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Report on the implementation of the Directive on Takeover Bids

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1. INTRODUCTION

1.1. Objective of the report

The long-awaited Takeover Bids Directive¹ — the result of almost 20 years of work — was intended to be one of the main pillars of the economic reform boosting Europe's competitiveness.

The Commission's proposal was based on the assumption that takeovers offer a number of benefits for companies, investors and ultimately for the European economy as a whole. Takeovers may be efficient drivers of value creation. They facilitate corporate restructuring and consolidation and provide a means for companies to achieve an optimal scale, a precondition for competing effectively on an integrated European market as well as on the global market. They help in disseminating good management practices and technology, and thus improve the quality of management and corporate performance. Furthermore, takeovers discipline management and stimulate competition². Such transactions are also beneficial for investors, allowing them to obtain a better return on their investments.

The aim of the Commission's proposal was to help exploit such benefits at European level and to promote integration of European capital markets by creating favourable conditions for the emergence of a European market for corporate control: efficient takeover mechanisms, a common regulatory framework and strong rights for shareholders, including minority shareholders.

The purpose of the directive in facilitating takeover activity through efficient takeover mechanisms required the removal of some of the main company-related obstacles permitted under national company law; these obstacles meant that takeovers could not be undertaken on equal conditions in the different Member States.

Two key provisions of the Directive — board neutrality and breakthrough — were considered to be particularly important in this respect. These rules restrict the use or availability of two different types of instruments which can be exploited by companies to thwart hostile bids (takeover defences). To take account of the differences in the takeover defences applied throughout the EU, the Commission's proposal covered both types of defences in order to ensure a level playing field between Member States.

The final text of the Directive, as adopted by the Council and the European Parliament, allows for considerable deviation at national level from its key provisions. As a consequence, member states are allowed not to impose the provisions on takeover defences at national level.

The ultimate impact of the Directive therefore depends largely on the modalities of its implementation in the Member States and on the extent to which they will use the exemption provided for in the Directive.

¹ Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

² Takeovers are not always beneficial for all (or any) of the parties involved. However, the Directive was based on the assumption that, in the long run, takeover facilitation is in the best interests of all stakeholders and the company.

This report indicates how the Directive has been, or is expected to be, transposed, focusing on those provisions which offer wide scope for the Member States to deviate from the Directive. In addition, the report analyses some of the issues which influence the effectiveness of these rules in the light of the objectives of the Directive. On the basis of this analysis preliminary conclusions are drawn on the likelihood of achieving the Directive's original objectives — particularly the aim of promoting an open market for corporate control and protecting shareholders, including minorities.

The Commission services have based this report primarily on answers provided by Member States to a questionnaire, as limited information was available on transposing laws at the time of its preparation. Although the transposition deadline expired on 20 May 2006, a significant number of Member States have not transposed the Directive. A more thorough analysis is foreseen once implementation is finalised in all the Member States.

In this report, the Commission services do not judge the quality of the transposing rules in terms of compliance with the Directive's rules³.

1.2. State of transposition

At the time of publication of this report, seventeen Member States have transposed the Directive or adopted necessary framework rules⁴. Belgium, Cyprus, the Czech Republic, Estonia, Italy, the Netherlands, Poland and Spain have not yet (fully) aligned their legislation with the Directive⁵. The policy choices indicated in this report regarding these countries are based on information provided by Member States to the Commission services during the transposition process. These expectations mainly reflect the provisions of the draft laws prepared in national administrations or the official proposal submitted to the national parliament.

2. IMPLEMENTATION OF THE DIRECTIVE AT NATIONAL LEVEL

2.1. Facilitation of takeovers

2.1.1. Board neutrality and breakthrough

As already mentioned, some of the key issues in the context of takeover bids are the ways in which companies can apply takeover defences. These defences may prevent change of control over companies or make a takeover more difficult or costly. As a consequence, they entrench management and/or certain incumbent shareholders and render companies immune to unfriendly raiders.

There are two categories of defensive mechanisms. "Post-bid defences" are put in place once the company has become subject to a takeover bid. Such defences include share buybacks aimed at reducing the number of shares the bidder could acquire or the issue of share capital – so as to increase the cost of the bid. "Pre-bid defences" may constitute barriers to the

³ Accordingly, any reference to an implementing rule does not imply that the Commission acknowledges adequate transposition of that provision in the Member State referred to.

⁴ Only Austria, Denmark, France, Hungary, Ireland, Luxembourg and the UK met the transposition deadline.

⁵ Some of these countries have implemented the Directive partially (e.g. Estonia, Poland and Italy) or adopted interim measures to ensure the workability of some of the Directive's rules (the Netherlands).

acquisition of shares in the company (e.g. share transfer restrictions contained in the company's articles) or to the exercise of control in the general meeting (e.g. voting restrictions, shares with multiple voting rights).

Both categories of company-related takeover defences had to be restricted in order to facilitate takeovers and “prevent patterns of corporate restructuring within the Community from being distorted by arbitrary differences in governance and management cultures”⁶.

The board neutrality rule relates to post-bid defences. It provides that during the bid period the board of the target company must obtain prior authorisation from the general meeting of shareholders before taking any action which may result in the frustration of the bid⁷. This rule may facilitate takeover activity by limiting the board's power to raise obstacles to hostile takeovers to the detriment of shareholders' interests. It safeguards shareholders against opportunistic behaviour of the incumbent management and ensures that it is indeed the owners who decide on the future of the company.

The breakthrough rule⁸ neutralises pre-bid defences during a takeover. This rule is considered to be a radical tool to facilitate takeovers as it makes certain restrictions (e.g. share transfer or voting restrictions) inoperable during the takeover period and allows a successful bidder⁹ to easily remove the incumbent board of the target company and modify its articles of association. Based on the principle of proportionality between capital and control, this rule overrides multiple voting rights at the general meeting authorising post-bid defensive measures as well as at the first general meeting following a successful takeover bid.

2.1.2. *Optional arrangements*

The final compromise on the Directive subjected the board neutrality and breakthrough rules to complex optional arrangements¹⁰. Member States are allowed to choose between imposing these rules or not. However, if a Member State decides not to make them mandatory, it cannot prevent companies from applying these rules on a voluntary basis. The decision on voluntary application of the rules in turn has to be adopted by the general meeting and can be reversed in the same way.

A further element of the final compromise is the so-called reciprocity exception¹¹, which allows Member States to permit companies applying one or both of these rules to disapply them, and thus to "retaliate" against a bidder who is not subject to the same rules. The reciprocating power can be used only if it is authorised by both the Member State and the general meeting¹² of the target company.

The following sections present the policy choices adopted by Member States when implementing the optional provisions.

⁶ Recital 3

⁷ Article 9

⁸ Breakthrough is referred to in this report as the provisions set out in Article 11.

⁹ Who has acquired 75% of the voting capital

¹⁰ Article 12

¹¹ Article 12(3)

¹² The general meeting must grant the authorisation no earlier than 18 months before the bid was made public.

2.1.3. Implementation of the board neutrality rule

Eighteen Member States in total impose (or are expected to impose) the application of the board neutrality rule. However, the board neutrality obligation is not new in any of these Member States, except one. Five of these Member States have introduced (or intend to introduce) the reciprocity exception, which may hold back the emergence of an active takeover market, as opposed to the original objective of the Directive.

- (a) In thirteen among the fourteen Member States where the Directive has already been transposed, board neutrality is not a new concept. All these Member States had the same or a similar board neutrality obligation in place before transposition¹³. It has to be acknowledged, however, that the implementation has contributed to clarifying or even strengthening the role of shareholders in some Member States. These benefits need to be analysed further.
- (b) However, in five of these thirteen Member States, the reciprocity exception has been introduced (France, Greece, Hungary, Portugal and Slovenia). Management boards which, before the transposition of the Directive had been required to abstain from taking any measures likely to frustrate the takeover bid during the bid period without the approval of shareholders (or their powers have been significantly restricted in this regard) are now permitted to do so under certain circumstances. Thus, these Member States have increased the managements' power to take frustrating measures without the approval of shareholders on the proposed measure during the bid period. This development will very likely hold back the emergence of an open takeover market, rather than promote it.
- (c) Although in the majority of these five Member States, shareholders need to regularly (every 18 months) give prior authorization to the management to apply takeover defences in a reciprocity situation, they will lose the possibility to have an immediate check on the validity of the proposed defensive measure during the bid period (where such a right existed before transposition). Reciprocity therefore may increase the likelihood of potential abuse by management to the detriment of shareholders' interests in these Member States.
- (d) Amendments to national law introduced parallel to the implementation of the Directive, such as the new French warrants may also potentially contribute to a slowdown in the emergence of a market in corporate control.
- (e) As to Member States which currently have board neutrality in place but have not transposed the Directive by the time of the publication of this report it should be noted that Cyprus and Spain informed the Commission about their intention to implement the Directive by introducing reciprocity. Italy might even decide not to impose the application of the board neutrality rule, although it is currently mandatory there.

¹³ In some of these Member States, however, there were only principles in place or board neutrality was regulated only at self-regulatory level.

No Member State has chosen (or intends) to impose the board neutrality rule where it was not (fully) applied before transposition, except for Malta¹⁴.

Some Member States had no strict board neutrality obligation before the implementation of the Directive. All these Member States have decided to introduce the rule only on an optional basis, except for Malta. The situation in terms of the legal obligations in these countries compared to previous or existing rules will therefore remain unchanged. One has to note, however, that in some of those Member States which do not impose (or intend to impose) a strict board neutrality rule, management are to some extent limited in their room for manoeuvre as regards the use of post-bid defences¹⁵.

2.1.4. *Implementation of the breakthrough rule*

As explained above, the breakthrough rule is an efficient tool designed to make robust takeover defences contained in the target's articles of association or in shareholders' pacts unenforceable against a bidder during the bid period and to facilitate takeovers by lifting incumbent shareholders' disproportional control rights.

In terms of legal obligations, the way in which Member States have implemented this rule is unlikely to significantly change the status quo, for the following reasons.

The vast majority of Member States have not imposed (or are unlikely to impose) the breakthrough rule, but have made it optional for companies.

Breakthrough is expected to be imposed only by the Baltic States. None of the other countries will oblige their companies to apply this provision in full. Therefore a mere 1% of listed companies in the EU will apply this rule on a mandatory basis¹⁶.

Hungary had a partial breakthrough rule before transposition, which has been eliminated.

However, some Member States have already eliminated multiple voting securities and/or other pre-bid defences, and the structure of the companies in these Member States is therefore more open to takeovers¹⁷. Others lifted some of the barriers referred to in the breakthrough rule before transposition and this partial breakthrough rule continues to apply¹⁸. Portugal imposes the rule on a limited number of companies¹⁹.

Given that only a few Member States intend to impose the application of the rule, its takeover-facilitating effect will depend almost exclusively on whether or not companies will apply the rule on a voluntary basis. In this respect it is worth noting the following:

¹⁴ Those Member States where shareholder approval for post-bid defences was not mandatory before transposition (Denmark, Germany and Luxembourg) have chosen not to apply the rule (except for Malta), and allow the use of reciprocity. Among those countries that have not yet implemented the Directive, Belgium, the Netherlands and Poland intend to go in the same direction.

¹⁵ E.g. Germany, Belgium, the Netherlands. The limitations are expected to remain valid after transposition in these Member States.

¹⁶ These companies represent less than 1% in terms of market capitalisation.

¹⁷ E.g. Germany.

¹⁸ France and Italy.

¹⁹ Portugal mandates the application of the rule to companies in which the approval of a supermajority (more than 75% of the votes) is required to change the articles of association.

- Voluntary application of the breakthrough rule is made conditional upon the approval of those benefiting from disproportionate or special rights or of a large proportion of shareholders in certain Member States. This makes the application of the rule on a voluntary basis more difficult²⁰.
- The breakthrough rule does not neutralise all pre-bid defences. A company applying it may continue to use other robust defences to thwart hostile takeovers²¹. Companies having acquisition plans may therefore choose to apply it so as to avoid reciprocity and continue to be protected against takeovers once they become targets. Furthermore, the fact that the breakthrough rule has a limited coverage may induce companies to switch to other available pre-bid defences not covered by it.
- If a company decides to apply the breakthrough rule on a voluntary basis, such decision can immediately be reversed as soon as the bidder becomes a target. The reversibility of the company's decision may even create confusion on the market²².

2.1.5. *Reciprocity*

As indicated in Annex 1, the majority of Member States have allowed companies to reciprocate against a bidder not subject to the board neutrality and/or breakthrough rules.

The endorsement of the reciprocity rule is justified by Member States in several ways. Member States which applied the board neutrality rule before transposition have presumably opted for reciprocity in order to ensure a "level playing field" with those countries which do not apply the rule and thus to give management greater room for manoeuvre against foreign raiders. One of the justifications for such a seemingly "protectionist" stance is the fear of regulatory competition. Such reasoning can be found in the preparatory works of the French transposing legislation, where it is stated that "an imbalance as to the powers of the management in a period of cross-border consolidation could favour those countries where the management's autonomy is not restricted. Such competition could even come from European countries. (...) there is a risk that such an imbalance plays globally to the disadvantage of the development of French corporate seats and favours those countries where the management has wider powers in a takeover context".

Another justification for the introduction of this rule in those Member States where board neutrality did not apply before transposition was to provide companies with all the flexibility the Directive offers.

²⁰ Although companies are allowed to apply the breakthrough rule on a voluntary basis by adopting a resolution at the general meeting, such a resolution can be conditional upon the approval of a certain percentage of those affected by such a resolution (i.e. shareholders with multiple vote securities, where such multiple votes are neutralised during and after a successful bid). Austria requires approval of the person enjoying a right to appoint members of the supervisory board. Denmark and Slovakia make such a decision conditional on the approval of two-thirds of those affected by the resolution. In the UK, rights of shareholders in a particular class may not be overridden unless three-quarters of that class consent, etc. In some countries, no additional resolution is required (e.g. the Netherlands). Sweden made it particularly difficult for companies to adopt such a resolution by making its validity subject to the approval of not less than nine-tenths of all the shareholders in the company.

²¹ E.g. non-voting or double vote shares, granting veto rights in respect of a change to the articles of association, granting special rights to an entity which is not a shareholder.

²² To address these concerns, some Member States have imposed limitations on the reversibility of the decision (e.g. UK, Malta).

Furthermore, reciprocity is considered to be an incentive for companies which have acquisition plans to apply the rules of the Directive voluntarily in order to be able to benefit from the liberal regime abroad. However, this argument is undermined by the fact that the company's decision to apply voluntarily the board neutrality or breakthrough rule is reversible.

Thus, taking into account the modalities of implementing the reciprocity rule, the main "benefit" of reciprocity seems to be the fact that it gives management new powers to take frustrating action and makes it easier for companies to disapply the board neutrality or breakthrough rule²³.

2.1.6. Squeeze-out

The right to squeeze out minority shareholders allows a bidder who has acquired a very large part²⁴ of the share capital to acquire the outstanding shares. Forcing minorities out of the company liberates the bidder from costs and risks which the continued existence of minorities could trigger. This is an efficient tool for bidders to finalise a takeover, thus making takeover bids more attractive. Takeover-related squeeze-out has been or will be introduced for the first time in the law of a number of Member States²⁵ and thus will help to facilitate such transactions within the EU.

In this respect, it is also important to note that the Directive offers at the same time guarantees to minority shareholders.

2.2. Protection of minority shareholders

2.2.1. Mandatory bid

Minority shareholders are protected in a number of ways under the Directive. The mandatory bid rule provides that if a person acquires control over a company, he/she is obliged to make a full takeover bid for all the remaining voting securities of this company at an equitable price²⁶. This rule protects minority shareholders by granting them a right to sell their shares in the event of a change of control as well as the benefit of the premium paid for the controlling stake. The introduction of the mandatory bid obligation and/or the equitable price rule in those Member States where such a rule did not apply before transposition and the setting of a threshold lower than the one applied before transposition will increase minority shareholders' rights in some Member States.

The threshold above which control is deemed to have been acquired is defined at national level. Annex 2 gives an overview of the control thresholds applied in the Member States²⁷.

²³ In some Member States a lower majority requirement applies for a reciprocity decision than the one required for reversing the decision to voluntarily apply the board neutrality or breakthrough rule, e.g. Germany, the Netherlands, Greece, Luxembourg).

²⁴ 90% of voting capital and voting rights in most Member States. The squeeze-out and sell-out thresholds are listed in Annex 4.

²⁵ E.g. Greece, Spain, Luxembourg, Malta, Slovenia, Slovakia.

²⁶ Article 5.

²⁷ These thresholds vary from 25% to 66% of voting rights. Most Member States have set the threshold at 30%.

Member States have widely used the flexibility provided by the Directive to derogate from the Directive's provisions in order to maintain their exceptions from the mandatory bid rule²⁸. Some of these exceptions are necessary to ensure that this obligation applies only where the holding actually confers control, while others are more far-reaching. Furthermore, in some Member States, supervisory authorities seem to have extensive powers to grant exceptions from the rule. Exceptions and wide-ranging discretionary power can undermine the effectiveness of the protection provided by such a rule.

2.2.2. *Sell-out*²⁹

The sell-out right provides minority shareholders with a counterpart to the squeeze-out right: it allows them to force the majority shareholder to buy their shares at a fair price. Such a rule protects minorities from abuse by the majority shareholder of his dominant position, where such protection is not available below the sell-out threshold in national law. Furthermore, the obligation to fairly compensate minorities may offer them a better price for their shares than the one set by a potentially illiquid market.

The takeover-related sell-out rule has been (or will be) introduced in a large number of Member States³⁰ for the first time through the transposition of the Directive. Consequently it strengthens minority protection in the EU.

3. CONCLUSION

It is difficult to predict the Directive's effects. Some of its provisions are likely to bring benefits in terms of better protection of minority shareholders. Others may have potential indirect effects. The incorporation of the Directive's rules on takeover defences into national laws on a voluntary basis could set a benchmark. Shareholders may push for the voluntary provisions to be applied by companies. The directive's rules on disclosure of takeover defences will help increase transparency, thereby facilitating investor's decisions. In the longer term this may result in a gradual increase in corporate governance standards and a more open market.

However, there is a risk that the board neutrality rule, as implemented in Member States will hold back the emergence of a European market for corporate control, rather than facilitate it. It is unlikely that the breakthrough rule, as implemented in Member States would bring any significant benefits in the short term.

A large number of Member States have shown strong reluctance to lift takeover barriers. The new board neutrality regime may even result in the emergence of new obstacles on the market of corporate control. The number of Member States implementing the Directive in a seemingly protectionist way is unexpectedly large.

Taking into account the potential negative effects of the new takeover rules on the European market, the Commission intends to closely monitor the way in which the Directive's rules are applied and work in practice, and to evaluate their effects. Furthermore, the Commission will

²⁸ See Annex 3.

²⁹ Articles 15 and 16

³⁰ E.g. Austria, Belgium, Estonia, Germany, Greece, the Netherlands, Malta, Spain, Luxembourg, Slovakia, Slovenia

analyse the reasons why Member States are so reluctant to endorse the fundamental rules of the Directive. In the light of this evaluation, the revision of the Directive scheduled for 2011 may, if necessary, be brought forward.

Annex 1

Transposition of the Directive on takeover bids in the EU, January 2007						
	Transposition of the Directive	Obligation to apply the board neutrality rule	Obligation to apply the breakthrough rule	Reciprocity	Number of listed companies ^{31*}	Capitalisation in € million*
Austria	yes	yes	no	no	93	121803
Belgium	no	no	no	yes	136	266302
Cyprus	no	yes	no	yes	140	8442
Czech Republic	no	yes	no	no	31	31466
Denmark	yes	no	no	yes	180	approx. 156000
Estonia	no	yes	yes	no	16	approx. 3000
Finland	yes	Expectedly yes ³²	no	no	138	approx. 214000
France	yes	yes	no	yes ³³	647	1676585
Germany	yes	no	no	yes	650	1097336
Greece	yes	yes	no	yes	289	133115
Hungary	yes	yes	no	yes	44	26162
Ireland	yes	yes	no	no	55	105381
Italy	no	no	no	yes	284	732654
Latvia	yes	yes	yes	no	40	approx. 2000
Lithuania	yes	yes	yes	no	43	approx. 6000
Luxembourg	yes	no	no	yes	37	54941
Malta	yes	yes	no	no	13	3699
The Netherlands	no	no	no	yes	223	587758
Poland	no	no	no	yes	246	91358
Portugal	yes	yes	no	yes	47	69189
Slovakia	yes	yes	no	no	214	3880
Slovenia	yes	yes	no	yes	107	8092
Spain	no	yes	no	yes	224	862941
Sweden	yes	yes	no	no	269	approx. 387000
UK	yes	yes	no	no	2876	2703364

* August 2006.

³¹ This number refers to domestic companies (i.e. companies that are listed and registered in the same Member State), except for companies listed on the OMX Nordic Exchange (Sweden, Finland, Denmark, Estonia, Latvia, Lithuania). Therefore in these latter cases the numbers do not separately identify companies registered in other countries for which the applicable law is the one of the place of registration.

³² Finland has informed the Commission that they opted into the board neutrality rule. However there is no obligation at the level of law in Finland on shareholder approval of post-bid defensive measures. Finland claims that further self-regulatory rules will complete the existing provisions to remedy to this situation. The Commission has not been informed that such rules have been adopted yet.

³³ Only regarding the board neutrality rule.

Annex 2

Country	Conditions triggering the obligation to make a mandatory bid
Austria	<ul style="list-style-type: none"> • Direct or indirect control through acquisition of more than 30% of voting rights • Indirect control through other rights conferring significant influence in the target company • Creation of controlling stake through creeping-in: acquisition of further 2% of voting rights to a controlling stake within 12 months, if the bidder does not have the majority of voting rights.
Belgium	<ul style="list-style-type: none"> • Acquisition of 30% of voting rights • Indirect acquisition of control of the target under certain circumstances.
Czech Republic	Acquisition of 40% of voting rights.
Cyprus	Acquisition of 30% of voting rights.
Denmark	<p>Acquisition of shares if the acquirer:</p> <ul style="list-style-type: none"> • holds the majority of voting rights in the company, • becomes entitled to appoint or dismiss a majority of the members of the board of directors, • obtains the right to exercise a controlling influence over the company on the basis of the articles of association or any agreement with the company in general, • controls the majority of voting rights pursuant to an agreement with other shareholders, or • is able to exercise a controlling influence over the company and holds more than one-third of the voting rights.
Estonia	<p>The mandatory bid obligation is triggered when a person has gained dominant influence over the target company, and thus</p> <ul style="list-style-type: none"> • holds the majority of the votes in the company, or • has the right to appoint or remove the majority of members of the supervisory board or management board, or • controls alone the majority of votes pursuant to the agreement entered into with other shareholders.
Germany	Indirect or direct acquisition of control, which is defined as 30% of the voting rights of the target company. This obligation is triggered if the threshold is overstepped by shareholders involved in a concert party arrangement even if such an arrangement is not linked to the acquisition of shares in the target company.
Greece	<ul style="list-style-type: none"> • Acquisition of more than one-third of the voting rights or • Acquisition of further 3% or more of the voting rights within one year in addition to holding between one-third and 50% of the voting rights.
Finland	Acquisition of 30% and 50% of the voting rights.
France	<ul style="list-style-type: none"> • Acquisition of more than 33,33% of the voting capital or of voting rights and • Acquisition of at least 2% more of the voting capital or voting rights within less than one year by persons holding between 33% and 50% of the voting capital or voting rights.
Hungary	<ul style="list-style-type: none"> • Acquisition of more than 25% of voting rights, provided that no other shareholder holds more than 10% of the voting rights of the company. • Acquisition of 33% of voting rights.
Ireland	<ul style="list-style-type: none"> • Acquisition of 30% of voting rights. • Consolidation of existing control position.
Italy	<p>According to the law currently in force the obligation to make a bid arises under the following conditions:</p> <ul style="list-style-type: none"> • Direct or indirect acquisition of more than 30% of the company's capital represented by shares giving the right to vote in shareholders' meeting on resolutions concerning the appointment, removal or liability of directors or members of the supervisory board. • Acquisition of more than 3% within a year of the company's capital represented by shares giving the right to vote in shareholders' meeting on resolutions concerning the appointment, removal or liability of directors or members of the supervisory board by a person already holding, directly or indirectly, more than 30% of the company's capital represented by such shares without having the majority of voting rights in the ordinary shareholders' meeting. <p>The draft implementing rules propose to maintain such conditions.</p>
Latvia	Acquisition of 50% of voting rights.
Lithuania	Acquisition of 40% or more of voting rights
Luxembourg	Direct or indirect acquisition of 33,33% of voting rights.
Malta	Direct or indirect acquisition of 50% plus one of the voting rights.

The Netherlands	Acquisition of 30% of voting rights.
Poland	Acquisition of more than 66% of the voting rights.
Portugal	Acquisition of one-third of voting rights (if presumption of control is not rebutted) and 50% of voting rights.
Spain	The draft law provides for a 30% voting rights threshold.
Slovakia	Acquisition of 33% of voting rights.
Slovenia	Acquisition of 25% of the voting rights.
Sweden	<ul style="list-style-type: none"> • Acquisition of 30% of voting rights or • Increase of 30% holding if a person attained a 30% shareholding as a result of measures taken by the company or another shareholder.
UK	<ul style="list-style-type: none"> • Acquisition of an interest in shares which carry 30% or more of the voting rights of a company. An interest in shares arises: through ownership of the shares; through having the right to exercise or direct the exercise of the voting rights attaching to the shares; through having the right or option to acquire the shares or call for their delivery or being under an obligation to take delivery of them by virtue of any agreement to purchase, option or derivative; and being party to a derivative whose value is determined by reference to the price of the shares and which results, or may result in, his having a long position in them. • A person (together with persons acting in concert) has an interest in shares carrying between 30% and 50% of the voting rights of a company and acquires an interest in other shares which increase the percentage of voting rights in which he is interested.

Annex 3

Country	Derogations provided at the level of law, derogatory powers of the supervisory body/authority
Austria	<p><u>Derogations provided at the level of law:</u> The takeover code provides for exceptions from the mandatory bid obligation (e.g. when the shareholder subject to the obligation cannot exert a significant influence on the target company). Furthermore, the mandatory bid threshold can be lowered in the company's articles of association.</p> <p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority may grant exemption from immediate publication of decision to make an offer and the publication of the offer in the prescribed deadline.</p>
Belgium	<p><u>Derogations provided at the level of law:</u> The draft executing decree provides for certain exceptions from the mandatory bid obligation (e.g. changes of control within the same corporate group, inheritance, rescue operations).</p> <p><u>Derogatory powers of the supervisory authority:</u> The draft law grants the supervisory authority the power to waive transposing rules, in order to take account of specific circumstances.</p>
Czech Republic	<p><u>Derogations provided at the level of law:</u> The definition provided in the draft law for the equitable price to be paid in case of a mandatory bid deviates from the rule of the Directive. In addition to the requirement of the Directive to define the equitable price as the highest price paid by the offeror over a certain period prior to the bid, the Czech draft law provides that the price should reflect the value of the securities and should not be lower than the weighted average price of the security over a certain period prior to the bid. The fairness of the price is subject to expert valuation. Furthermore, the draft law provides for exceptions from the mandatory bid obligation (e.g. inheritance).</p> <p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority may grant exemptions from the mandatory bid obligation (e.g. temporary stepping over of the mandatory bid threshold, increase of capital under certain circumstances, changes of control within the same group).</p>
Cyprus	<p><u>Derogatory powers of the supervisory authority:</u> The draft takeover law sets out derogations from certain obligations which are granted by the supervisory authority on request. These obligations are as follows: mandatory bid, the obligation to post the offer document to all shareholders, equal treatment of all shareholders and certain prohibitions following a public offer.</p>
Denmark	<p><u>Derogations provided at the level of law:</u> The mandatory bid obligation does not apply to acquisitions by inheritance, gift, debt enforcement and transfer within the same group.</p> <p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority has power to grant exception from certain provisions, e.g. offer period, mandatory bid obligation.</p>
Estonia	<p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority has power to grant exemption from the mandatory bid obligation (e.g. change of control within the same corporate group, the dominant influence was gained for the purpose of carrying out a merger or division, temporary acquisition of shares for the purpose of further transfer, etc.).</p>
Germany	<p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority may release the offeror from the obligation to publish and submit a mandatory bid insofar as this seems justified having regard to the interests of the offeror and the shareholders of the target company, the way in which control was obtained, the shareholder structure of the company, the actual possibility of exercising control or the fact that the share in the target company is reduced below the control threshold subsequent to the acquisition of control.</p> <p>Furthermore, the supervisory authority permits voting rights to be disregarded under certain circumstances (e.g. inheritance, change of legal form).</p>
Greece	<p><u>Derogations provided at the level of law:</u> The law provides for exceptions from the mandatory bid obligation (temporary stepping over of the mandatory bid threshold, another person holds a higher percentage of the voting rights, securities have been acquired through the exercise of pre-emption rights during share capital increase, merger between affiliated companies, privatisation, etc.).</p>
Finland	<p><u>Derogations provided at the level of law:</u> The law provides for exceptions from the mandatory bid obligation (e.g. another person holds a higher percentage of the voting rights, the mandatory bid threshold has been stepped over as a result of measures taken by the target company or by another shareholder).</p> <p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority may grant exemptions from certain rules, e.g. offer price and mandatory bid obligation.</p>
France	<p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority has power to grant exemptions from the mandatory bid obligation (merger authorised by the shareholders in general meeting, changes of control within the same corporate group, changes of control in order to save a company from bankruptcy, etc.)</p>

Hungary	-
Ireland	<u>Derogatory powers of the supervisory authority:</u> The supervisory body has power to provide for derogations and waivers in the rules in relation to particular matters having regard to exceptional circumstances and "in other circumstances".
Italy	<u>Derogations provided at the level of law:</u> The law currently in force provides for exceptions from the mandatory bid obligation (e.g. voluntary partial bid addressed to all shareholders for at least 60% of the voting capital, transactions aimed at rescuing companies in crisis, changes of control within the same corporate group, transactions of a temporary nature, mergers). The draft implementing rules propose to maintain such exceptions.
Latvia	-
Lithuania	<u>Derogations provided at the level of law:</u> The law on the securities market provides for certain exceptions from the mandatory bid rule (e.g. reorganisations under certain circumstances, stepping over the threshold in accordance with the rules on restructuring of enterprises, change of control within the same corporate group).
Luxembourg	<u>Derogatory powers of the supervisory authority:</u> The supervisory authority may grant exceptions under specific circumstances of certain implementing rules (mandatory bid, immediate publication of the decision to make a bid, contents of offer document, etc.).
Malta	<u>Derogatory powers of the supervisory authority:</u> The supervisory authority has power to grant exemptions from the mandatory bid obligation (control was obtained as a result of the reduction of the offeree's share capital, merger or division, transactions of a temporary nature, acquisition of control as a result of the exercise of pre-emption rights in case of increase of capital, etc.).
The Netherlands	<u>Derogations provided at the level of law:</u> The draft rules provide for derogations regarding the mandatory bid obligation. In the following situations no (immediate) obligation to launch a takeover bid will arise: preference shares held by a foundation, share certificates held by a foundation, restructuring within a group, change of control through inheritance or marriage, bankruptcy, shares held by a custodian which votes according to instructions.
Poland	<u>Derogations provided at the level of law:</u> The rules provide for derogations regarding the mandatory bid obligation (e.g. change of control within the same group, in case of a bankruptcy or recovery procedure, inheritance)
Portugal	<u>Derogations provided at the level of law:</u> A subsequent bid is not mandatory if the acquisition of the voting rights at the level of the threshold is made i) through a previous general takeover bid; ii) through an insolvency process; iii) through the merger of companies, if the decision of the relevant shareholders explicitly refers that the merger operation would give rise to a mandatory bid.
Spain	<u>Derogations provided at the level of law:</u> Exceptions to the mandatory bid rule are likely to be maintained (e.g. unintentional acquisition of control, acquisition following a decision of the shareholders of the offeree company, certain operations in the context of bankruptcy procedures, operations within the same group)
Slovakia	<u>Derogations provided at the level of law:</u> The rules provide for derogations regarding the mandatory bid obligation (e.g. changes of control within the same corporate group, inheritance).
Slovenia	<u>Derogations provided at the level of law:</u> The rules provide for derogations regarding the mandatory bid obligation (e.g. inheritance, merger or division if the purpose of the operation was not the takeover of the target company, reduction of the capital of the offeree company).
Sweden	<u>Derogations provided at the level of law:</u> The rules provide for derogations regarding the mandatory bid obligation (temporary acquisition). <u>Derogatory powers of the supervisory authority:</u> The supervisory authority may, under certain circumstances, waive the mandatory bid rule (e.g. inheritance) and the board neutrality rule (e.g. completion of an operation started prior to the bid).
UK	<u>Derogations provided at the level of law:</u> Specific derogations from rules are included in the Takeover Code where necessary to facilitate a pragmatic approach to long-established practice. These include: An exception from the obligation to draw up an offer document once an offeror has announced a decision to make a bid if, subsequent to the announcement of this decision a competing offeror has announced a higher bid and an exception from the board neutrality rule that requires the board of the offeree company to obtain the prior authorisation of the general meeting before taking any frustrating action, if shareholders holding more than 50% of the voting rights approve the proposed action.

	<p>There are also certain exceptions from the mandatory bid rule (issue of new securities as consideration for an acquisition (provided approval is given by shareholders), rescue operation, acquisition of shares as a result of inadvertent mistake, holders of shares carrying 50% of the voting rights state that they would not accept the offer, etc.).</p> <p><u>Derogatory powers of the supervisory authority:</u> The Takeover Panel may derogate or grant a waiver to a person from the application of a rule where the Panel considers that the particular rule would operate unduly harshly or in an unnecessarily restrictive or burdensome or otherwise inappropriate manner.</p>
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Annex 4

Country	Squeeze-out, sell-out threshold following a takeover bid
Austria	90 % of voting capital and voting rights
Belgium	95% of voting capital and voting rights
Czech Republic	90% of voting capital and voting rights
Cyprus	90% of voting capital and voting rights
Denmark	90% of shares and voting rights
Estonia	The draft amendments ensuring transposition of the Directive provide for a threshold of 90% of voting capital and voting rights
Germany	95% of the capital carrying voting rights
Greece	90 % of voting rights
Finland	90% of capital and voting rights
France	95% of capital or voting rights
Hungary	90 % of voting rights
Ireland	90% of voting capital and voting rights
Italy	The draft implementing rules provide for 95% of the voting capital and voting rights.
Latvia	Squeeze-out: 95%, sell-out: 90% of voting rights
Lithuania	Squeeze-out: 95% of voting capital and voting rights Sell out: 95% of voting rights
Luxembourg	Squeeze-out: 95% of voting capital and voting rights, sell-out: 90% of voting rights
Malta	90% of voting capital and voting rights
The Netherlands	95% of voting capital and voting rights
Poland	90% of capital and voting rights
Portugal	90% of capital and voting rights and 90% of the voting rights subject to the bid
Spain	90% of the voting capital and of the voting rights subject to the bid
Slovakia	95% of the voting capital and voting rights
Slovenia	90% of the voting capital and of the voting rights
Sweden	90% of capital
UK	Squeeze-out: 90% of shares to which the offer relates and of voting rights Sell-out: 90% of the voting shares in the company and of the voting rights

Annex 5



