

Special Issue Section on Corporate Governance in Europe in the Light of the Takeover Directive

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Introduction

The 13th European Directive on company law, the Directive on Takeover Bids (the Takeover Directive) was finally approved by the Council on 29 March 2004, marking an end to an extremely protracted and difficult birth process.¹ This new Directive is of great importance and does not only deal with company law matters of a more technical character, but primarily, with issues of great relevance for corporate governance and future company structure in Europe. The law of the Member States shall comply with the Directive no later than 20 May 2006.

The legal framework for corporate governance is a much observed issue in Europe today, closely linked to the shaping of the EU company law directives. An important ambition of the European Commission is the creation of a plain level field and the abolishment of different national obstacles to the establishment of a more integrated European capital market and company structure. However, the fulfilment of these ambitions should take into consideration the large differences in existing corporate governance models and culture between the Member States. These differences are well reflected in the manifest problems in reaching agreement on the Takeover Directive.

An aspect deserving particular attention is the relation between different models for corporate governance, where one can roughly distinguish between an Anglo-American model based on equal voting rights and dispersed ownership and a Continental-Nordic model, often based on differentiated voting rights of different kinds or other measures favouring a more concentrated ownership. Both models seem to have their advantages in terms of economic efficiency and results. It will be necessary to explore how these different models may be reconciled with European pro-integration ambitions and the plans for enhanced and more uniform European company law, avoiding allegations of national protectionism. The compromise opt out decision finally reached on the multiple voting rights issue reflects these problems.

A Round-Table Conference for invited experts on Good Corporate Governance in Europe in the Light of the Takeover Directive was organized in Oxford in March

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¹ Directive 2004/25/EC of the European Parliament and of the Council of 21 Apr 2004 on takeover bids, OJ L 142/12, 30.4.2004.

2004 by the Institute of European and Comparative Law at the University of Oxford in collaboration with the Oxford/Stockholm Venture in European Law. The Conference was primarily focused on examining the background and shortcomings of the new Takeover Directive, its implementation and options and the future handling of problems it has left open.

This special issue section of the *European Business Law Review* is devoted to the publication of six articles based on papers presented at the Conference.² In general, the articles are rather closely related one to the other. Let me by way of a short introduction present the articles.

The first article by Theodor Baums describes the regulation of takeovers under German law, its background, structure and relation to the Takeover Directive. The coming into being of the German legislation has been closely linked to the deliberations that have now resulted in the Directive.

The next article by Ulf Bernitz discusses the EU legal limits for restructuring of the framework of company ownership and control. It is a critical study of the attack on the Nordic multiple voting rights model which was launched during the final phases of the preparations of the Takeover Directive and analyses its legal basis.

The article by Paul Krüger Andersen, entitled *The Takeover Directive and Corporate Governance: The Danish Experience*, discusses the new Directive in the light of Danish company law and experience. The article focuses on the forthcoming implementation of the Directive, primarily from Danish point of view.

Andre Nilsen analyzes the takeover problems from a political economy perspective. He examines critically the two basic models of corporate governance: the Anglo-American and the Continental-Nordic models. He questions the supremacy of the Anglo-American model and points at the comparative advantages of the Continental-Nordic model.

Jonathan Rickford presents the emerging European takeover law from a British perspective in his comprehensive article. He discusses the legislative process behind the Directive and assesses its results, focusing in particular on British ambitions and positions. In the final part, he gives his thoughts on the forthcoming British implementation of the Directive.

The last article in the issue, by Rolf Skog, discusses the Takeover Directive, the 'breakthrough' rule and the Swedish system of dual class common stock. The author took a very active part in the negotiations. Partially, the article can be characterized as a continuation of his earlier 2002 article in this journal, *The Takeover Directive – an endless Saga?*

Taken together, the articles will facilitate the comprehension of the new Takeover Directive, its difficult birth process and shortcomings, its relation to different corporate governance models and ideas and its forthcoming implementation into national company law.

² Takeover issues have also been treated in another special issue of the EBLR, (2002) 13 EBLR issue 4.