



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.11.1997  
COM(97) 565 final

95/0341 (COD)

Amended proposal for a  
**THIRTEENTH EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE**  
on company law concerning takeover bids

(presented by the Commission pursuant to Article 189 a (2)  
of the EC-Treaty)

## EXPLANATORY MEMORANDUM

### I. GENERAL

On 8 February 1996 the Commission presented to the Council and the European Parliament the proposal for a thirteenth Directive on company law concerning takeover bids.<sup>1</sup>

The Economic and Social Committee endorsed the proposal on 11 July 1996.<sup>2</sup>

The European Parliament delivered its opinion (first reading) under the co-decision procedure at its plenary part-session on 25 and 26 June 1997.<sup>3</sup> In its opinion, Parliament approved the Commission proposal by a large majority, while proposing some 20 amendments.

The Commission has accepted most of those amendments. They are designed to clarify certain matters and are not at odds with the aim of the Directive, which is to guarantee a minimum level of harmonisation while observing the principle of subsidiarity.

The Commission has also accepted the amendments providing for the employees to be informed once the bid has been made public and for the bid document to be communicated to them. It has been accepted that the principle of disclosure to shareholders should be extended to employees. However, the proposal that the offeree company's board should be required to consult employees before giving its opinion on the bid has not been accepted. According to the general principles, the board is required to take account of all the company's interests, and in particular employment. The application of those principles should be left to the Member States given the "framework" nature of the Directive. The Commission has not accepted the amendment that the supervisory authority should publish a report for five years on the workforces of the offerer and offeree companies. Apart from the need to observe the principle of

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<sup>1</sup> OJ No C 162, 6.6.1996, p. 5; with explanatory memorandum, COM(95) 655 final.

<sup>2</sup> OJ No C 295, 7.10.1996, p. 1.

<sup>3</sup> OJ No C 222, 21.7.1997, p. 20.

subsidiarity, this is an impractical idea given the fact that the supervisory authority designated by a Member State to oversee the bid relinquishes its involvement once the operation has been completed.

The Commission has also not accepted those amendments designed to introduce a special system for consulting individuals who become shareholders in either the offerer or the offeree company following investments made in the context of the management of their pension funds and to define the role of those responsible for institutional investments. This is a matter more for national law and is in any case difficult to cover in this Directive. The Commission has also rejected the idea of reducing the minimum bid acceptance period from four to two weeks in order to ensure that there is sufficient time for a general meeting of shareholders to be called during the procedure.

This amended proposal takes account not only of all the amendments proposed by Parliament and accepted at a full meeting of the Commission but also, as far as possible, of the concerns expressed by the Economic and Social Committee. The amended proposal also contains a number of amendments which reflect comments made by interested parties on the Commission's initial proposal. These amendments are designed to clarify the wording of certain provisions and do not alter the spirit and objectives of the proposal.

## II. COMMENTARY ON THE ARTICLES

No comment will be made on the wording changes made in the amended proposal.

### Article 1

#### Scope

At the request of the Economic and Social Committee (ESC) and the European Parliament (EP), it is made clear that the coordination measures prescribed by the Directive apply to the laws, regulations and administrative provisions of the Member States, which may include mechanisms or arrangements established by organisations officially authorised to regulate the markets.

## **Article 2**

### **Definitions**

At the request of the ESC and the EP, the definition of "offerer" is supplemented by a reference to the national law applicable to the supervisory authority. Besides the identification of the offerer itself, the Member States must thus define any person who could be viewed as such, for example persons acting in unison to acquire a company's securities or persons making a bid in their own name but on behalf of someone else.

At the suggestion of the ESC, the definition of "securities" has been limited to transferable securities which carry voting rights conferring actual control over a company.

## **Article 3**

### **Protection of minority shareholders**

At the request of the ESC and the EP, it has been made clear that the provisions concerning the obligation to protect minority shareholders apply not only following acquisitions conferring immediate control but also following those conferring subsequent control. In the latter case, the decisive moment for determining the percentage of voting rights which, under national law, confers control over a company will be the moment when control can actually be exercised, e.g. the settlement date in the case of a futures contract or the moment when options are realised.

At the request of the ESC, it has been made clear that the Directive covers only the direct taking of control through acquisition of the offeree company's securities and does not cover indirect control of the offeree company by a holding company which is not listed on the stock exchange.

At the request of the EP and the ESC, it is also stipulated that the competent supervisory authority may grant exemptions from the obligation to protect minority shareholders where a person holds controlling shares only temporarily or without the intention of exercising control, including, for example, the acquisition of shares forming part of the trading portfolio of companies acting as intermediaries in security dealings.

## Article 4

### **Supervisory authority**

It has been made clear that the authorities designated by the Member States will be responsible for supervising the entire course of the bid procedure and not all aspects of the bid (Article 4(1) and sixth recital). The aim of this amendment is not to exclude other authorities which might also be involved in other aspects of the bid, such as those responsible for safeguarding free competition.

At the request of the EP, the arrangements for determining the competent authority, designation of which will decide the law applicable, have been supplemented by a third criterion designed to cover the case where the securities of the offeree company are for the first time traded simultaneously on different markets outside the Member State in which the company's registered office is located. In this case, the competent authority will be that of the Member State on whose market the securities are principally traded during the period of acquisition of control of the offeree company (Article 4(2)).

The professional secrecy requirement is explicitly laid down through reference to the rules already adopted in connection with securities markets (Article 4(3)).

The general power of the supervisory authority to derogate from some of the national rules adopted pursuant to the Directive (second sentence of Article 4(4)) has been restricted to specific cases provided for in the Directive itself (see Articles 3(2), 6(3), ninth indent, and 10(1)). This amendment reflects the criticisms made by the ESC, which considered it unacceptable for the supervisory authorities to be granted a general power of derogation.

As regards disputes which may arise during the bid procedure, Article 4(5) has been amended to enable Member States to designate the judicial or other authorities responsible for dealing with disputes and for deciding on irregularities committed during the procedure, provided that any injured party has appropriate remedies for claiming compensation for any loss suffered. The question as to what extent these authorities may deal with a dispute during the bid procedure and whether the bid procedure should be suspended or halted is thus left to Member States' discretion.

## **Article 5**

### **General principles**

The third general principle designed to ensure that the board of an offeree company acts in the interests of the company as a whole has been both clarified and substantively amended. As requested by the EP, the board must act in all the interests of the company, including those of shareholders, creditors and employees, particularly with a view to safeguarding employment.

The fourth general principle, designed to prevent false markets from being created in the securities of any company affected by the bid, has been clarified at the request of the ESC. False markets can be created in particular where the rise or fall in the prices of securities becomes artificial owing, for example, to the publication or dissemination of false, exaggerated or tendentious information, which has the effect of disrupting the normal functioning of the markets (see also Article 7(1) on disclosure).

## **Article 6**

### **Information**

At the EP's request, paragraphs 1 and 2 and the ninth recital have been amended to provide expressly for information to be given to the employees' representatives or, where there are no such representatives, to the employees themselves. As soon as the bid has been made public, the board of the offeree company is thus required to inform them and to communicate the published bid document to them.

The list of information to be communicated has been supplemented:

In the case of cross-border bids, information must also be provided concerning the payment arrangements for shareholders living in a Member State other than that in which the offeree company has its registered office or the shares are listed.

The offerer must specifically make known its intentions as to any change it intends to make to the conditions of employment in the offeree company.

As regards the bid acceptance period, the amended proposal specifically refers to the possibility open to the supervisory authority of granting a derogation from the minimum/maximum range of four to ten weeks. This flexibility is important, particularly in the case of competing bids or for taking account of the specific characteristics of a given bid.

In order to enable the shareholders of the offeree company to assess the financial guarantees underlying the bid and any effects it may have on their company's future, the offerer must also specify how its bid is being financed.

#### **Article 7**

##### **Disclosure**

At the EP's request, the rules governing the publication of any information or documents required must also extend to the representatives of the employees of the offeree company or, failing that, to the employees themselves. In the case of cross-border bids, these rules must also take account of shareholders living in a Member State other than that in which the offeree company's registered office is located or in which the securities are listed.

#### **Article 8**

##### **Obligations of the board of the offeree company**

At the EP's request, the general meeting's authorisation to adopt defensive measures must be given during the bid acceptance period to enable the shareholders to take their decisions in full knowledge of the terms of a given bid. In this context, it should be pointed out that this rule also applies to the acquisition of the offeree company's own shares provided for in Article 19(1)(a) and (2) of the second company law Directive (power of the board to acquire up to 10% of the company's own shares without the authorisation of the general meeting of shareholders where such acquisition is necessary to prevent serious and imminent harm to the company). A takeover bid should not be regarded as serious and imminent harm which justifies circumvention of the authorisation of the general meeting of shareholders.

#### **Article 10**

##### **Mandatory bid**

At the request of the EP and the ESC, the term "substantial part" used in connection with a partial bid is clarified through the setting of a minimum threshold, namely 70% of the offeree company's securities. However, the competent authority may grant derogations in duly justified cases.

**Amended proposal for a  
THIRTEENTH 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,<sup>1</sup>

Having regard to the opinion of the Economic and Social Committee,<sup>2</sup>

Acting in accordance with the procedure referred to in Article 189b of the Treaty<sup>3</sup>

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<sup>1</sup> OJ No C 162, 6.6.1996, p. 5, with explanatory memorandum, COM(95) 655 final.

<sup>2</sup> OJ No C 295, 7.10.1996, p. 1.

<sup>3</sup> European Parliament opinion of 26 June 1997 (OJ No C 222, 21.7.1997, p. 20), Council common position of ..., European Parliament decision of ...

**Amended proposal for a 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,<sup>1</sup>

Having regard to the opinion of the Economic and Social Committee,<sup>2</sup>

Acting in accordance with the procedure referred to in Article 189b of the Treaty<sup>3</sup>

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<sup>2</sup> OJ No C 295, 7.10.1996, p. 1.

<sup>3</sup> European Parliament opinion of 26 June 1997 (not yet published in the Official Journal),  
Council common position of ..., European Parliament decision of ...

7 bis

## INITIAL PROPOSAL

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 EC 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 takeovers 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;

## AMENDED PROPOSAL

Unchanged

Unchanged

Unchanged

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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;

Unchanged

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 each Member State should designate an authority or authorities to supervise the entire course 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;

Unchanged

Whereas to reduce the scope for insider dealing offerers 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;

Unchanged

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

Whereas the addressees of a takeover bid should be properly informed of the terms of the bid by means of an offer document; whereas appropriate information should also be given to the representatives of the company's employees or, failing that, to the employees directly;

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

Unchanged

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;

Unchanged

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;

Unchanged

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;

Unchanged

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 offerer 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,

Unchanged

HAVE ADOPTED THIS DIRECTIVE:

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,

- 'offerer' shall mean any natural person or legal entity in public or private law making a bid,

## Article 1

### Scope

The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States, including mechanisms or arrangements established by organisations officially authorised to regulate the markets, 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:

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Unchanged

- 'offerer' shall mean any natural person or legal entity in public or private law making a bid in accordance with the legislation of the Member State determined as provided for in Article 4(2);

- '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 offerer, the members of the offerer's administrative or management board, if the offerer 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.

- 'securities' shall mean transferable securities carrying voting rights in a company, ~~or conferring entitlement to obtain transferable securities carrying such rights,~~

Unchanged

### Article 3

#### Protection of minority shareholders

1. Where a natural person or legal entity who, as a result of immediate or future acquisition, holds securities which added to any existing holdings directly 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 in accordance with Article 4(2). That authority shall also be responsible for determining whether and to what extent the provisions of paragraph 1 apply to the temporary holding of securities or to the acquisition of a majority holding without there being any intention to exercise control over the company.

#### 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 is necessary for the performance of their duties and for this purpose shall supply each other with any information that may be necessary.

#### Article 4

##### Supervisory authority

1. Member States shall designate the authority or authorities, which will supervise the entire course 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 and the law applicable shall be that of that Member State. If that condition is not met either, the competent authority shall be that of the Member State on whose regulated market the company's securities are principally traded during the period of acquisition of the securities conferring control of the company and the law applicable shall be that of that Member State.

3. Each Member State shall require any individuals who are or have been employed by the supervisory authorities to be bound by professional secrecy. Without prejudice to their obligation not to divulge information covered by professional secrecy, the supervisory authorities of the Member States shall cooperate, in so far as is 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;

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 of Member States to designate the judicial or other authorities responsible for dealing with disputes and for deciding on irregularities committed during the bid procedure, provided that an injured party enjoys appropriate and adequate remedies to defend its interests and, where appropriate, obtain compensation for any loss suffered.

#### Article 5

##### General principles

Unchanged

(a) all holders of securities of an offeree company who are in the same position are to be given equivalent treatment;

Unchanged

(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 offerer 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.

(c) the board of an offeree company is to act in all the interests of the company, including employment

(d) false markets must not be created in the securities of the offeree company, of the offerer company, or of any other company concerned by the bid in such a way that the rise or fall in the prices of the securities becomes artificial and the normal functioning of the markets is disrupted;

Unchanged

Unchanged

#### 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. As soon as the bid has been made public, the board of the offeree company shall inform the representatives of its employees or, where there are no such representatives, the employees themselves.

2. Member States shall ensure that rules are in force requiring the offerer 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 offerer shall communicate it to the supervisory authority.

2. Member States shall ensure that rules are in force requiring the offerer 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 offerer shall communicate it to the supervisory authority. When it is made public, the board of the offeree company shall communicate it to the representatives of its employees or, where there are no such representatives, to the employees themselves.

3. Those rules shall require that the document state at least:

Unchanged

- the terms of the bid,

Unchanged

- the identity of the offerer or, where the offerer is a company, the type, name and registered office of that company,

Unchanged

- the securities or class, or classes of securities for which the bid is made,

Unchanged

- 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 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, and in particular the methods and terms of payment to shareholders resident in a Member State other than that of the offeree company's registered office or than that in which the securities are listed.

- the maximum and minimum percentages or quantities of securities which the offerer undertakes to acquire,

Unchanged

- details of any existing holdings of the offerer in the offeree company,

Unchanged

- all conditions to which the offer is subject,

Unchanged

- the offerer'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 10 weeks from the date on which the document is made public,

where the consideration offered by the offerer includes securities, information about those securities.

4. Member States shall ensure that rules are in force requiring that the parties to a bid 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 offerer.

- the offerer's intentions with regard to the future business and undertakings of the offeree company, its employees and its management, including any change in the conditions of employment.

- the period for acceptance of the bid, which may not be less than four weeks or more than 10 weeks from the date on which the document is made public, except where duly justified authorisation has been given by the supervisory authority.

Unchanged

- the conditions under which the offerer is to finance its bid.

4. Member States shall ensure that rules are in force requiring that the parties to a bid provide the supervisory authority at any time on request with all information in their possession concerning the bid which is necessary for the supervisory authority to discharge 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, of the offerer or of any other company affected by the bid, particularly through the publication or dissemination of false, exaggerated or tendentious information.

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.

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, including those resident in a Member State other than that of the offeree company's registered office or than that in which the securities are listed, and to the representatives of the employees of the offeree company or, where there are no such representatives, to the employees themselves.

### 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 offerer 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

### 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 offerer to obtain control over the offeree company, unless it has the prior authorisation of the general meeting of the shareholders given for this purpose, during the period of acceptance of the bid.

Unchanged

### Article 9

#### Rules applicable to the conduct of bids

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- (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 offerer 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.

#### 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 ensures equal treatment for shareholders. The term "substantial part" should not be interpreted as meaning less than 70% of the securities, except where duly justified authorisation has been given by the supervisory authority.

Unchanged

#### 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 January 1999.

2. Member States shall communicate Unchanged  
to the Commission the provisions or other  
arrangements referred to in paragraph 1,  
making express reference to this  
Directive.

**Article 12**

Addressees of the Directive

This Directive is addressed to the Unchanged  
Member States.

**Article 12**

Addressees of the Directive

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# DOCUMENTS

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