

ANALYSIS



Company law

Voluntary takeover bids and squeeze-outs

The Judgment of the Court of Justice of the European Union (Fifth Chamber) of 13 May 2026 (Korfin and Sempiola v Slovnaft, Case C-225/25) clarifies the concept of a *takeover bid* for the purposes of Article 2 of the 2004 Takeover Bids Directive, such that an offer made to the holders of securities of a company with a view to acquiring all or some of those securities does not fall within the concept of a takeover bid where it is made by an offeror who already controls the offeree company.

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§ 1. The Judgment of the Court of Justice (Fifth Chamber) of 13 May 2026 (Korfin and Sempio-la v Slovnaft, Case C-225/25, EU:C:2026:401), in response to a request for a preliminary ruling, clarifies the definition of a *takeover bid* in Article 2 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (the ‘Takeover Bids Directive’ or the ‘Directive’), specifically whether a voluntary takeover bid may fall within that definition where the offeror already controls the offeree company. The issue is relevant for the purposes of applying, where appropri-

Under the Directive, a voluntary takeover bid by an offeror who already has control is not subject to a squeeze-out

ate, the provisions of the Directive on squeeze-outs in cases where the offeror — who already had control of the company — makes a subsequent voluntary takeover bid.

§ 2. The facts of the main proceedings may be summarised as follows: on 10 October 2019, the attendees of the Extraordinary General Meeting of Slovnaft approved the transfer, to MOL — which, on that date, was Slovnaft’s majority shareholder and held a 98.56% shareholding in the latter — of all the shares held by the remaining minority shareholders (representing 1.44% of the voting capital) in the context of a squeeze-out of the holders of securities provided for in Article 118i of the Slovak Negotiable Securities Act. Korfin and Sempio-la, minority shareholders of Slovnaft, brought an action seeking a declaration that that decision was invalid, claiming, *inter alia*, that the

majority shareholder (MOL) could not have a right of squeeze-out because it had not made a ‘takeover bid’, within the meaning of Article 2(1)(a) of the Takeover Bids Directive, to all the holders of Slovnaft securities, contrary to the requirements of Article 15(1) of that directive (“Member States shall ensure that, following a bid made to all the holders of the offeree company’s securities for all of their securities, paragraphs 2 to 5 apply.”). The minority shareholders did not dispute the fact that that decision had been preceded by an offer made by MOL to purchase the shares in Slovnaft, which was

valid from 10 May to 18 July 2019. What they argued was that that offer did not satisfy the conditions required to be classified as a ‘takeover bid’ within the meaning of Article 2(1)(a) of the Takeover Bids Directive. This was because MOL had acquired a controlling interest in Slovnaft long before that offer

was made, with the result that it cannot be regarded as a mandatory bid for the purposes of Article 5(1) of that directive. Nor could that offer constitute a voluntary bid under Article 2(1)(a), since it did not pursue the objective of acquiring control over Slovnaft, which was already exercised by MOL prior to its offer being made.

§ 3. The action was dismissed at first instance and that dismissal was upheld on appeal. The Slovak Supreme Court stayed the second appeal proceedings and referred the following question to the Court of Justice for a preliminary ruling: ‘Must Article 2(1)(a) of Directive [2004/25] be interpreted as meaning that a voluntary takeover bid can be made only if it has as its objective the acquisition of a controlling interest in the offeree company and, therefore, a voluntary takeover bid cannot be

made by an entity which already has a controlling interest in the offeree company?’

§ 4. Leaving aside issues addressed in the judgment concerning the transposition of the Takeover Bids Directive and the somewhat unclear wording of Slovak domestic law, the Court of Justice of the European Union (‘CJEU’) considers that, in order to answer the question referred for a preliminary ruling, account must be taken not only of the wording of Article 2 of the Directive, “but also of the context in which it occurs, as well as the objectives and purpose pursued by the act of which it forms part” (citing the judgments of 17 November 1983, *Merck*, 292/82, EU:C:1983:335, and of 30 October 2025, *Pome*, C-398/24, EU:C:2025:843).

§ 5. As regards *takeover bids*, the Directive includes in its definition (Article 2(1)(a)) both mandatory and voluntary takeover bids, and takeover bids both *ex ante* (before the acquisition of control of the listed company) and *ex post* (‘which follows or has as its objective the acquisition of control of the offeree company in accordance with national law’).

§ 6. However, other provisions of the Takeover Bids Directive must also be taken into account. The court thus refers to Article 5, which concerns the case of a full mandatory takeover bid (for 100% of the share capital) made *ex post*, following the acquisition of control of the company. “It is the only mandatory bid provided for by that directive, since no other provision of that directive imposes such an obligation. It follows that a mandatory takeover bid, within the meaning of Article 2(1)(a) of that directive, occurs following the acquisition of control of the offeree company and cannot have as its objective the acquisition of control of that company”. In this line of argument, it refers to Article 5(2), pursuant to which “[w]here

control has been acquired following a voluntary bid made in accordance with this Directive to all the holders of securities for all their holdings, the obligation laid down in paragraph 1 to launch a bid shall no longer apply”; it states in this regard that “the voluntary takeover bid that it envisages is an offer which has as its objective the acquisition of control of the offeree company and which has actually resulted in the acquisition of that control”.

§ 7. It also refers to Article 15(2) in relation to squeeze-outs: if the offeror wishes to exercise his or her right to require all the holders of the remaining securities to sell him or her those securities at a fair price, he or she is required to do so within three months of the end of the time allowed for acceptance of the bid referred to in Article 7 of that directive. The court considers that this three-month period “would be deprived of any practical effect” if it were accepted that the person who controls the listed company may, at any time following the acquisition of that control, make a voluntary bid with a view to acquiring the remaining securities of that company. It gives the example of an offeror in this situation who has refrained from exercising his or her right of squeeze-out of holders of securities within that three-month period: “it would be sufficient for that person to make a new voluntary bid in order to trigger a new period for the exercise of that right”.

§ 8. It therefore argues that “a voluntary bid, within the meaning of Article 2(1)(a) of Directive 2004/25, must be understood as being an offer which has as its objective the acquisition of control of the offeree company and cannot, consequently, constitute an offer submitted following the acquisition of that control”.

§ 9. Furthermore, it is apparent from Article 3 and recitals 2 to 9 of the Directive that the provision “seeks to ensure the protection of

shareholders of companies falling within its scope where those companies are the subject of an acquisition of control or a public offer which has as its objective the acquisition of their control". Thus, in the absence of a change of control, the protection of minority shareholders does not form part of the objectives pursued by the Takeover Bids Directive.

§ 10. In its decision, it also takes into account the fact that the Directive establishes minimum standards, such that Member States may lay down additional conditions and provisions that are stricter than those provided for in the Directive; this would be the case, for instance, if they were to provide in their national law that a shareholder who already holds control of a company may make an offer for the acquisition of the remaining shares of that company and, subsequently, require the remaining shareholders to sell him or her their shares in the context of a squeeze-out of the holders of securities. However, that is a matter for the Slovak Supreme Court, which alone has jurisdiction to interpret its national law.

§ 11. In light of the foregoing, the European Court answers the question referred for a preliminary ruling to the effect that Article 2(1)(a) of the Takeover Bids Directive must be interpreted as meaning that an offer made to the holders of the securities of a company with a view to acquiring all or some of those securities does not constitute a voluntary bid falling within the

concept of 'takeover bid', within the meaning of that provision, where it is made by an offeror who already controls the offeree company.

§ 12. Under Spanish law, Article 116 of the Securities Markets and Investment Services Act extends the rules governing squeeze-outs to voluntary takeover bids, provided that they have been made to all holders of shares or other securities conferring, directly or indirectly, voting rights in a listed company. Article 117 of this Act provides that voluntary takeover bids must be made to all holders of securities conferring voting rights, shall be subject to the same procedural rules as mandatory takeover bids "and may be made, under the conditions laid down by regulation, for a number of securities less than the total". Article 13 of the Takeover Bids' Regulations (Royal Decree 1066/2007, of 27 July, on the rules governing takeover bids for securities) permits a voluntary takeover bid to be made for a number of securities less than the total by a person who will not, as a result thereof, acquire a controlling interest or by a person who, "already holding a controlling interest, may freely increase his or her holding in the target company without being subject to the obligation to make a mandatory bid". Hence the significance of this judgment of the Court of Justice of the European Union, which clarifies in which cases the rules governing squeeze-outs following a voluntary takeover bid do not apply.