

Directive 2004/25/EC of the European Parliament and of the Council
of 21 April 2004 on takeover bids (Text with EEA relevance)

Article 11

Breakthrough

1 Without prejudice to other rights and obligations provided for in Community law for the companies referred to in Article 1(1), Member States shall ensure that the provisions laid down in paragraphs 2 to 7 apply when a bid has been made public.

2 Any restrictions on the transfer of securities provided for in the articles of association of the offeree company shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).

Any restrictions on the transfer of securities provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the adoption of this Directive, shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).

3 Restrictions on voting rights provided for in the articles of association of the offeree company shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

Restrictions on voting rights provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the adoption of this Directive, shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

Multiple-vote securities shall carry only one vote each at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

4 Where, following a bid, the offeror holds 75 % or more of the capital carrying voting rights, no restrictions on the transfer of securities or on voting rights referred to in paragraphs 2 and 3 nor any extraordinary rights of shareholders concerning the appointment or removal of board members provided for in the articles of association of the offeree company shall apply; multiple-vote securities shall carry only one vote each at the first general meeting of shareholders following closure of the bid, called by the offeror in order to amend the articles of association or to remove or appoint board members.

To that end, the offeror shall have the right to convene a general meeting of shareholders at short notice, provided that the meeting does not take place within two weeks of notification.

5 Where rights are removed on the basis of paragraphs 2, 3, or 4 and/or Article 12, equitable compensation shall be provided for any loss suffered by the holders of those rights. The terms for determining such compensation and the arrangements for its payment shall be set by Member States.

6 Paragraphs 3 and 4 shall not apply to securities where the restrictions on voting rights are compensated for by specific pecuniary advantages.

Status: This is the original version (as it was originally adopted).

7 This Article shall not apply either where Member States hold securities in the offeree company which confer special rights on the Member States which are compatible with the Treaty, or to special rights provided for in national law which are compatible with the Treaty or to cooperatives.