;

Having regard to the opinion of the Economic and Social Committee;

Whereas it is necessary to coordinate certain safeguards which Member States require of companies and firms within the meaning of the second paragraph of Article 58 of the Treaty for the protection of members and others, in order to make such safeguards equivalent throughout the Community;

Whereas it is necessary to protect the interests of shareholders of companies governed by the law of a Member State when these companies are subject to a takeover bid or to a change of control and their securities are admitted to trading on a regulated market within the scope of this Directive;

Whereas only action at Community level can ensure an adequate level of protection for shareholders throughout the Union and provide for minimum guidelines for the conduct of takeover bids; whereas Member States acting independently are not able to establish the same level of protection especially in the case of cross-border take-overs or purchases of control;

Whereas the adoption of a Directive is the appropriate procedure for laying down a framework consisting of certain common principles and a limited number of general requirements which Member States will be required to implement through more detailed rules according to their national systems and their cultural contexts;

Whereas Member States should take the necessary steps in order to protect shareholders having minority holdings after the purchase of the control of their company; whereas such a protection can be ensured either by obliging the person who acquired the control of a company to make a bid to all shareholders for all or for a substantial part of their holdings or by providing for other means which attain the objective of at least an equivalent level of protection of minority shareholders;

Whereas each Member State should designate an authority or authorities to supervise all aspects of the bid and to ensure that parties to takeover bids comply with the rules made pursuant to this Directive; whereas the different authorities must cooperate with one another;

Whereas it is desirable to encourage the voluntary control exercised by self regulatory bodies in order to avoid recourse to administrative or judicial action;

Whereas to reduce the scope for insider dealing offerors should be required to announce their intention of launching a bid as soon as possible and to inform the supervisory authority and the offeree company's board of the bid before they are made public;

Whereas the addressees of a takeover bid should be properly informed of the terms of the bid by means of an offer document;

Whereas it is necessary to set a time limit for takeover bids;

Whereas to be able to perform their functions satisfactorily, supervisory authorities must at all times be able to require the parties to the bid to provide information on it;

Whereas to avoid operations which frustrate the bid it is necessary to limit the powers of the board of directors of the offeree company to engage in operations of an exceptional nature;

Whereas the board of the offeree company should be required to make public a document setting out its opinion on the bid and the reasons on which it is based;

Whereas it is necessary that Member States provide for rules covering the cases when the bid may be withdrawn or declared void once the offer document has been made public, the right of the offeror to revise its bid, the possibility of competing bids for the securities of a company which are necessarily to the advantage of its shareholders and the disclosure of the result of the bid;

HAVE ADOPTED THIS DIRECTIVE

Article 1

Scope

The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions or other mechanisms or arrangements of the Member States relating to takeover bids for the securities of a company governed by the law of a Member State, where such securities are admitted, wholly or partially, to trading on a market in one or more Member States which is regulated and supervised by authorities recognised by public bodies, operates regularly and is accessible, directly or indirectly, to the public.

Article 2

Definitions

For the purposes of this Directive :

- "takeover bid" ("bid") shall mean an offer made to the holders of the securities of a company to acquire all or part of such securities by payment in cash and/or in exchange for other securities. A bid may be either mandatory, if so provided by Member States as a means to protect minority shareholders, or voluntary;
- "offeree company" shall mean a company whose securities are the subject of a bid;
- "offeror" shall mean any natural person or legal entity in public or private law making a bid;
- "securities" shall mean transferable securities carrying voting rights in a company or conferring entitlement to obtain transferable securities carrying such rights;
- "parties to the bid" shall mean the offeror, the members of the offeror's administrative or management board, if the offeror is a company, the addressees of the bid and the members of the administrative or management board of the offeree company.

Article 3

Protection of minority shareholders

1. Where a natural person or legal entity who as a result of acquisition, holds securities which added to any existing holdings give him a specified percentage of voting rights in a company referred to in Article 1, conferring on him the control of that company, Member States should ensure that rules or other mechanisms or arrangements are in force which either oblige this person to make a bid in accordance with article 10 or offer other appropriate and at least equivalent means in order to protect the minority shareholders of that company.

2. The percentage of voting rights which confers control for the purposes of paragraph 1 and the way of its calculation shall be determined by the law of the Member State where the supervisory authority is located.

Article 4

Supervisory authority

1. Member States shall designate the authority or authorities, which will supervise all aspects of the bid. The authorities thus designated may include associations or private bodies. Member States shall inform the Commission of these designations and shall specify all divisions of functions that may be made.
2. The authority competent for supervising the bid shall be that of the Member State in which the offeree company has its registered office if the securities of the company are admitted to trading on a regulated market in that Member State. Otherwise, the competent authority shall be that of the Member State on whose regulated market the securities of the company were first admitted to trading and are still traded.
3. Without prejudice to their duty of professional secrecy, the competent authorities of the Member States shall cooperate, in so far as necessary for the performance of their duties and for this purpose shall supply each other with any information that may be necessary.
4. The supervisory authorities shall have all the powers necessary for the exercise of their functions, which shall include responsibility for ensuring that the parties to a bid comply with the rules made pursuant to this Directive. In addition Member States can provide that their supervisory authorities may, on the basis of a reasoned decision, grant derogations from the rules drawn up in accordance with this Directive provided that in granting such derogations the supervisory authorities shall respect the principles mentioned in article 5.
5. This Directive does not affect the power which courts may have in a Member State to decline to hear legal proceedings and to decide whether or not such proceedings affect the outcome of the bid provided that an injured party enjoys adequate remedies, whether through an appeals procedure operated by the supervisory authority or through the right to take proceedings before the courts to claim compensation.

Article 5

General principles

1. For the purposes of the implementation of this Directive, Member States shall ensure that the rules or other arrangements made pursuant to this Directive respect the following principles:
 - (a) all holders of securities of an offeree company who are in the same position are to be treated equally ;
 - (b) the addressees of a bid are to have sufficient time and information to enable them to reach a properly informed decision on the bid;

- (c) the board of an offeree company is to act in the interests of the company as a whole;
 - (d) 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;
 - (e) offeree companies must not be hindered in the conduct of their affairs for longer than is reasonable by a bid for their securities.
2. In order to attain the objective set out in paragraph 1, Member States shall ensure that rules are in force which satisfy the minimum requirements set out in the following articles.

Article 6

Information

1. Member States shall ensure that rules are in force requiring that the decision to make a bid is made public and that the supervisory authority and the board of the offeree company are informed of the bid before this decision is made public.
2. Member States shall ensure that rules are in force requiring the offeror to draw up and make public in good time an offer document containing the information necessary to enable the addressees of the bid to reach a properly informed decision on the bid. Before the offer document is made public, the offeror shall communicate it to the supervisory authority.
3. Those rules shall require that the document state at least :
 - the terms of the bid;
 - the identity of the offeror or, where the offeror is a company, the type, name and registered office of that company;
 - the securities or class or classes of securities for which the bid is made;
 - the consideration offered for each security or class of securities and the basis of the valuation used in determining it with particulars of the way in which that consideration is to be given ;
 - the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire;
 - details of any existing holdings of the offeror in the offeree company;
 - all conditions to which the offer is subject;
 - the offeror's intentions with regard to the future business and undertakings of the offeree company, its employees and its management;

- the period for acceptance of the bid, which may not be less than four weeks or more than ten weeks from the date on which the document is made public;
 - where the consideration offered by the offeror includes securities, information about those securities.
4. Member States shall ensure that rules are in force requiring that the parties to a bid to provide the supervisory authority at any time on request with all information in their possession concerning the bid which the supervisory authority considers necessary for the discharge of its functions.

Article 7

Disclosure

1. Member States shall ensure that rules are in force which require a bid to be made public in such a way as to avoid the creation of false markets in the securities of the offeree company or of the offeror.
2. Member States shall ensure that rules are in force which provide for the disclosure of all information or documents required in such a manner as to ensure that they are both readily and promptly available to the addressees of the bid.

Article 8

Obligations of the board of the offeree company

Member States shall ensure that rules are in force requiring that:

- a) after receiving the information concerning the bid and until the result of the bid is made public, the board of the offeree company should abstain from any action which may result in the frustration of the offer, and notably from the issuing of shares which may result in a lasting impediment to the offeror to obtain control over the offeree company, unless it has the prior authorisation of the general meeting of the shareholders given for this purpose;
- b) the board of the offeree company shall draw up and make public a document setting out its opinion on the bid together with the reasons on which it is based.

Article 9

Rules applicable to the conduct of bids

In addition Member States shall ensure that rules are in force which govern the conduct of bids at least for the following matters:

- a) withdrawal or nullity of the bid
- b) revision of bids
- c) competing bids
- d) disclosure of the result of bids

Article 10

Mandatory bid

1. Where a Member State provides for a mandatory bid as a means to protect the minority shareholders, this bid shall be launched to all shareholders for all or for a substantial part of their holdings at a price which meets the objective of protecting their interests.
2. If the mandatory bid comprises only a part of the securities of the offeree company and the shareholders offer to sell to the offeror more shares than the partial offer covers, shareholders should be treated equally by means of a pro rata treatment of their shareholdings.

Article 11

Transposition of the Directive

1. Member States shall ensure that the laws, regulations and administrative provisions or other mechanisms or arrangements necessary for them to comply with this Directive are in force before 1 April 1998.
2. Member States shall communicate to the Commission the provisions or other arrangements referred to in paragraph 1, making express reference to this Directive.

Article 12

Addresses of the Directive

This Directive is addressed to the Member States.

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