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# PROPOSAL OF DIRECTIVE ON TAKE OVER BIDS

current perspectives

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# PROPOSAL OF DIRECTIVE ON TAKE OVER BIDS

- **First proposal issued on 19/01/1989**
    - Aimed at achieving detailed harmonisation in the field of take over bids
    - Rejected by the European Parliament on 04/07/2001 on 3 major grounds:
      - Defensive measures by the target would require the prior approval of the shareholders once a bid has been made
      - Insufficient protection would be afforded to the personnel of the target
      - The proposal would fail to achieve a level playing field with the US
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- Report of the Group of High Level Company Law Experts in January 2002:
    - Keep the general principles included in the previous draft, and at the same time
    - Add new provisions to meet the concerns of the European Parliament (eg. Common definition of the 'equitable price', introduction of a squeeze out right and a sell out right, greater transparency of the defensive structures and mechanisms)
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## ■ New Proposal: 02/10/2002

- Basic principle: same scope and same basic principles + some amendments to follow the recommendations of the experts
  - Major principle upheld: it is for the shareholders to decide on the defensive measures once a bid has been made public
  - Major amendments:
    - Common definition of the equitable price to be offered to minority shareholders within the scope of a mandatory bid. Depending on the circumstances, supervisory authorities may be given authority to adjust the price
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- ❑ Squeeze out and sell-out right in respect of minority shareholders
  - ❑ Higher level of transparency of the defensive structures and mechanisms which will need to be published in a detailed and thorough manner. In addition the shareholders' meeting shall need to decide on the structural aspects and defensive mechanisms every 2 year
  - ❑ Unenforceability of the restrictions on the transfer of securities and voting rights once the offer has been made public
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## Current status:

- ❖ 19/05/2003: extensive exchange of views at the Council level
  - ❖ Broad convergence of views on the main thrust and the ultimate objective of the draft directive as well as on individual provisions
  - ❖ No agreement on key provisions of the draft (art. 9 - defensive measures; art. 11 – neutralisation of agreements which could frustrate or unduly inhibit the launching or the conclusion of the bid)
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Next step: 07/07/2003

Adoption in Parliamentary Commission

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