



EUROPEAN COMMISSION

Brussels, 28.6.2012  
COM(2012) 347 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS**

**Application of Directive 2004/25/EC on takeover bids**

(Text with EEA relevance)

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Application of Directive 2004/25/EC on takeover bids**

(Text with EEA relevance)

**1. INTRODUCTION**

1. This report reviews the application of Directive 2004/25/EC<sup>1</sup> on takeover bids (hereinafter: "the Takeover Bids Directive" or "the Directive"), in accordance with Article 20 of the Directive.
2. The Takeover Bids Directive contains minimum guidelines for the conduct of takeover bids, including disclosure, involving securities with voting rights of companies governed by the laws of Member States, where all or some of these shares are admitted to trading on a regulated market.
3. The objectives pursued by the Takeover Bids Directive are important to financial markets and stakeholders of listed companies. More specifically, the objectives of the Directive are:
  - Legal certainty on the conduct of takeover bids and community-wide clarity and transparency in respect of takeover bids;
  - Protection of the interests of shareholders, in particular minority shareholders, and of employees and other stakeholders through transparency and information rights, when a company is subject to a takeover bid or change of control;
  - Facilitation of takeover bids, through reinforcement of the freedom to deal in and vote on securities of companies and prevention of operations which could frustrate a bid;
  - Reinforcing the single market, by enabling free movement of capital throughout the EU.
4. The Takeover Bids Directive is based on general principles<sup>2</sup>, which should be complied with by Member States for the purpose of transposing the Directive. The principles include:
  - Equal treatment of shareholders;

---

<sup>1</sup> Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, OJ L 142/12 of 30.03.2004, p.38. Available at:

[http://ec.europa.eu/internal\\_market/company/official/index\\_en.htm](http://ec.europa.eu/internal_market/company/official/index_en.htm)

<sup>2</sup> See Article 3 of the Directive.

- Protection of minority shareholders in case of change of control;
- Prohibition of market manipulation or abuse; and
- Shareholders must have sufficient time and information to make a properly informed decision on the bid.

Any exemptions made by Member States to the rules of the Directive must still comply with these principles, as well as the other principles listed therein.

5. This report describes the impact of the Takeover Bids Directive and how it has been complied with (section 2); identifies the main issues emerging from the application of the Directive (section 3) and draws a number of conclusions (section 4).

## 2. IMPACT OF AND COMPLIANCE WITH THE TAKEOVER BIDS DIRECTIVE

6. The External Study on the application of the Takeover Bids Directive conducted on behalf of the Commission (hereinafter "the External Study")<sup>3</sup> considers that the Takeover Bids Directive has not led to major changes in the legal framework of the Member States included in the study<sup>4</sup>, because similar rules already existed or were in the making at national level prior to the adoption of the Directive.
7. With regard to the transposition of the optional provisions of the Takeover Bids Directive, the External Study, the 2007 Commission Staff Report on the implementation of the Directive<sup>5</sup> and further research conducted by the Commission show that 19<sup>6</sup> Member States have transposed the board neutrality rule<sup>7</sup>, while only three Member States<sup>8</sup> have transposed the breakthrough rule<sup>9</sup>. In accordance with article 12 (3) of the Directive, about half of the Member States<sup>10</sup> allow companies who are subject to the board neutrality rule and/or breakthrough rule (by law or based on the articles of association of the company) not to apply the rule when they are confronted with a takeover bid by an offeror who is not subject to the same rule (reciprocity).

---

<sup>3</sup> Marcus Partners, in cooperation with the Centre for European Policy Studies (June 2012), *Study on the application of Directive 2004/25/EC on takeover bids*. Available at: [http://ec.europa.eu/internal\\_market/company/takeoverbids/index\\_en.htm](http://ec.europa.eu/internal_market/company/takeoverbids/index_en.htm)

<sup>4</sup> Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Spain, Sweden and the United Kingdom

<sup>5</sup> Commission Staff Working Document. Report on the Implementation of the Directive on Takeover Bids, 21 February 2007, SEC(2007) 268.

<sup>6</sup> Austria, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Greece, Ireland, Italy, Latvia, Lithuania, Malta, Portugal, Romania, Slovenia, the Slovak Republic, Spain and the United Kingdom

<sup>7</sup> The board neutrality rule (Article 9 of the Directive) provides that during the bid period the board of the offeree company must obtain prior authorisation from the general meeting of shareholder before taking any action which might result in the frustration of the bid.

<sup>8</sup> Estonia, Latvia and Lithuania

<sup>9</sup> The breakthrough rule (Article 11 of the Directive) neutralises pre-bid defences during a takeover by making certain restrictions (e.g. share transfer or voting restrictions) inoperable during the takeover period and allows a successful offeror to remove the incumbent board of the offeree company and modify its articles of association.

<sup>10</sup> Belgium, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, Slovenia and Spain

8. With regard to the application of the legal framework in the Member States, no structural compliance issue has emerged.
9. The External Study considers that the Takeover Bids Directive has contributed to improvements in relation to its objectives, for instance through the introduction of coordination rules for supervisors with regard to cross border offers, general principles of the directive, disclosure rules, the mandatory bid rule and squeeze-out and sell-out rights.
10. Stakeholders who participated in the perception survey, conducted for the preparation of the External Study, consider the Takeover Bids Directive to be useful for the proper and efficient functioning of the market. Stakeholders are generally satisfied with the clarity of the rules included in the Directive and the adequacy of their enforcement. Stakeholders generally believe that the Directive has strengthened the position of minority shareholders and are positive about the disclosure regime, the mandatory bid rule and the squeeze-out and sell-out rights included in the Directive. Representatives of employees, consulted through the perception survey, are however less satisfied with the Directive. In particular, they expressed the view that the Directive does not sufficiently protect employees against the risk of change in working conditions or redundancies after the takeover.
11. With regard to the optional provisions of the Takeover Bids Directive, which regulate the use of defensive measures, stakeholders appear to believe that they had little effect. For instance, the External Study shows that stakeholders perceive that the Directive did not have a significant effect on the number of bids and that, notwithstanding the existence of the Directive, a high number of mostly pre-bid defences is used in Europe. However, they also expressed the view that there are sufficient possibilities to break through defences even though most Member States have not transposed the breakthrough rule.
12. It is difficult to calculate the impact of the Takeover Bids Directive on the economy, mainly because there have been few takeover bids in the EU since the transposition of the Directive<sup>11</sup>, due to the economic situation in the EU following the financial crisis<sup>12</sup>. Moreover, the minimum harmonisation character of the Directive, together with the optional character of the articles with regard to defensive measures and the possibility in article 4 (5) of the Directive, for Member States to derogate from the rules of the Directive has led to a wide variety of national rules in the field of takeover bids.

More generally, economic analysis<sup>13</sup> shows that although takeover bids promote economic efficiency in theory, this is not always the case in practice because the conditions of rational behaviour, fully informed market participants and absence of transaction costs are not always met (e.g. takeover bids might be made for empire building purposes and shareholders might face incomplete information, high transaction costs and pressure to tender). Moreover, some provisions of the Directive, e.g. the board neutrality rule, the breakthrough rule and the squeeze-out

---

<sup>11</sup> Except a 'peak' in takeovers in 2007, see figure 2 in the Annex.

<sup>12</sup> See Figures 1 and 2 in the Annex to this Report.

<sup>13</sup> See Chapter 4 of the External Study.

right, facilitate takeover bids, while others, e.g. the mandatory bid rule, may serve as a deterrent to takeover bids<sup>14</sup>.

13. A comparison with third countries<sup>15</sup> shows that takeover bid legislation in those countries is based on similar principles to those in the Takeover Bids Directive. An exception is the principle of protection of employees through information rights, which is in general not present in the third countries investigated. The duration of a takeover bid and the information that needs to be provided is also similar in the EU and in third countries. Most investigated third countries, except the United States, have a mandatory bid rule or a similar rule in their legislation, under which the control threshold is usually around 30% or one third, which is also similar to the EU (the Takeover Bids Directive leaves it to Member States to define the control threshold, but most Member States have chosen 30% or one third). With regard to defensive measures, the comparison shows that they are used in all investigated third countries, and that most of these countries (except the United States) have an equivalent to the board neutrality rule. However, there is no equivalent to the breakthrough rule included in the legislation of any investigated third country. With regard to squeeze-out and sell-out rights, a limited number of investigated third countries do not have such rules. However, there are other mechanisms present that have similar effects (e.g. callable shares in Japan and compulsory acquisitions in Australia and cash mergers in Switzerland). Some third countries also offer the possibility to obtain full ownership of a company through the use of schemes of arrangement.
14. Article 20 of the Takeover Bids Directive instructs the Commission to include in its examination of the Directive a survey of control structures and barriers to takeover bids that are not covered by the Directive. The External Study investigated pyramid structures<sup>16</sup> and cross-shareholdings, which are not covered by the Takeover Bids Directive. It finds that 18,1% of listed companies in the Member States included in the study have pyramid structures, while 3,5% have cross-shareholdings<sup>17</sup>. This is consistent with the fact that EU continental shareholding structures are to a large extent based on block holding. It concludes that, although pyramid structures remain a popular mechanism to retain control of a company with less capital, both mechanisms are considered weak defences against takeovers. The External Study also considers that other possible barriers to takeovers, such as sector-specific regulations, public funds, co-determination procedures and employee share ownership do not create strong or unjustified obstacles<sup>18</sup>.

### **3. THE REVIEW OF THE OPERATION OF THE DIRECTIVE: EMERGING ISSUES**

15. A number of issues emerge from the review of the operation of the Takeover Bids Directive.

---

<sup>14</sup> See Figure 3 in the Annex to this Report.

<sup>15</sup> The External Study includes the following third countries: Australia, Canada, China, Hong Kong, India, Japan, Russia, Switzerland and the United States.

<sup>16</sup> Pyramid structures are structures where an entity holds a controlling stake in a company, which holds a controlling stake in another company, which holds a controlling stake in another company, and so on.

<sup>17</sup> See Figure 4 in the Annex to this Report.

<sup>18</sup> See page 48 and 267 of the External Study.

16. Firstly, there is some concern about the legal certainty of the concept of "acting in concert" and its application by national regulators. The concept of "acting in concert" is relevant for calculating whether the control threshold has been crossed and, consequently, whether an obligation to launch a mandatory bid has arisen. Article 2 (1) (d) of the Takeover Bids Directive defines "acting in concert" as:

"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".

Member States have transposed the definition in different ways. For instance, some Member States<sup>19</sup> stay close to the definition given in the Takeover Bids Directive, while others<sup>20</sup> have included elements of the definition of "acting in concert" given in the Transparency Directive<sup>21</sup>. Moreover, the concept of "acting in concert" is also included in the Acquisitions Directive<sup>22</sup>. The broad definition of the term, included in the Acquisitions Directive's level 3 guidance,<sup>23</sup> is however not used by regulators in connection with takeover bids. To mitigate uncertainty around the application of the concept of "acting in concert" some national regulators<sup>24</sup> have issued interpretative guidelines or presumptions. However, the content of these guidelines is not the same. The existence of different definitions and interpretations on national level is a source of uncertainty for international investors who wish to cooperate with each other and might have a limiting effect on their willingness to engage actively with investee companies. This is confirmed by respondents to the Commission Green Paper on the EU Corporate Framework<sup>25</sup> who expressed the view that there is a need to clarify existing provisions on "acting in concert"<sup>26</sup>.

17. Secondly, the wide range of national derogations to the mandatory bid rule raises the question as to whether the mandatory bid rule adequately protects minority shareholders in situations of change of control. Article 4 (5) of the Takeover Bids Directive allows Member States to make derogations from the rules of the Directive by providing that:

---

<sup>19</sup> E.g. Austria, Cyprus, Denmark, Italy, Hungary, Ireland, Luxembourg, the Netherlands, the Slovak Republic and the United Kingdom

<sup>20</sup> E.g. Belgium, Finland, France, Germany, Poland, Portugal, Romania, Spain and Sweden

<sup>21</sup> Directive 2004/109/EC of the European Parliament and the Council on the harmonisation of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market. Article 10 (a) of the Directive defines "acting in concert" as: "*a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, lasting common policy towards the management of the issuer in question*".

<sup>22</sup> Directive 2007/44/EC of the European Parliament and the Council as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector

<sup>23</sup> Level 3 guidance to the Acquisitions Directive considers persons "acting in concert" when: "*each of them decides to exercise his rights linked to the shares he acquires in accordance with an explicit or implicit agreement made between them*".

<sup>24</sup> E.g. Italy and the United Kingdom

<sup>25</sup> Green Paper on the EU Corporate Governance Framework, 4 April 2011, COM (2011) 164 final. Available at: [http://ec.europa.eu/internal\\_market/company/docs/modern/com2011-164\\_en.pdf#page=2](http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf#page=2)

<sup>26</sup> See: Feedback Statement, Summary of Responses to the Green Paper on the EU Corporate Governance Framework. Available at: [http://ec.europa.eu/internal\\_market/company/docs/modern/20111115-feedback-statement\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/modern/20111115-feedback-statement_en.pdf)

"Provided that the general principles laid down in Article 3(1) are respected, Member States may provide in the rules that they make or introduce pursuant to this Directive for derogations from those rules:

- i. by including such derogations in their national rules, in order to take account of circumstances determined at national level and/or
- ii. by granting their supervisory authorities, where they are competent, powers to waive such national rules, to take account of the circumstances referred to in (i) or in other specific circumstances, in which case a reasoned decision must be required.

All Member States included in the External Study have made derogations to the mandatory bid rule. Derogations can be divided into a number of categories<sup>27</sup>:

- Discretionary power of the national supervisory authority to grant an exemption. Only a few Member States<sup>28</sup> have used this possibility;
- Whitewash procedures where shareholders may decide to waive the obligation to launch a mandatory bid;
- Technical derogations, such as a derogation for open-ended collective investment schemes (which are outside the scope of the Directive), which do not limit the scope of application of the mandatory bid rule as foreseen by the Directive;
- Situations where there is no real change of control, for instance when the change of control is temporary or the acquisition has taken place within the same company group or "acting in concert" group. These derogations do not affect the objective of the directive to protect minority shareholders in situations of change of control;
- To protect the interests of the offeror or the controlling shareholder, for instance when the change of control was not caused by a voluntary act, the acquisition was indirect, or followed a personal event, such as inheritance;
- To protect the interests of a creditor, for instance in situations where the acquisition is the consequence of an exercise of financial security by a creditor;
- To protect the interests of other stakeholders, for instance when an investor is in financial distress, when control is acquired through a specific type of corporate transaction, such as a merger or scheme of arrangement, or when control is acquired following a sale of securities by the state.

Within the range of different national derogations to the mandatory bid rule, it is not always clear how the protection of minority shareholders is ensured. As follows from

---

<sup>27</sup> For a table of different derogations to the mandatory bid rule and in which Member States they are available, see p. 152 of the External Study. This report summarises the most common derogations and arranges them in categories.

<sup>28</sup> Finland, Ireland and the United Kingdom. In Germany, Bafin has a limited discretionary power to waive a mandatory bid, while in France the Court of Appeal upheld a decision from the AMF to grant an exemption.

Article 4 (5) of the Directive Member States who provide for derogations from the rules of the Directive, must respect the general principles of the Directive. One of the general principles is that, if a person acquires control of a company, the other holders of securities must be protected (Article 3 (a) of the Directive). The Directive does not regulate how Member States should ensure that the general principles of the Directive are respected.

18. Thirdly, Article 5 (2) of the Takeover Bids Directive regulates that where control has been acquired following a voluntary bid to all the holders of securities for all their holdings, the obligation to launch a mandatory bid no longer applies. It has come to the attention of the Commission that this exemption can be used by offerors to avoid having to launch a mandatory bid for an equitable price. The advantage for the offeror is that the Directive does not regulate the price of a voluntary bid. The exemption for situations where control has been acquired following a voluntary bid assumes that the offer price was high enough to persuade a significant part of the shareholders to accept the offer, otherwise the offeror would not have acquired control through the bid. However, if the offeror already holds an interest very close to the control threshold, only a few shareholders need to offer their shares for the offeror to cross the control threshold. Therefore, even if the offeror offers a very low price, he is likely to acquire control through the voluntary bid and thus is able to make use of the exemption to the mandatory bid rule. In this case, minority shareholders are unable to share in the control premium. However, in a number of Member States this route is unavailable because national law provides that the offer must be subject to the condition that the offeror acquires a minimum percentage of the shares<sup>29</sup> or subsequent acquisitions of shares will trigger a mandatory bid<sup>30</sup>.

It has also been argued that offerors can acquire a controlling stake without having to launch a mandatory bid by keeping their participation just below the control threshold, while de facto they are able to control the company, or by acquiring a derivative position<sup>31</sup>.

19. Fourthly, with regard to the optional articles of the Takeover Bids Directive, it could be concluded that, although the board neutrality rule is a relative success<sup>32</sup>, the breakthrough rule was not so successful, given that only three Member States have transposed it. At the moment of adoption of the Directive, the idea was that shareholders might push for the optional provisions to be applied voluntarily by companies, where Member States chose not to transpose them. However, this appears not to have been the case. It could therefore be considered that the Directive is not very effective in regulating the use of defensive measures. This is confirmed by stakeholders. However, they have also indicated that there are, notwithstanding the lack of transposition of the breakthrough rule, sufficient possibilities to break through takeover defences (see paragraph 11 of this report).

---

<sup>29</sup> For instance in the United Kingdom, the offer must be subject to the condition that the offeror acquires at least 50% of the shares.

<sup>30</sup> For an overview of national provisions defining when subsequent acquisitions trigger a mandatory bid obligation, see p. 130 of the External Study.

<sup>31</sup> The proposal for modification of the Transparency Directive already includes mandatory disclosure of derivative positions. See: [http://ec.europa.eu/internal\\_market/securities/docs/transparency/modifying-proposal/20111025-provisional-proposal\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/transparency/modifying-proposal/20111025-provisional-proposal_en.pdf)

<sup>32</sup> See paragraph 7 of this Report.



20. Fifthly, the Takeover Bids Directive requires that representatives of employees of the offeree company and the offeror must be informed in detail in the event of a takeover bid<sup>33</sup>. The information provided to employee representatives should include a statement of the offeror's intentions as regards the future business of the offeree company and the offeror with a view to repercussions on employment and employment conditions<sup>34</sup> and a statement of the view of the board of the offeree company on the offer and its likely repercussions on employment<sup>35</sup>. The External study shows that representatives of employees are not satisfied with how the Directive safeguards the interests of employees. They mention that the required information is not always given in time, or is inadequate, and that takeover offers have a significant impact on working conditions and redundancies. Moreover, after the bid, they claim that there is no control over whether the offeror will do as he stated in the information disclosed in the offer procedure. This is however not regulated by the Directive.

#### 4. CONCLUSIONS

21. This review of the operation of the Takeover Bids Directive shows that, generally, the regime created by the Directive is working satisfactory. No structural compliance issues have emerged in relation to the application of the legal framework in the Member States. Stakeholders are generally satisfied with the clarity of the rules included in the Directive and the adequacy of their enforcement and consider the Directive be useful for the proper and efficient functioning of the market. The External Study considers that the Takeover Bids Directive has contributed to improvements in relation to its objectives.
22. Nevertheless, there are areas where the rules of the Takeover Bids Directive could merit some clarification in order to improve legal certainty for the parties concerned and the effective exercise of (minority) shareholder rights.
23. Firstly, **the concept of "acting in concert"** could be clarified on EU level, in order to provide more legal certainty to international investors as to the extent to which they can cooperate with each other without being regarded as "acting in concert" and running the risk of having to launch a mandatory bid. Clarification could, for instance, be provided through the development of guidelines, from the Commission and/or ESMA. Such clarification would give greater opportunity to shareholders to hold boards accountable for their actions and promote good corporate governance standards in listed companies in the EU. However it should not limit the ability of competent authorities to oblige control seeking concert parties to accept the legal consequences of their concerted action. Possible initiatives in this area would be in line with the goals of the Commission's Green Paper on the EU Corporate Governance Framework and its Communication "Towards a Single Market Act"<sup>36</sup> to promote longer term, sustainable ownership to the benefit of sustainable growth of

---

<sup>33</sup> See Articles 6 (1), 6 (2) and 8 (2) of the Directive.

<sup>34</sup> See Article 6 (3) (i) of the Directive.

<sup>35</sup> See Article 9 (5) of the Directive.

<sup>36</sup> Communication "Towards a Single Market Act", April 2011, COM(2011) 206 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0206:FIN:EN:PDF>

the European market. The Commission intends to announce what measures it intends to take in this area in October 2012.

24. Secondly, the review shows that there is a wide variety of **national derogations to the mandatory bid rule** and that it is not always clear how the general principle of the directive, which requires the protection of minority shareholders in situations of change of control, is respected when a national derogation applies. As a possible way forward, the Commission intends to carry out further investigation on how minority shareholders are protected when a national derogation to the mandatory bid rule applies. More information is indeed needed on the scope of application of national derogations to the mandatory bid rule, on the extent to which national derogations limit the protection of minority shareholders in situations of change of control and, when relevant, what alternative mechanisms exist in national law to protect minority shareholders in situations of change of control. If, following the investigation, the protection of minority shareholders proves to be inadequate, the Commission will take the necessary steps (e.g through infringement procedures) to restore the effective application of this general principle of the Directive.
25. Thirdly, the review shows that the exemption to the mandatory bid rule included in the Takeover Bids Directive, for situations where control has been acquired following a **voluntary bid for all shares of the company**, has created a possibility for offerors to get round the mandatory bid rule by acquiring a stake close to the mandatory bid threshold and then launching a voluntary bid for a low price. As a consequence, the offeror would cross the mandatory bid threshold without giving minority shareholders a fair chance to exit the company and share in the control premium. This technique is clearly not in line with the objective of the Directive to protect minority shareholders in situations of change of control, although it does not appear to breach the letter of the Directive<sup>37</sup>. Examples in national legislation, such as additional mandatory bid thresholds<sup>38</sup> or minimum acceptance conditions to takeover offers<sup>39</sup>, show that there are possibilities to prevent the use of this technique. The Commission will take the appropriate steps to discourage the use of this technique across the EU, such as through bilateral discussions with the concerned Member States or Commission Recommendations.
26. Fourthly, with regard to the optional **Articles 9 and 11 of the Takeover Bids Directive** the review shows that although the board neutrality rule (Article 9) is transposed by a relatively large number of the Member States, this is not the case for the breakthrough rule (Article 11)<sup>40</sup>. However, the lack of application of the optional rules does not seem to have been a major obstacle to takeover bids in the EU, given that stakeholders have indicated that there are sufficient possibilities to break through takeover defences. In light of this and considering also the lack of economic evidence available to justify changing the situation, it does not, therefore, seem appropriate at this stage to propose to make the optional articles of the Directive mandatory.

---

<sup>37</sup> See article 5, paragraph 2, of the Directive, which explicitly exempts acquisitions following a voluntary bid for all shares of the company from the mandatory bid rule.

<sup>38</sup> See p. 130 of the External Study for an overview of additional thresholds.

<sup>39</sup> See p. 146 of the External study.

<sup>40</sup> See paragraph 7 of this Report.

27. Finally, employee representatives have indicated that they are not satisfied with how the Takeover Bids Directive protects the **rights of employees** in a takeover situation, in particular with respect to the risk of changes in work conditions and job availability. The Commission will pursue its dialogue with employee representatives with a view to exploring possible future improvements. It will also investigate further the experience gained in practice with the provisions of the Directive which require disclosure of the offeror's intentions as regards the future business of the company and its employment conditions and the view of the offeree company's board on this, as well as disclosure of information concerning the financing of the bid and the identity of the offeror<sup>41</sup>.
28. Member States, the European Parliament, the European Economic and Social Committee and other interested parties are invited to submit their views on the review described in this Report.

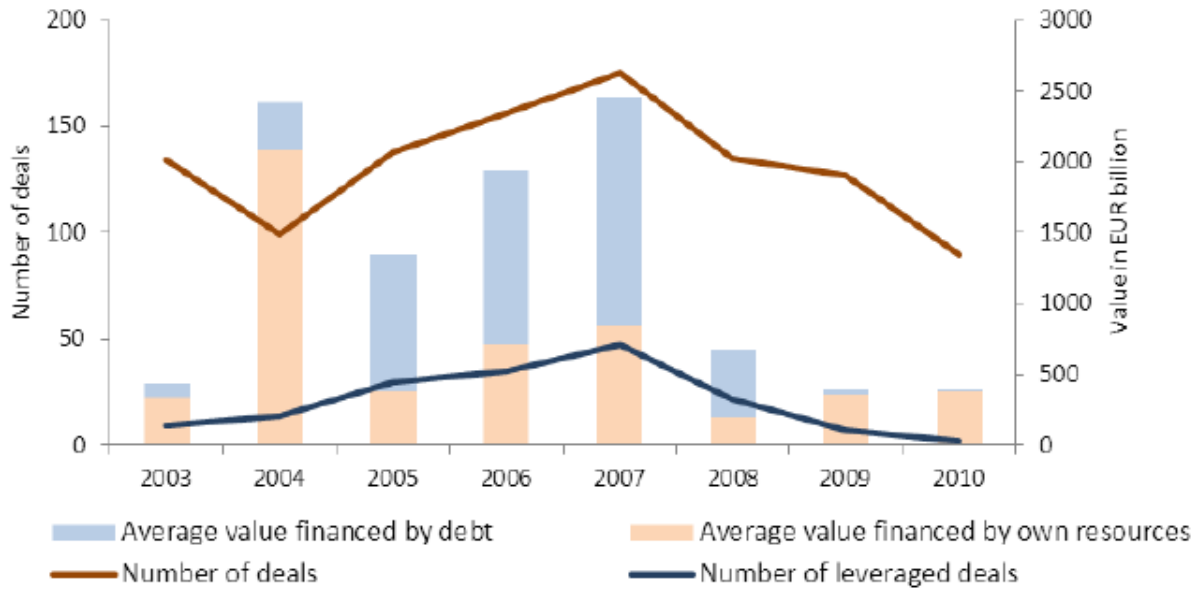
---

<sup>41</sup> See article 3 paragraph 1 (b), article 6, paragraph 3 (i), (l) and (m) and article 9 paragraph 5 of the Directive.

**ANNEX TO THE REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

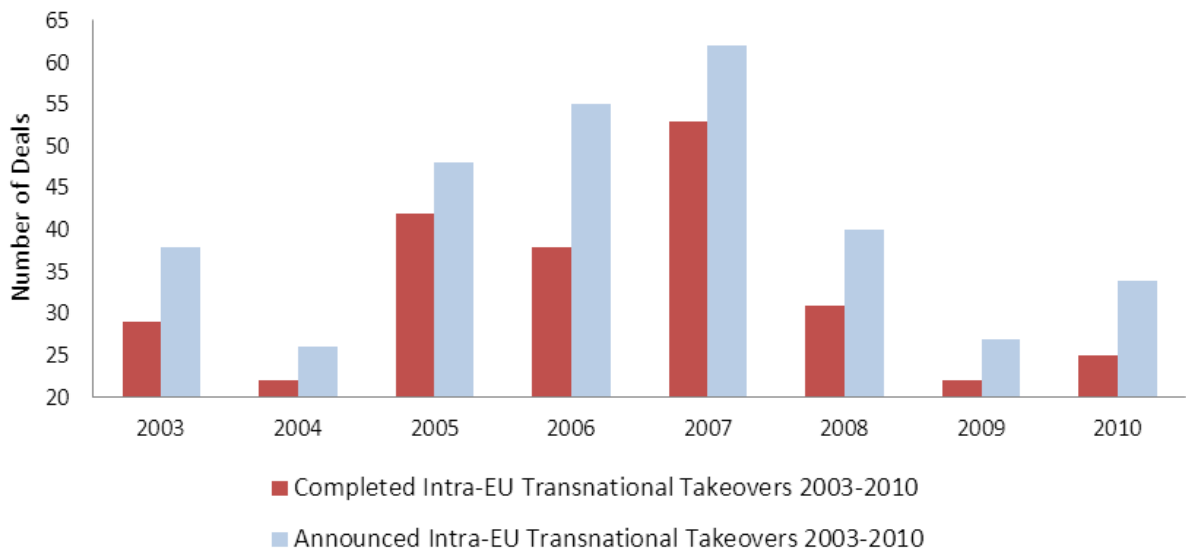
**Application of Directive 2004/25/EC on takeover bids**

Figure 1: Evolution of takeovers in Europe



Source: External Study, p. 284

Figure 2: Number of Intra-EU Takeover Deals 2003-2010



Source: External Study, p. 285

Figure 3: Impact of takeover regulation (+ relationship and intensity)

	Volume of takeovers		Protection of (minority) shareholders		Disproportionality between ownership and control	
	CONCENTRATED OWNERSHIP	DISPERSED OWNERSHIP	CONCENTRATED OWNERSHIP	DISPERSED OWNERSHIP	CONCENTRATED OWNERSHIP	DISPERSED OWNERSHIP
Mandatory bid rule	-	--	++	+	+	++
Ownership transparency	+	++	+	++	-	-
	-	--				
Squeeze-out rule	++	+	-	-	+	+
Sell-out rule	--	-	++	+	--	-
Breakthrough rule	++	+	++	+	++	+
Board neutrality rule	++	+	+	-	+	++

Source: External Study, p.29

Figure 4: Barriers to takeovers not covered by the Takeover Bids Directive. Percentage of companies that have pyramid structures or cross-shareholdings.

Pyramids		
Overall	Recently listed	Total
18.1%	27.5%	20.5%

Cross-shareholding		
Overall	Recently listed	Total
3.5%	0%	2.6%

Source: External Study, p. 48