Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

27 November 2025 *

(Reference for a preliminary ruling – Company law – Directive 2004/25/EC – Mandatory takeover bid – Squeeze-out of holders of securities – Minority shareholder protection – Third subparagraph of Article 15(5) – Consideration offered in the bid presumed to be fair – Rebuttable presumption)

In Case C-567/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Okrožno sodišče v Ljubljani (District Court, Ljubljana, Slovenia), made by decision of 6 June 2024, received at the Court on 21 August 2024, in the proceedings

YO

v

SVEMA TRADE d.o.o.,

intervener

Minority shareholders in the company Hram Holding d.d.,

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, J. Passer, E. Regan, D. Gratsias (Rapporteur) and B. Smulders, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Italian Government, by S. Fiorentino, acting as Agent, and by I. Fresu, procuratore dello Stato,

– the Finnish Government, by A. Laine, acting as Agent,

* Language of the case: Slovenian.

– the European Commission, by G. Goddin, G. Meeßen and B. Rous Demiri, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 July 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the third subparagraph of Article 15(5) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ 2004 L 142, p. 12).

2 The request has been made in proceedings between YO and SVEMA TRADE d.o.o. ('SVEMA') concerning the determination of the financial compensation to be paid to the minority shareholders of the company HRAM Holding d.d. for the sale of their securities, in a mandatory takeover bid.

Legal context

European Union law

3 Recitals 1 to 3 and 9 of Directive 2004/25 state:

'(1) In accordance with Article 44(2)(g) [EC] it is necessary to coordinate certain safeguards which, for the protection of the interests of members and others, Member States require of companies governed by the law of a Member State the securities of which are admitted to trading on a regulated market in a Member State, with a view to making such safeguards equivalent throughout the Community.

(2) It is necessary to protect the interests of holders of the securities of companies governed by the law of a Member State when those companies are the subject of takeover bids or of changes of control and at least some of their securities are admitted to trading on a regulated market in a Member State.

(3) It is necessary to create Community-wide clarity and transparency in respect of legal issues to be settled in the event of takeover bids and to prevent patterns of corporate restructuring within the Community from being distorted by arbitrary differences in governance and management cultures.

…

(9) Member States should take the necessary steps to protect the holders of securities, in particular those with minority holdings, when control of their companies has been acquired. The Member States should ensure such protection by obliging the person who has acquired control of a company to make an offer to all the holders of that company's securities for all of their holdings at an equitable price in accordance with a common definition. Member States should be free to establish further instruments for the protection

of the interests of the holders of securities, such as the obligation to make a partial bid where the offeror does not acquire control of the company or the obligation to announce a bid at the same time as control of the company is acquired.'

4 In accordance with Article 1(1) of Directive 2004/25, that directive lays down measures coordinating the laws, regulations, administrative provisions, codes of practice and other arrangements of the Member States, including arrangements established by organisations officially authorised to regulate the markets, relating to takeover bids for the securities of companies governed by the laws of Member States, where all or some of those securities are admitted to trading on a regulated market within the meaning of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ 1993 L 141, p. 27) in one or more Member States.

5 Article 2 of Directive 2004/25, entitled 'Definitions', provides, in paragraph 1 thereof:

'For the purposes of this Directive:

(a) "takeover bid" or "bid" shall mean a public offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company in accordance with national law;

(b) "offeree company" shall mean a company, the securities of which are the subject of a bid;

(c) "offeror" shall mean any natural or legal person governed by public or private law making a bid;

(d) "persons acting in concert" shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid;

(e) "securities" shall mean transferable securities carrying voting rights in a company;

…'

6 Article 3 of that directive, entitled 'General principles', provides, in paragraph 1:

'For the purpose of implementing this Directive, Member States shall ensure that the following principles are complied with:

(a) all holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected;

…

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

(e) an offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration;

…'

7 Article 4 of that directive, entitled 'Supervisory authority and applicable law', provides, in paragraph 1:

'Member States shall designate the authority or authorities competent to supervise bids for the purposes of the rules which they make or introduce pursuant to this Directive. The authorities thus designated shall be either public authorities, associations or private bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. Member States shall inform the [European] Commission of those designations, specifying any divisions of functions that may be made. They shall ensure that those authorities exercise their functions impartially and independently of all parties to a bid.'

8 Article 5 of that directive, entitled 'Protection of minority shareholders, the mandatory bid and the equitable price', provides, in paragraphs 1, 3 and 4:

'1. Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company as referred to in Article 1(1) which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price as defined in paragraph 4.

…

3. The percentage of voting rights which confers control for the purposes of paragraph 1 and the method of its calculation shall be determined by the rules of the Member State in which the company has its registered office.

4. The highest price paid for the same securities by the offeror, or by persons acting in concert with him/her, over a period, to be determined by Member States, of not less than six months and not more than 12 before the bid referred to in paragraph 1 shall be regarded as the equitable price. If, after the bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with him/her purchases securities at a price higher than the offer price, the offeror shall increase his/her offer so that it is not less than the highest price paid for the securities so acquired.

Provided that the general principles laid down in Article 3(1) are respected, Member States may authorise their supervisory authorities to adjust the price referred to in the first subparagraph in

circumstances and in accordance with criteria that are clearly determined. To that end, they may draw up a list of circumstances in which the highest price may be adjusted either upwards or downwards, for example where the highest price was set by agreement between the purchaser and a seller, where the market prices of the securities in question have been manipulated, where market prices in general or certain market prices in particular have been affected by exceptional occurrences, or in order to enable a firm in difficulty to be rescued. They may also determine the criteria to be applied in such cases, for example the average market value over a particular period, the break-up value of the company or other objective valuation criteria generally used in financial analysis.

Any decision by a supervisory authority to adjust the equitable price shall be substantiated and made public.'

9 Article 15 of Directive 2004/25, entitled 'The right of squeeze-out', is worded as follows:

'1. 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.

2. Member States shall ensure that an offeror is able to require all the holders of the remaining securities to sell him/her those securities at a fair price. Member States shall introduce that right in one of the following situations:

(a) where the offeror holds securities representing not less than 90% of the capital carrying voting rights and 90% of the voting rights in the offeree company,

or

(b) where, following acceptance of the bid, he/she has acquired or has firmly contracted to acquire securities representing not less than 90% of the offeree company's capital carrying voting rights and 90% of the voting rights comprised in the bid.

In the case referred to in (a), Member States may set a higher threshold that may not, however, be higher than 95% of the capital carrying voting rights and 95% of the voting rights.

3. Member States shall ensure that rules are in force that make it possible to calculate when the threshold is reached.

Where the offeree company has issued more than one class of securities, Member States may provide that the right of squeeze-out can be exercised only in the class in which the threshold laid down in paragraph 2 has been reached.

4. If the offeror wishes to exercise the right of squeeze-out he/she shall do so within three months of the end of the time allowed for acceptance of the bid referred to in Article 7.

5. Member States shall ensure that a fair price is guaranteed. That price shall take the same form as the consideration offered in the bid or shall be in cash. Member States may provide that cash shall be offered at least as an alternative.

Following a voluntary bid, in both of the cases referred to in paragraph 2(a) and (b), the consideration offered in the bid shall be presumed to be fair where, through acceptance of the

bid, the offeror has acquired securities representing not less than 90% of the capital carrying voting rights comprised in the bid.

Following a mandatory bid, the consideration offered in the bid shall be presumed to be fair.'

10 Article 16 of that directive, entitled 'The right of sell-out', provides:

'1. 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 and 3 apply.

2. Member States shall ensure that a holder of remaining securities is able to require the offeror to buy his/her securities from him/her at a fair price under the same circumstances as provided for in Article 15(2).

3. Article 15(3) to (5) shall apply *mutatis mutandis*.'

Slovenian law

11 Article 68 of the Zakon o prevzemih (Law on company acquisitions) of 14 July 2006 (Uradni list RS, No 79/06), in the version applicable to the dispute in the main proceedings ('the Law on company acquisitions'), provides:

'1. For the squeeze-out of minority shareholders of an offeree company in which the acquirer has acquired at least 90% of the voting shares following a successful mandatory or voluntary takeover bid, accepted by the holders of at least 90% of the voting shares in that company, the provisions of the Law on capital companies relating to the squeeze-out of minority shareholders shall apply, unless otherwise provided for in paragraph 2 of this article.

2. Where, following a proposal from the acquirer as the principal shareholder, within three months of the announcement of the result of the takeover bid as set out in the preceding paragraph, the general meeting of the offeree company resolves to transfer the shares of the minority shareholders to the principal shareholder, the acquirer shall, as financial compensation in lieu of the cash amount determined in accordance with the Law on capital companies, propose compensation of the type and amount specified in the takeover bid.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 YO is a minority shareholder in HRAM Holding, the shares of which are listed on the Slovenian stock exchange.

13 SVEMA, initially a holder of 19.77% of the shares in HRAM Holding, became the latter's majority shareholder following the purchase, on 30 September 2021, of an additional stake representing 67.56% of the company's shares. Since its shareholding in HRAM Holding thus exceeded the control threshold provided for by Slovenian legislation, SVEMA was authorised by the Slovenian supervisory authority for securities to launch a mandatory takeover bid, which it did on 27 October 2021. Following that bid, SVEMA held 90.51% of the shares in HRAM Holding.

14 That bid having thus been successful, within the meaning of Article 68 of the Law on company acquisitions, the general meeting of HRAM Holding – within three months of that acquisition and following a proposal by SVEMA – passed a resolution to the effect that the minority shareholders of HRAM Holding would sell their shares to SVEMA in exchange for financial compensation of the same amount as that specified, for each share, in the takeover bid launched by SVEMA.

15 YO has brought an action before the Okrožno sodišče v Ljubljani (District Court, Ljubljana, Slovenia), which is the referring court, seeking a determination, by judicial means, of the appropriate financial compensation to be paid by SVEMA to the minority shareholders of HRAM Holding for the sell-out of their shares.

16 By decision of 27 January 2023, a joint representative of the minority shareholders of HRAM Holding was appointed for the purposes of the proceedings before the referring court. That representative endorses the arguments put forward by YO in its action.

17 The referring court is uncertain as to the interpretation of the third subparagraph of Article 15(5) of Directive 2004/25, for the purposes of interpreting Article 68 of the Law on company acquisitions, which transposed that directive into Slovenian law. In particular, the referring court asks whether the presumption established in the third subparagraph of Article 15(5) of that directive must be considered as rebuttable or irrebuttable. According to the referring court, the wording alone of that provision does not allow that question to be answered, given the differences between the various language versions of that provision.

18 In those circumstances the Okrožno sodišče v Ljubljani (District Court, Ljubljana) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must the third subparagraph of Article 15(5) of Directive [2004/25] be interpreted as meaning that the presumption laid down in that provision of the directive must be regarded as absolute or relative?

(2) If the above presumption of fair consideration is to be regarded as relative, is that relative character unlimited or possibly limited to specific circumstances?’

Consideration of the questions referred

19 By its questions, which should be examined together, the referring court asks, in essence, whether the third subparagraph of Article 15(5) of Directive 2004/25 must be interpreted as meaning that the presumption established in that provision, according to which the consideration offered in a mandatory takeover bid of a company’s securities is fair, must be considered to be a rebuttable presumption and, if so, under what conditions must that presumption be considered to have been rebutted.

20 In accordance with Article 15(1) and (2) of Directive 2004/25, Member States are to ensure that, following a bid made to all the holders of the concerned company’s securities to acquire all of their securities, an offeror is able, under certain conditions, to require all the holders of the remaining securities to sell him or her those securities at a fair price. In that respect, the third subparagraph

of Article 15(5) of that directive provides that, following a mandatory takeover bid, within the meaning of Article 5(1) of that directive, 'the consideration offered in the bid shall be presumed to be fair'.

21 Although Article 15(5) of Directive 2004/25 expressly refers to the existence of a presumption, it does not, however, specify whether that presumption is rebuttable or irrebuttable.

22 Some language versions of that paragraph, such as those in Greek, English, French or Portuguese, refer to a presumption without determining its nature. However, other language versions of that paragraph, in particular those in Spanish, German and Italian or, as the referring court notes, in Slovenian, use a verb that suggests that the presumption it lays down is irrebuttable.

23 It is settled case-law that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority over the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union. Accordingly, where there is a divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the general scheme and purpose of the rules of which it forms part (judgments of 27 October 1977, *Boucherau*, 30/77, EU:C:1977:172, paragraph 14, and of 30 April 2025, *Celní jednatelství Zelinka*, C-330/24, EU:C:2025:296, paragraph 19 and the case-law cited).

24 Therefore, in order to answer the questions referred, the third subparagraph of Article 15(5) of Directive 2004/25 must be interpreted in the light of the general scheme and purpose of that directive.

25 As regards the general scheme of Directive 2004/25, it should be noted that, where a natural or legal person acquires control of a company subject to that directive, the directive provides for a two-step procedure which may result in the acquisition by that person of all of that company's shares.

26 In the first place, Article 5(1) of Directive 2004/25 establishes the principle of the mandatory takeover bid for the holdings of securities in a given company. Article 5(1) also provides that, where a natural or legal person holds securities giving him or her control of a company subject to that directive, Member States are to ensure that that person is required to make a bid as a means of protecting the minority shareholders of that company, a bid that must cover all the holdings of those shareholders at the 'equitable price' defined in Article 5(4) of that directive (see, to that effect, judgments of 20 July 2017, *Marco Tronchetti Provera and Others*, C-206/16, EU:C:2017:572, paragraph 29, and of 10 December 2020, *Euromin Holdings (Cyprus)*, C-735/19, EU:C:2020:1014, paragraph 43).

27 In the second place, as regards the holders of the securities of the company affected by a mandatory takeover bid who have not accepted that bid, Article 15(2) of Directive 2004/25 provides for the possibility, under certain conditions, for the offeror to 'squeeze-out' those holders by requiring them to sell him or her their securities. Article 16(2) of that directive also provides for the corresponding right of every holder of the concerned company's remaining securities to require the offeror to buy his or her securities.

28 As already noted in paragraph 26 above, under Article 5(1) of Directive 2004/25, the price offered to the minority shareholders, in the context of a mandatory takeover bid for their shares, must be 'equitable'. For their part, Article 15(2) and Article 16(2) of that directive provide, respectively, that the squeeze-out of holders of the remaining securities of a company subject to that directive or the sell-out of those securities must be done 'at a fair price'.

29 In that respect, as the Advocate General noted, in essence, in point 51 of his Opinion, it is irrelevant that, in some language versions of Directive 2004/25, the adjective used to qualify the 'price' referred to in Article 5(1) and (4) of that directive is different from that employed to qualify the price referred to in Article 15(2) and (5) and Article 16(2) of that directive.

30 In other language versions of Directive 2004/25, those provisions refer to the same adjective to qualify that 'price' and, even if that were not the case, the two qualifying adjectives used are synonyms, like, for example, in the French-language version of those provisions, which employs the adjectives '*équitable*' and '*juste*'.

31 As regards the determination of the 'fair' or 'equitable' price, which is paid as consideration for the acquisition of the securities of the minority shareholders of a company, Directive 2004/25 opts, primarily, for an objective method.

32 Thus, under the first subparagraph of Article 5(4) of Directive 2004/25, the equitable price is regarded as, primarily, the highest price paid for the same securities by the offeror, or by persons acting in concert with him or her, over a period to be determined by the Member States of no less than 6 months and not more than 12 before the bid referred to in Article 5(1) of that directive (see, to that effect, judgments of 20 July 2017, *Marco Tronchetti Provera and Others*, C-206/16, EU:C:2017:572, paragraph 30, and of 10 December 2020, *Euromin Holdings (Cyprus)*, C-735/19, EU:C:2020:1014, paragraph 44).

33 The equitable price calculated in that way is also presumed to be a fair price within the meaning of the third subparagraph of Article 15(5) of Directive 2004/25, concerning the squeeze-out of shareholders, to which Article 16(3) of that directive, concerning the sell-out of shares, also refers.

34 However, under the second subparagraph of Article 5(4) of Directive 2004/25, provided that the principles laid down in Article 3(1) of that directive are respected, Member States may authorise their supervisory authorities, referred to in Article 4 of that directive, to adjust the price referred to in the first subparagraph of Article 5(4) thereof in circumstances and in accordance with criteria that are clearly determined. To that end, Member States may, first, draw up a list of circumstances in which that price may be adjusted either upwards or downwards, and, secondly, determine the criteria to be applied in the cases set out by way of example in that second subparagraph (see, to that effect, judgments of 20 July 2017, *Marco Tronchetti Provera and Others*, C-206/16, EU:C:2017:572, paragraph 31, and of 10 December 2020, *Euromin Holdings (Cyprus)*, C-735/19, EU:C:2020:1014, paragraph 45).

35 Thus, Directive 2004/25 recognises that, in certain circumstances, an acquisition price for the securities of minority shareholders of a company subject to that directive, offered in the context of a mandatory takeover bid and calculated on the basis of the objective method established in the first subparagraph of Article 5(4) thereof, may prove not to be 'equitable' or 'fair' and may require an adjustment.

36 It follows that consideration of the context of Article 15(5) of Directive 2004/25 supports an interpretation of that provision to the effect that the presumption it establishes may, in certain circumstances, be rebutted.

37 It is possible that circumstances that could have justified, in accordance with the discretionary power conferred on Member States in the second subparagraph of Article 5(4) of that directive, the adjustment by their supervisory authorities, upwards or downwards, of the price offered in a mandatory takeover bid, were not brought to the attention of those authorities with a view to the implementation of such an adjustment, or that those circumstances came to light only after the bid was closed, at which point such an adjustment is no longer possible.

38 Furthermore, if a Member State does not exercise that power, it will not be possible to adjust the price offered in the context of a mandatory takeover bid, even if there are circumstances, such as those envisaged by that provision, which could serve to justify an adjustment of that price. In that case, only the rebuttal of the presumption established in the third subparagraph of Article 15(5) of Directive 2004/25 is capable of ensuring that the price offered in the bid, in the context of a squeeze-out of holders of securities or a sell-out of securities, is 'fair', as is required by Articles 15 and 16 thereof.

39 It would also be paradoxical to accept that, although Directive 2004/25 recognises the possibility of adjusting the price offered in the context of a mandatory takeover bid, a bid that each shareholder may, ultimately, decide not to accept, if a shareholder is required to sell its shares in the case of a squeeze-out of holders of securities or if the majority shareholder is required to buy back shares in the context of a sell-out, there is no possibility of adjusting the purchase price by rebutting the presumption established in the third subparagraph of Article 15(5) of that directive.

40 Consideration of the purpose pursued by Directive 2004/25 also supports the view that that presumption is rebuttable.

41 As is clear from recitals 1 to 3 and 9 of Directive 2004/25, the objective of that directive is to protect the interests of holders of the securities of companies the control of which is acquired by a natural or legal person and it seeks, in that perspective, to guarantee clarity and transparency of the rules in respect of takeover bids (judgment of 20 July 2017, *Marco Tronchetti Provera and Others*, C-206/16, EU:C:2017:572, paragraph 24).

42 Furthermore, the principles that must be complied with in the implementation of Directive 2004/25, set out in Article 3(1) of that directive and described as 'general principles' by that provision, include the principle that, if a person acquires control of a company, the holders of securities must be protected (see, to that effect, judgment of 20 July 2017, *Marco Tronchetti Provera and Others*, C-206/16, EU:C:2017:572, paragraph 26).

43 It would be contrary to that objective of protecting holders of securities to accept that those holders could, in the context of their squeeze-out, be required to sell their securities to the person who has acquired control of the company concerned at the price offered in the mandatory takeover bid, without it being possible to challenge the fairness of that price, even though Directive 2004/25 acknowledges, in the second subparagraph of Article 5(4) thereof, that, in certain circumstances, it may be necessary to adjust such a price to ensure that it is fair or equitable.

44 As regards the circumstances in which the presumption established in the third subparagraph of Article 15(5) of Directive 2004/25 may be considered to have been rebutted, account must be taken – as the Advocate General essentially pointed out in point 82 of his Opinion – of the association that that directive makes between the price set out in the mandatory takeover bid and the price at which the remaining securities, affected by a squeeze-out of holders of securities or a sell-out of securities, must be bought back.

45 As noted in paragraph 34 above, the second subparagraph of Article 5(4) of Directive 2004/25 confers on Member States a discretionary power, provided that the principles laid down in Article 3(1) of that directive are respected, to authorise their supervisory authorities to adjust the price offered in a mandatory takeover bid in circumstances and in accordance with criteria that are clearly determined, some examples of which are set out in the second subparagraph of Article 5(4). However, that power does not preclude Member States from having recourse, in the legislation that they adopt in order to transpose that provision, to abstract legal notions (see, to that effect, judgment of 20 July 2017, *Marco Tronchetti Provera and Others*, C-206/16, EU:C:2017:572, paragraphs 37 to 42).

46 Where a Member State has exercised that power and has defined the circumstances in which the price offered in a mandatory takeover bid may be adjusted, it must be held that those circumstances, if established, may warrant the rebuttal of the presumption set out in the third subparagraph of Article 15(5) of Directive 2004/25, provided that they have not been brought to the attention of the supervisory authority of that Member State or came to light only after the bid was closed, at which point such an adjustment is no longer possible.

47 Furthermore, if the Member State concerned has not made use of the discretionary power conferred on it by the second subparagraph of Article 5(4) of Directive 2004/25, it must be held that the examples of circumstances which could serve to justify an adjustment of the price offered in a mandatory takeover bid and the criteria to be applied in such circumstances, set out in that provision, may also serve to justify the rebuttal of the presumption set out in the third subparagraph of Article 15(5) of that directive.

48 In the light of all the foregoing considerations, the answer to the questions submitted is that the third subparagraph of Article 15(5) of Directive 2004/25 must be interpreted as meaning that the presumption established in that provision, according to which the consideration offered in a mandatory takeover bid of a company's securities is fair, must be considered to be a rebuttable presumption that may be rebutted in circumstances such as those set out in the second subparagraph of Article 5(4) of that directive or in the circumstances defined by the Member State concerned pursuant to that provision, provided that those circumstances have not been brought to the attention of the supervisory authority of that Member State, with a view to adjusting the price offered in the preliminary mandatory takeover bid, or came to light only after the bid was closed, at which point such an adjustment is no longer possible.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

The third subparagraph of Article 15(5) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids

must be interpreted as meaning that the presumption established in that provision, according to which the consideration offered in a mandatory takeover bid of a company's securities is fair, must be considered to be a rebuttable presumption that may be rebutted in circumstances such as those set out in the second subparagraph of Article 5(4) of that directive or in the circumstances defined by the Member State concerned pursuant to that provision, provided that those circumstances have not been brought to the attention of the supervisory authority of that Member State, with a view to adjusting the price offered in the preliminary mandatory takeover bid, or came to light only after the bid was closed, at which point such an adjustment is no longer possible.

[Signatures]