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## DIRECTIVE ON TAKEOVER BIDS

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

Directive 2004/25/EC of 21 April 2004 on takeover bids (13th directive) was adopted in the context of the Financial Services Action Plan adopted in 1999, stipulating policy objectives and specific measures for improving the single market in financial services. After refusal by the European Parliament of the previous proposal for a directive on takeover bids in July 2001, the present Directive takes into account the remarks of members of the European Parliament, as well as the recommendations made by the Group of High-Level Company Law Experts set up by the Commission.

Pursuant to the Directive, the "takeover bid" or "bid" means 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" Article 2 (1) (a).

The Directive applies 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 Directive 93/22/EEC of 10 May 1993 on investment services in the securities field) in one or more Member States" Article 1 (1). The Directive does not apply to takeover bids for securities issued by collective investment companies, or to takeover bids for securities issued by the Member States' central banks.

The Directive sets forth the following general principles for the conduct of takeover bids, with which the legal regulation of the Member States must comply: (i) equal treatment for all holders of securities of the

offeree company; (ii) sufficient time and sufficient information provided to the addressees of the bid; (iii) the board of the offeree company acting in the interests of the company as a whole; (iv) preventing creation of false markets (i.e. where the rise or fall in the prices of the securities becomes artificial and the normal functioning of the market is distorted); (v) ensuring that an offeror can fulfil in full any cash or other consideration offered; (vi) minimum possible hindering of an offeree company's activities Article 3.

For the regulation of bids, Member States may lay down additional conditions and provisions more stringent than those of the Directive. Member States are to designate the authority or authorities competent to supervise bids, and inform the Commission of those designations. The Directive further lays down rules for deciding the applicable law and the competent supervisory authority.

For the purposes of protection of minority shareholders, the Directive provides for a mandatory bid, which must be executed by a person holding securities of a company which give him a specified percentage of voting rights, giving him control of that company. Such a bid must be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price, i.e. the highest price paid for the same securities by the offeror, or by persons acting in concert with him, over a period, to be determined by the Member States, of not less than six months and not more than twelve before the bid. The obligation to launch a bid does not apply where control has been acquired following a voluntary bid to all the holders of securities for all their holdings.

The Directive further stipulates the main rules concerning the provision of information on takeover bids to the supervisory

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