



EUROPEAN COMMISSION

Internal Market and Services DG

FREE MOVEMENT OF CAPITAL, COMPANY LAW AND CORPORATE GOVERNANCE
Company law, corporate governance and financial crime

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DG MARKT F2/ET D(2008) 74062

European Commission's checklist on Article 20 of the Directive

(20 November 2008) Takeover bid fiche

To be completed pursuant to Article 20 of the Takeover Bids directive¹

Member State completing the
fiche:

Date/period:

1. Information on the companies/businesses involved in the takeover bid

1.1 Offeree Company

1.1.1 Name: _____

1.1.2 Nationality: _____

1.1.3 Are the securities of the Offeree Company admitted to trading on other markets?

Yes, on regulated market(s) within the following EEA Member State(s): _____

Yes, on market(s) within the following third countr(y)(ies):

No

Do not know

1.1.4 Control structure of the Offeree Company.

The largest block of voting rights at the moment of launching the bid is²:

higher than 50% between threshold for
mandatory bid and 50%

between 25% and thres- between 10% and 25%

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

² Please take into consideration the agreements between voting right holders pursuant to Article 10 a) of the Transparency Directive (Directive 2004/109/EC).

hold for mandatory bid

- between 5% and 10% lower than 5%

1.1.5 Were any of the control enhancing mechanisms/pre-bid defences listed in article 10 of particular relevance during the bid?

- Yes No

If yes, please specify the control enhancing mechanisms:

- Shares with multiple voting rights [cf. Art. 10(1)(a)].
- Shares with loyalty schemes that may increase their voting rights [cf. Art. 10(1)(a)].
- Limitations on the holdings of securities (ownership ceilings) [cf. Art. 10(1)(b)].
- Other share transfer restrictions [cf. Art. 10(1)(b)].
- Significant direct and indirect shareholders (including indirect shareholdings through pyramid structures and cross-shareholdings) [cf. Art. 10(1)(c)].
- Priority shares, golden shares or other special control rights [cf. Art. 10(1)(d)].
- Voting rights of the employee share scheme not exercised directly by the employees [cf. Art. 10(1)(e)].
- Voting rights ceilings [cf. Art. 10(1)(f)].
- Other restrictions on voting rights [cf. Art. 10(1)(f)].
- Known shareholders' agreements resulting in restrictions on the transfer of securities and/or voting rights [cf. Art. 10(1)(g)].
- Rules governing the appointment and replacement of board members and the articles of association, including for instance supermajority requirements not foreseen in the legislation or staggered board provisions [cf. Art. 10(1)(h)].
- Powers of the board members, and in particular the power to issue or buy back shares [cf. Art. 10(1)(i)].
- Significant agreements to which the company is a party and which take effect, alter or terminate upon a change of control of the company following a takeover bid [cf. Art. 10(1)(j)].
- Agreements between the company and its board members or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases because of a takeover bid [cf. Art. 10(1)(k)].

If possible, please explain the relevance for the bid:

1.2 Offeror (bidder)³

1.2.1 Name: _____

³ For the purpose of this list, offeror is defined as the person(s) making the bid. In case of joint offerors, please include all the offerors making the takeover bid.

1.2.2 Nationality: _____

1.2.3 The offeror is a⁴:

Company whose securities are admitted to trading:

i) on regulated market(s) within the following EEA Member State(s): _____; and/or

ii) on market(s) within the following third countr(y)(ies):

Private (un-listed) company

State-owned company

Private equity fund

Sovereign wealth fund

Hedge fund

Other. Please specify if possible: _____

2 Information on the transaction

2.1 Type of bid⁵

Initially recommended by the unitary or executive board of the Offeree Company

Initially recommended by the supervisory board of the Offeree Company

Initially not recommended by the board of the Offeree Company

Other, please explain: _____

Voluntary bid

Mandatory bid

Did the status of the offer change during the bid period?

Yes No

Please explain: _____

2.2 Type of consideration

Cash

Exchange of securities

A combination of both cash and securities

Was there a change of the type of consideration during the bid?

Yes No

If yes, please explain: _____

⁴ More than one box may be selected, where appropriate.

⁵ More than one box may be selected, where appropriate.

2.3 Value of the offer⁶: _____

Did the Offeror increase the value of its bid during the bid period?

Yes No

If yes, the reason was:

in order to compete with other bidders

because the Offeror purchased securities at a price higher than the offer price after the decision to make a bid was made public

adjustment by the competent authority. Please explain:

other. Please explain: _____

unknown.

2.4 Conditions of the offer

Offer included conditions relating to:

Acquiring a minimum number of shares and/or voting rights. Please specify percentage: _____

Eliminating some or all of the control enhancing mechanisms (see question 1.1.5)

A full list of conditions is attached as an annex to this fiche (optional).

Other. Please explain (optional): _____

2.5 Results of the offer

The bid lapsed because of the following reason:

Insufficient acceptances received;

Other bid conditions were not met, please explain:
_____;

Offer withdrawn, please explain: _____;

Offer not accepted by another competent authority or a national court, please explain: _____.

The bid is still under consideration with another competent authority or a national court, please explain: _____. Please state the total percentage of voting rights held by the Offeror(s)⁷ before announcement of the decision to make a bid and the total percentage of voting rights in respect of which the Offeror(s) has received acceptances at the end of the acceptance period _____.

Successful bid. Please state the total percentage of voting rights held by the Offeror(s)⁸ both before announcement of the decision to make a bid and after the bid closed _____.

⁶ In Euro. To be calculated as follows: offer price x the securities to be acquired by the offeror (therefore not including in the calculation the securities already directly held by the offeror). In case of offer in securities: use closing trading price immediately before publication of the offer document.

⁷ Include all offerors (see footnote 3). Optional to include subsidiaries of the offeror.

⁸ Include all offerors (see footnote 3). Optional to include subsidiaries of the offeror.

2.6 Time of the acceptance period⁹.

- Between 2 and 10 weeks More than 10 weeks

2.7 Post-bid activity. Please indicate if,

- The Offeree Company was delisted within 1 year of the end of the bid acceptance period;
- The squeeze-out rule was applied within 3 months of the end of the bid acceptance period. Please explain: _____;
- The sell-out rule was applied within 3 months of the end of the bid acceptance period. Please explain: _____.
- This information is not available.

3. Information regarding the Directive's rules on takeover defences

3.1 Takeover frustrating measures:

Was shareholder approval sought for potentially frustrating measures?

- Yes No Do not know

Please describe these measures: _____

If yes, was shareholder approval given for these measures?

- Yes No Do not know

If no, were potentially frustrating measures directly taken by the board (not bound by the neutrality rule)?

- Yes No Do not know

Please describe these measures: _____

Was there any complaint before the supervisory authority or before the national courts referring to lack of neutrality of the board?

- Yes No Do not know

If yes, please explain: _____

Did the board seek alternative bids?

- Yes No Do not know

Please explain whether the board was successful or not:

3.2 Application of the breakthrough rule.

Was the breakthrough rule in Article 11 of the Directive applicable?

- Yes, because of national legislation
- Yes, because of a decision of the Offeree Company
- No
- Do not know

Where the breakthrough rule applied:

⁹ Total acceptance period including extension.

If a general meeting to decide on defensive measures pursuant to Article 9 of the Directive was convened, did the breakthrough rule in Article 11(3) have any impact (for instance, proposals by the board for defensive measures were dismissed)?

Yes No Do not know

Please explain: _____

If a general meeting was convened following the bid, did the breakthrough rule in Article 11(4) of the Directive have any impact (for instance the offeror holding 75% or more of the capital carrying voting rights could amend the articles of associations or remove/appoint board members).

Yes No Do not know

If no, please explain: _____

Other issues of relevance regarding the breakthrough rule (optional):

3.3 Please indicate how the reciprocity rule was applied.

Was the derogation in Article 12(3) of the Directive applied?

Yes No Do not know

Please explain: _____

4 Information on supervision and/or control of the transaction

4.1 Please indicate if Article 4(2)(c) of the Directive was applied

Yes No

4.2 Please indicate whether cooperation between supervisory authorities referred to in Article 4(4) of the Directive of different EEA Member States took place.

Yes No

If yes, please explain: _____

4.3 Please indicate if the transaction was subject to approval¹⁰ by a specialised supervisory authority pursuant to Community law: e.g. telecommunications, financial services, energy etc.?

Yes No Do not know

4.4 Please indicate if the transaction was subject to merger control by the relevant competition authorities.

Yes No Do not know

If yes, was the transaction subject to control by the national competition authorities, by European Commission or by a third country competition authority:

National competition authorities

European Commission

¹⁰ The transaction is subject to approval if the concerned competent authority according to its law has the competence to deny the transaction.

Third country authority

4.6 Please indicate if the bid was subject to approval¹¹ by a supervisory authority in a third country.

Yes No Do not know

4.7 Please indicate if there were any cases brought before national courts in relation to this bid:

Yes No Do not know

If yes, cases were brought before national courts of

the Member State providing the reply to this fiche

another/other Member State(s)

third countries

Please explain _____

5 Other issues (optional)

5.1 Please identify any difficulty arising from the application of the rules of the Directive or any other issues of interest arising in relation to this bid: _____

¹¹ The transaction is subject to approval if the concerned competent authority according to its law has the competence to deny the transaction.