

**Study on the application of Directive 2004/25/EC on takeover bids
(the "Takeover Bids Directive" or the "Directive")**

Questionnaire for Institutional Investors

EU jurisdictions

Content

Part I - Overview of the Takeover Bids Directive3
Part II - Understanding of the Takeover Bids Directive6
Part III - Supervisory authority and exemptions7
Part IV - Mandatory bid rule (article 5)11
Part V - Disclosure and takeover bid procedure16
Part VI - Takeover defenses (article 9 and 11)20
Part VII - Squeeze-out rule (article 15) and sell-out rule (article 16)21
Part VIII – Impact of the Takeover Bids Directive on employees and the labor market.....30
Part IX – Impact of the Takeover Bids Directive on the EU economy30
Part X - Improvement of the Takeover Bids Directive.....31

Appendix A: List of main obligations contained in the Directive32
Appendix B: List of principles contained in the Directive.....33

Questionnaire for Institutional Investors

Part I - Overview of the Takeover Bids Directive

1.1. Objectives of the Directive

The objectives of the Directive, as described by the European Commission, are the following:

- (a) legal certainty on the handling of takeover bids and Community-wide clarity and transparency in respect of takeover bids,
- (b) protection of the interests of shareholders, in particular minority shareholders, employees and other stakeholders, when a company is subject to a takeover bid for control, and
- (c) 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.

Q 1.1.1: Below, you will see a list of objectives pursued by the Directive. Has the **Directive itself** contributed to furthering these?

	Yes	Partially	No	Don't know
1) Legal certainty and transparency	X			
2) Protection of the interests of stakeholders				
a) Protection of the interests of shareholders in general	X			
b) Protection of the interests of minority shareholders	X			
c) Protection of the interests of employees				X
d) Protection of the interests of other stakeholders				X
3) Facilitation of takeover bids	X			

Q 1.1.2: Below, you will see a list of objectives pursued by the Directive. Has **the implementation of the Directive** contributed to furthering these?

	Yes	Partially	No	Don't know
1) Legal certainty and transparency		X		
2) Protection of the interests of stakeholders				
a) Protection of the interests of shareholders in general		X		
b) Protection of the interests of minority shareholders		X		
c) Protection of the interests of employees				X
d) Protection of the interests of other stakeholders				X
3) Facilitation of takeover bids		X		

Q 1.1.3: If you consider that **the Directive itself or the implementation of the Directive has not** contributed to furthering (some of) the objectives listed above, please provide an explanation:

EU Study on Takeover Bids Directive

Explanation¹:

Q 1.1.4: A list of the main obligations contained in the Directive is attached as **Appendix A**. Do you consider these **obligations to be helpful, neutral or prejudicial in reaching the objectives** of the Directive? Please insert the relevant number in the appropriate column and separate each number with a comma².

Helpful	Neutral	Prejudicial	Don't know
1-4, 6, 8, 9, 11, 12	5, 7, 10		

Q 1.1.5: Please refer again to the attached **Appendix A**. Do you consider **the implementation of these obligations to be helpful, neutral or prejudicial in reaching the objectives** of the Directive? Please insert the relevant number in the appropriate column and separate each number with a comma³.

Helpful	Neutral	Prejudicial	Don't know
			1-12

1.2. General principles of the Directive (article 3)

Q 1.2.1: Do the general principles **sufficiently protect the interests of the parties concerned**? The principles contained in the Directive are further described in **Appendix B**.

Principles	Interests of shareholders	Interests of employees	Interests of other stakeholders
1 Equal treatment	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	Not applicable	Not applicable
2 – A Informed decision	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	Not applicable	Not applicable
2 – B Opinion of	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially	<input type="checkbox"/> Yes <input type="checkbox"/> Partially	<input type="checkbox"/> Yes <input type="checkbox"/> Partially

¹ Throughout this questionnaire, when you wish to provide further explanation or comments, you may do so on a separate document and attach it to the questionnaire.

² For instance, if you consider that obligations n°1 and n°10 (compliance with general principles (article 3 of the Directive) and Reciprocity principles (article 12.3 of the Directive)) are helpful in reaching the objectives of the Directive as described by the European Commission, please insert "1, 10" in the box "helpful".

³ For instance, if you consider that the implementation of obligation n°1 and n°10 (compliance with general principles (article 3 of the Directive) and Reciprocity principles (article 12.3 of the Directive)) is helpful in reaching the objectives of the Directive as described by the European Commission, please insert "1, 10" in the box "helpful".

EU Study on Takeover Bids Directive

the offeree company	<input type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know	<input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know
3 – A Interests of the company	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know
3 – B Interests of the shareholders	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know
4 Prohibition of false markets	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know
5 Bid funding	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	Not applicable	Not applicable
6 Reasonable time for the offer	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know

Q 1.2.2: Have listed companies, boards and/or offerors **taken specific measures to respect the principles of the Directive**? The principles contained in the Directive are further described in **Appendix B**.

Principles	Measures taken by listed companies/boards	Measures taken by offerors
1 Equal treatment	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know
2 – A Informed decision	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know
2 – B Opinion of the offeree company	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know

EU Study on Takeover Bids Directive

3 – A Interests of the company	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know
3 – B Interests of the shareholders	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know
4 Prohibition of false markets	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know
5 Bid funding	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know
6 Reasonable time for the offer	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know

Part II - Understanding of the Takeover Bids Directive

2.1. Clarity of the obligations imposed by the legislation

Q 2.1.1: Does the Directive provide **enough legal certainty and predictability**?

Yes No Don't know

Q 2.1.1(a): **In case there is unclarity**, does such unclarity result from the Directive's legal framework or from national implementation? (More than one box may be ticked).

Legal framework National implementation Don't know

Q 2.1.1(b): In case there is unclarity, **could such unclarity be compensated** by guidance⁴ and, if so, is existing guidance sufficient?

Unclarity is already compensated by	Unclarity could be compensated by	Unclarity could not be compensated by guidance	Don't know
-------------------------------------	-----------------------------------	--	------------

⁴ For the purposes of this questionnaire, "guidance" is defined as general statements or documents issued by the supervisor with a view to explaining laws, regulations or rules. They are distinct from the rules or regulations themselves (as they are meant to explain them) and from decisions taken in individual cases.

EU Study on Takeover Bids Directive

existing guidance	additional guidance		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q 2.1.2: Compared to the previous legal framework, have you **experienced benefits or disadvantages** in connection with the entry into force of the Directive?

Benefits
 Disadvantages
 No significant impact
 Don't know

2.2. Acting in concert

Article 2 § 1 d) of the Directive: "*persons acting in concert*" shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid"

Q 2.2.1: Is the definition of "*persons acting in concert*" in the **Directive sufficiently clear**?

Very clear
 Reasonably clear
 Unclear
 Don't know

Q 2.2.1(a): If the definition in the Directive is unclear, **how do you believe it could be clarified**?

By re-stating the definition (in the Directive itself)
 By providing further guidance (at EU level)
 Don't know

Q 2.2.2: Is the definition of "*persons acting in concert*" in the **national legislation sufficiently clear**?

Very clear
 Reasonably clear
 Unclear
 Don't know

Q 2.2.2(a): If the definition in the national legislation is unclear, **how do you believe it could be clarified**?

By restating the definition (in the national legislation itself)
 By providing further guidance (at national level)
 Don't know

Q 2.2.3: Do you believe the following practices should **constitute acting in concert**?

	Yes, always	Yes, in principle (rebuttable presumption)	No, in principle (rebuttable presumption)	No, never (safe harbour)	Don't know
1. Agreements having the effect of acquisition of control (irrespective of its aim).	X				
2. Agreements granting to a person a (certain) right to	X				

EU Study on Takeover Bids Directive

acquire control of an issuer in the future (e.g. by means of an unconditional call option).					
3. Agreements granting to a person a (contingent) right to acquire control of an issuer in the future (e.g. a call option the exercise of which is subject to a condition).					X
4. Within the same transaction, if Person A and Person B act in concert, and Person B and Person C act in concert, should Person A, B and C be considered as acting in concert together?			X		
5. Agreements having the effect of replacing board members.				X	
6. Agreements among shareholders which threaten to replace board members if a certain action is not taken.				X	
7. Agreements among shareholders to vote in the same way on a specific matter with a specific purpose.				X	
8. Agreements among shareholders which aim to replace existing board members with those who have a significant relationship with such shareholders.			X		
9. Preemption rights					X

Q 2.2.4: Do you believe the **different rules** governing the concept of "acting in concert" contained in the (Takeover Bids) Directive, the **Transparency Directive** (Directive 2004/109/EC⁵) and the **Acquisitions Directive** (Directive 2007/44/EC⁶) create problems in practice?

⁵ Under article 10 (a) of the Transparency Directive, the notification requirements apply to a natural person or legal entity to the extent that the latter is entitled to acquire, to dispose of, or to exercise "voting rights held by a third party with whom that person or entity has concluded an agreement, which

EU Study on Takeover Bids Directive

Always Often Sometimes Rarely Never Don't know

Q 2.2.5: In your opinion, **what rules** on "acting in concert" are **the most appropriate** in connection with takeover bids?

The rules contained in the Directive The rules contained in the Transparency Directive
 The rules contained in the Acquisitions Directive Don't know

Q 2.2.6: Does the **implementation** of the definition of "acting in concert" attain its objective?

Always Often Sometimes Rarely Never Don't know

Q 2.2.6(a): **If not**, how is this explained? (More than one box may be ticked)

The rule is too easy to circumvent The rule is too vague to be enforced The rule is too broad and captures situations that should not be covered Don't know
 Other:

Q 2.2.7: What are the major **consequences** of any perceived **lack of clarity** of the "acting in concert" rules? (More than one box may be ticked)

The rules prevent useful cooperation between shareholders
 The rules have unduly triggered mandatory bids
 The rules have not triggered mandatory bids when they should have done so in order to protect minority shareholders

Q 2.2.8: How has the definition of acting in concert (article 2 § d) been **applied in practice**?

Q 2.2.8(a): Have there been cases where the definition of "acting in concert" **was** applied by the regulator or the courts **but you believe it should not have been**?

Yes (please specify) No Don't know
Comments: This is solely based on our view from the public equity side.

Q 2.2.8(b): Have there been cases where the definition of "acting in concert" **was not** applied by the regulator or the courts **but you believe it should have been**?

Yes (please specify) No Don't know
Comments:

⁶ *obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question".*
Under article 1, 2. of the Acquisitions Directive, "Member States shall require any natural or legal person or such persons acting in concert (...) who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an insurance undertaking (...) to notify in writing the competent authorities".

EU Study on Takeover Bids Directive

Q 2.2.8(c): Do you believe that the definition of "acting in concert" **has been appropriate to cover situations** that were meant to be covered?

<input type="checkbox"/> Always <input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never <input checked="" type="checkbox"/> Don't know
Comments:

Q 2.2.9: Since the Directive has entered into force, have you considered initiating takeover bids more often?

<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know

Q 2.2.9(a): If you have considered initiating takeover bids **more often**, to what extent was this due to the fact that you perceived the Directive as **facilitating takeover bids**?

<input type="checkbox"/> The entry into force of the Directive has had a high impact <input type="checkbox"/> The entry into force of the Directive has had some impact <input type="checkbox"/> The entry into force of the Directive has had little to no impact

Part III - Supervisory authority and exemptions

3.1. Supervisors (article 4 of the Directive)

Q 3.1.1: Is it sufficiently clear which supervisor is **competent** to supervise:

	Yes	Partially	No	Don't know
a) takeover bids			X	
b) the use of squeeze-out rights			X	
c) the use of sell-out rights			X	

Q 3.1.2: In case there is unclarity, does such **unclarity result from** the Directive's legal framework or from national implementation? (More than one box may be ticked).

<input type="checkbox"/> Directive's legal framework <input checked="" type="checkbox"/> National implementation <input type="checkbox"/> Don't know
--

Q 3.1.3: **Do supervisors provide** guidance on national legislation transposing the Directive?

<input type="checkbox"/> Always <input type="checkbox"/> Frequently <input checked="" type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never <input type="checkbox"/> Don't know
--

3.2. Exemptions to the Directive (article 4 § 5)

Q 3.2.1: Has the **possibility for Member States to prescribe exemptions** from the obligations of the Directive led to a significant weakening of the Directive?

<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Partially <input type="checkbox"/> No <input type="checkbox"/> Don't know
--

EU Study on Takeover Bids Directive

Q 3.2.1(a): If the possibility for Member States to prescribe exemptions from the obligations of the Directive has led to a **significant weakening of the Directive, how is that explained?**

In some cases the exemption clause has led to the implementation of anti-takeover measures at the member state level, which weakens the spirit of the Directive.

Q 3.2.2: Has the **possibility for Member States to grant their supervisory authorities** power to waive these obligations (article 4 § 5) led to a **significant weakening** of the Directive?

Yes Partially No Don't know

Q 3.2.2(a): If the possibility for **Member States to grant their supervisory authorities** power to waive these obligations (article 4 § 5) has led to a **significant weakening** of the Directive, how is that explained?

Same as above.

Part IV - Mandatory bid rule (article 5)

4.1. Protection of minority shareholders

Q 4.1.1: Does the mandatory bid rule **protect the interests of (minority) shareholders** appropriately?

Yes Partially No Don't know

Q 4.1.1(a): **If not**, does this result from the Directive's legal framework or from national implementation? (More than one box may be ticked).

Directive's legal framework National implementation Don't know

Q 4.1.1(b): If it **results from national implementation**, is it due to (more than one box may be ticked):

Improper implementation of laws and regulations Don't know
 Improper practice of national supervisors

4.2. Exemptions from the mandatory bid rule

Q 4.2.1: Please find below a list of exemptions from the mandatory bid rule. Do you believe these **exemptions have significantly weakened the purpose** of the mandatory bid rule?

a) Discretionary exemptions ⁷	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know
b) Technical exemptions ⁸	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know

⁷ Exemptions decided by the supervisory authority based on a broad discretionary power and exemptions decided by shareholders (whitewash procedure).

EU Study on Takeover Bids Directive

<u>There is no real change of control because:</u>	
c) The change of control is only temporary	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know
d) The change of control was the result of a mistake and/or there was no intent to take control	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know
e) Existence of a larger shareholder	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know
f) Intra-group transaction (no change of ultimate controller)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know
g) Other (please describe) ⁹	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know
<u>There is a real change of control but:</u>	
h) The change of control did not result from a voluntary act ¹⁰	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know
i) The change of control is the result of a voluntary takeover bid ¹¹	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know
j) The acquisition is indirect and a "substance test" is applied ¹²	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know
k) The change of control results from a personal event ¹³	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know
l) A concert is formed but no shares are acquired	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know
m) The acquisition is made upon exercising a financial security (such as a pledge) ¹⁴	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know
n) The target company is in a distressed financial situation	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know
o) The control was acquired pursuant to specific types of corporate transactions ¹⁵	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know
p) The rule is not applicable to certain entities that have acquired control ¹⁶	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know
q) There is a change of control but there is a need to protect the State's interests or public order ¹⁷	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know

⁸ Exemptions relating to certain target companies (such as investment companies) or resulting from exclusion procedures or controlling agreements.

⁹ For instance, there is no real change of control because the transaction takes place within the same "acting in concert group", or the acquisition is made through cash settled financial derivatives.

¹⁰ Such as (i) disposal of shares by another investor or (ii) changes in the total number of shares or voting rights not caused by the bidder.

¹¹ Either any voluntary bid for all the shares of the target may qualify or the voluntary bid must comply with certain requirements (for instance, regarding its price).

¹² Where an offeror acquires a holding company which in turn holds control in the target company an exemption may be granted if the primary purpose of the acquisition by the offeror was not the stake in the target company but in the holding company. The substance test is based on a threshold portion of the holding company's assets that the target company may represent in order to warrant the exception.

¹³ Such as inheritance, donation, marriage, divorce or transaction within the same family group.

¹⁴ The enforcement of the security is made without any other conditions or the acquirer needs to sell the acquired shares within a certain time period.

¹⁵ The corporate transactions may be capital increases (with or without preferential subscription rights), mergers, divisions, reorganizations, contributions in kind, distributions of company assets to shareholders, schemes of arrangement, etc.

¹⁶ Such as foundations or issuers of sponsored depository certificates.

¹⁷ Such as privatization exemption or other State's interest or need to meet statutory obligations.

EU Study on Takeover Bids Directive

r) Other (please describe)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know
----------------------------	---

4.3. Equitable price rule

Q 4.3.1: **In practice**, does the equitable price rule **protect the interests** of minority shareholders **well**?

<input type="checkbox"/> Yes, very well <input type="checkbox"/> Yes, adequately but could be better <input checked="" type="checkbox"/> Not very well <input type="checkbox"/> No, not well at all <input type="checkbox"/> Don't know
--

Q 4.3.2: Where there are any problems with the application of the equitable price rule, **how is this explained?** (More than one box may be ticked)

<input checked="" type="checkbox"/> There are too many exemptions from the rules <input type="checkbox"/> The rules are not clear enough <input checked="" type="checkbox"/> The rules have not been properly designed <input type="checkbox"/> Don't know

Q 4.3.3: How frequently have the following **exemptions to the mandatory bid rule** been applied?

a) Discretionary exemptions ¹⁸	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
b) Technical exemptions ¹⁹	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
<u>There is no real change of control because:</u>	
c) The change of control is only temporary	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
d) The change of control was the result of a mistake and/or there was no intent to take control	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
e) Existence of a larger shareholder	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
f) Intra-group transaction (no change of ultimate controller)	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
g) Other (please describe) ²⁰	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
<u>There is a real change of control but:</u>	
h) The change of control did not result from a voluntary act ²¹	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
i) The change of control is the result of a voluntary takeover	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes

¹⁸ Exemptions decided by the supervisory authority and exemptions decided by shareholders (whitewash procedure).

¹⁹ Exemptions relating to certain target companies or resulting from exclusion procedures or controlling agreements.

²⁰ For instance, there is no real change of control because the transaction takes place within the same "acting in concert group", the acquisition is small or financial derivatives.

²¹ Such as (i) disposal of shares by another investor or (ii) changes in the total number of shares or voting rights not caused by the bidder.

EU Study on Takeover Bids Directive

bid ²²	<input type="checkbox"/> Rarely <input type="checkbox"/> Never
j) The acquisition is indirect and a "substance test" is applied	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
k) The change of control results from a personal event ²³	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
l) A concert is formed but no shares are acquired	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
m) The acquisition is made upon exercising a financial security (such as a pledge) ²⁴	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
n) The target company is in a distressed financial situation	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
o) The control was acquired pursuant to specific types of corporate transactions ²⁵	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
p) The rule is not applicable to certain entities that have acquired control ²⁶	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
q) Protection of State's interest and public order ²⁷	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never
r) Other (please describe)	<input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never

4.4. Enforcement of the mandatory bid rule

Q 4.4.1: Are sufficient **legal remedies** available to enforce a mandatory bid?

Yes No Don't know

Q 4.4.2: Are there sufficient possibilities to request **adjustment of the equitable price**?

Yes No Don't know

Q 4.4.3: Have **minority shareholders taken steps** to enforce the mandatory bid rule and/or equitable price rule?

Q 4.4.3(a): Through the supervisor:

²² Either any voluntary bid for all the shares of the target may qualify or the voluntary bid must comply with certain requirements (for instance, regarding its price).

²³ Such as inheritance, donation, marriage, divorce or transaction within the same family group.

²⁴ The enforcement of the security is made without any other conditions or the acquirer needs to sell the acquired shares within a certain time period.

²⁵ The corporate transactions may be capital increases (with or without preferential subscription rights), mergers, divisions, reorganizations, contributions in kind, distributions of company assets to shareholders, schemes of arrangement, etc.

²⁶ Such as foundations or issuers of sponsored depository certificates.

²⁷ Such as privatization exemption or other State's interest or need to meet statutory obligations.

EU Study on Takeover Bids Directive

Always
 Frequently
 Sometimes
 Rarely
 Never
 Don't know

Q 4.4.3(b): Through court action:

Always
 Frequently
 Sometimes
 Rarely
 Never
 Don't know

Q 4.4.4: What types of transactions have been used to **circumvent the mandatory bid obligation** and how often has this happened? (You may provide examples after having ticked the boxes).

	Always	Frequently	Some times	Rarely	Never	Don't know
1. A voluntary bid with a low price has been launched, resulting in the acquisition of control ²⁸ .			X			
2. De facto control has been acquired but not legal control ("creeping acquisition") ²⁹ .			X			
3. The conditions of application of an exemption have been artificially created.						X
4. The factual basis for the application of the mandatory bid has been successfully hidden ³⁰ .						X
5. Other cases (please specify)						X

Examples:

Q 4.4.5: Is it common for a controlling stake³¹ to be acquired **without triggering a mandatory bid obligation**?

²⁸ Pursuant to article 5.2 of the Directive, no mandatory bid is required in such a case. A "low price" is a price lower than the one that would have been proposed if the equitable price rule had been applied.

²⁹ For instance, a person acquires 29% of an issuer with a widely dispersed shareholder base where the threshold triggering the mandatory bid is set at 30%.

³⁰ For instance, shareholders have hidden the fact they were acting in concert.

³¹ A "controlling stake" is here defined as a stake triggering the mandatory bid obligation in your jurisdiction. For instance, if a mandatory bid needs to be launched when a 30% threshold is crossed then the "controlling stake" would be a 30% stake. Further, exemptions to the mandatory bid rule should not be taken into account when answering this question (e.g. if, under the previous example, a 35% stake is acquired but no mandatory bid is launched, this should be considered a case where a "controlling stake" has been acquired and no mandatory bid was launched, irrespective of the fact that an exemption was validly used by the acquirer).

EU Study on Takeover Bids Directive

Always Frequently Sometimes Rarely Never Don't know

Q 4.4.5(a): If this happens always, frequently or sometimes, is it generally because an **exemption from this obligation** applies or are there other reasons?

Generally, an exemption from this obligation applies Don't know Other reasons:

4.5. Effects of the mandatory bid rule

Q 4.5.1: Do you believe the mandatory bid rule can be an **obstacle to some acquisitions** (e.g. where an investor is prepared to buy 51% of an issuer, but not to make an offer for 100% of its shares)?

Always Frequently Sometimes Rarely Never Don't know

Q 4.5.5: How has the mandatory bid rule **affected the market** concerning the **size of blockholdings**? The size of blockholdings has:

Significantly decreased Slightly decreased Remained about the same
 Significantly increased Slightly increased Don't know

Q 4.5.6: How has the mandatory bid rule **affected the market** concerning the **protection of minority shareholders**? The protection of minority shareholders has:

Significantly decreased Slightly decreased Remained about the same
 Significantly increased Slightly increased Don't know

Q 4.5.7: Has the mandatory bid rule had **other effects** on the market?

Q 4.5.8: What are the **effects** of the application of the **equitable price rule**? (More than one box may be ticked)

Better protection of minority shareholders Deterrent effect on potential acquirers
 Other: Don't know

Q 4.5.9: How frequently are the following adjustments used:

<u>For automatic adjustments:</u>	
An upward adjustment	<input type="checkbox"/> Always <input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never <input checked="" type="checkbox"/> Don't know
A downward adjustment	<input type="checkbox"/> Always <input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never <input checked="" type="checkbox"/> Don't know

EU Study on Takeover Bids Directive

<u>For discretionary adjustments:</u>	
An upward adjustment	<input type="checkbox"/> Always <input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never <input checked="" type="checkbox"/> Don't know
A downward adjustment	<input type="checkbox"/> Always <input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never <input checked="" type="checkbox"/> Don't know

Q 4.5.10: What are the **effects** of the application of the **adjustment of the equitable price (article 5 § 4)**?

a) A higher price:	<input type="checkbox"/> Always <input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never <input checked="" type="checkbox"/> Don't know
b) A lower price:	<input type="checkbox"/> Always <input type="checkbox"/> Frequently <input type="checkbox"/> Sometimes <input type="checkbox"/> Rarely <input type="checkbox"/> Never <input checked="" type="checkbox"/> Don't know

Part V - Disclosure and takeover bid procedure

5.1. Disclosure rules

Q 5.1.1: Are the disclosure obligations **in the Directive itself sufficient**?

Yes Partially No Don't know

Q 5.1.2: Does **national implementation sufficiently complement** the disclosure obligations in the Directive?

Yes Partially No Don't know

Q 5.1.3: Are the rules regarding the **content of the offer document** (article 6) sufficient?

The rules regarding the content of the offer document are sufficient	The rules regarding the content of the offer document are not sufficient		Don't know
<input type="checkbox"/>	They are sufficiently complemented by national requirements	They are not sufficiently complemented by national requirements	<input type="checkbox"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

Q 5.1.4: Are disclosure requirements **appropriately enforced**?

Always Frequently Sometimes Rarely Never Don't know

Q 5.1.5: Please find below a list of disclosure requirements that are **expressly mandated** by the Directive. Do you believe these disclosure requirements adequately and sufficiently **protect stakeholders**?

	Yes	No	Don't
--	-----	----	-------

EU Study on Takeover Bids Directive

			know
a) Article 10 general disclosures about companies ³²			X
b) Information regarding national law and competent courts.			X
c) Information regarding the financing of the bids.			X
d) Information on the conditions to which the bids are subject.			X
e) The terms of the bid.			X
f) The identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, their types, names, registered offices and relationships with the offeror an, where possible, the offeree company.			X

Q 5.1.6: **Are there other issues**, subject to disclosure requirements set forth in the Directive, for which disclosure is not a sufficient solution³³?

a)
b)
c)

Q 5.1.7: **What** do you believe **would be appropriate ways** to address **the issues** listed in Q5.1.5 and Q5.1.6?

a)
b)
c)

Q 5.1.8: Please find below a list of disclosure requirements **not expressly mandated** by the Directive. Do you believe stakeholders **would be better protected** with such disclosure requirements?

	Yes	No	Don't know
a) Detailed situation of the offeree company in the offer document.	X		
b) Details of any agreement between the offeror and the management and board members of the offeree company	X		

³² This includes: (i) the structure of their capital, (ii) restrictions on the transfer of securities, (iii) significant direct and indirect shareholdings (including pyramid structures and cross-shareholdings), (iv) holders of securities with special control rights, (v) system of control of any employee share scheme where control rights are not exercised directly by the employees, (vi) restrictions on voting rights, (vii) agreements between shareholders that may result in restrictions on transfer of securities/voting rights, (viii) rules governing replacement of board members and amendment of the articles of association, (ix) powers of board members (eg. to issue/buy back shares), (x) any significant agreements to which the company is a party which would be affected by a change of control, or (xi) agreements between the company and its board members/employees regarding compensation in event of resignation/termination (eg. golden parachutes).

³³ For instance, subjecting bids to the law and competent courts of the offeree company or, subjecting bids to a financing guarantee or, only allowing a limited list of permitted conditions for bids.

EU Study on Takeover Bids Directive

(management package).			
c) Details on deal protections (such as break-up fees).	X		
d) Details of any existing or potential long and short positions of the offeror, and of any persons acting in concert with him, in the offeree company, whether such positions are existing or potentially available pursuant to a contract.	X		
e) Details of the offeror's intentions regarding the environmental policy of the offeree company.			X
f) Details of the offeror's intentions regarding the research and development policy of the offeree company.			X
g) Details of the offeror's commitments (as opposed to mere "intentions") regarding issues such as employment, environmental policy, research and development, and the location of the offeree company's place of business.			X
h) Details of the offeror's intentions regarding the main local business partners and sub-contractors of the offeree company.			X
i) Details of the offeror's intentions regarding the offeree company's pension fund (including with respect to its nature and funding).			X
j) Details of the offeror's intentions regarding any significant divestment of assets or activities of the offeree company.			X
k) Details of the offeror's intentions regarding any significant investments of the offeree company.			X
l) Details of the offeror's intentions regarding the dividend policy of the offeree company.			X
m) Details of the offeror's intentions regarding the combined debt of the offeror and the offeree company after the bid.	X		
n) Opinion of the offeree company on items d) to m), to the extent that you have answered "Yes" to such questions.			X

5.2. Procedure

Q 5.2.1: Is there **sufficient clarity** regarding takeover bid procedures?

High clarity
 Reasonable clarity
 Low clarity
 Don't know

Q 5.2.1(a): **In case there is unclarity**, does such unclarity result from the Directive's legal framework, from national implementation and/or other national legislation in this field? (More than one box may be ticked)

Directive's legal framework
 National implementation
 Other national legislation in this field
 Don't know

Q 5.2.2: Do you perceive **significant differences in procedure** within the EU?

EU Study on Takeover Bids Directive

<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know

Q 5.2.2(a): If you perceive the existence of **significant differences**, do such differences form an **obstacle to the efficient execution of takeover bids**?

<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know

Part VI - Takeover defenses (article 9 and 11)

6.1. Objectives

Q 6.1.1: Have the obligations of the Directive with regard to takeover bid defenses **contributed to the openness** of the EU "market for corporate control" and/or the **competitiveness** of the EU market?

Openness of the EU "market for corporate control"	Competitiveness of the EU market
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know

Q 6.1.1(a): **If not**, how is this explained?

Openness of the EU "market for corporate control"	Competitiveness of the EU market
A number of member states continue to use anti-takeover measures or adopt new ones.	Same.

Q 6.1.2: Do you believe that taking into account **pyramid structures** in takeover regulations would contribute to the openness of the EU "market for corporate control" and/or the competitiveness of the EU market?

Openness of the EU "market for corporate control"	Competitiveness of the EU market
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know

Q 6.1.3: Do you believe that taking into account **cross-shareholding structures** in takeover regulations would contribute to the openness of the EU "market for corporate control" and/or the competitiveness of the EU market?

Openness of the EU "market for corporate control"	Competitiveness of the EU market
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know

Q 6.1.4: Do the obligations set forth in the Directive with regard to takeover bid defenses sufficiently **protect the interests** of shareholders, employees, target company and other stakeholders?

Shareholders	Employees	Target company	Other stakeholders
<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes

EU Study on Takeover Bids Directive

<input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know	<input checked="" type="checkbox"/> No <input type="checkbox"/> Don't know	<input type="checkbox"/> No <input checked="" type="checkbox"/> Don't know
---	---	---	---

6.2. Harmonization or flexibility

Q 6.2.1: Regarding takeover defenses, do you believe **the differences in legislation** within the EU create an obstacle to takeover bids?

Always Frequently Sometimes Rarely Never Don't know

6.3. Passivity rule and break-through rule

Q 6.3.1: Are there too many, too few or sufficient **possibilities** for boards **to take defensive measures**?

Under the Directive	Under your local rules
<input checked="" type="checkbox"/> Too many possibilities <input type="checkbox"/> Too few possibilities <input type="checkbox"/> Sufficient possibilities <input type="checkbox"/> Don't know	<input type="checkbox"/> Too many possibilities <input type="checkbox"/> Too few possibilities <input type="checkbox"/> Sufficient possibilities <input checked="" type="checkbox"/> Don't know

Q 6.3.2: Are there sufficient **possibilities to break through** existing defensive mechanisms?

Under the Directive	Under your local rules
<input type="checkbox"/> Too many possibilities <input type="checkbox"/> Too few possibilities <input checked="" type="checkbox"/> Sufficient possibilities <input type="checkbox"/> Don't know	<input type="checkbox"/> Too many possibilities <input type="checkbox"/> Too few possibilities <input type="checkbox"/> Sufficient possibilities <input checked="" type="checkbox"/> Don't know

6.4. Implementation, enforcement and effects

Q 6.4.1: Generally speaking, what are the **effects** of the application of **defensive measures** in practice when such measures are applied?

Q 6.4.1(a): They prevent the occurrence of hostile takeovers:

Always Frequently Sometimes Rarely Never Don't know

Q 6.4.1(b): They lead to higher bid prices:

Always Frequently Sometimes Rarely Never Don't know

Q 6.4.2: Have the **transparency rules** of the Directive on takeover defenses contributed to the **dismantling of such defenses**?

Always Frequently Sometimes Rarely Never Don't know

Q 6.4.3: How often is the **board passivity** rule applied?

EU Study on Takeover Bids Directive

Always Frequently Sometimes Rarely Never Don't know

Q 6.4.3(a): If the board passivity rule is **mandatory** in your country, **how is it applied in practice?**

- It is always applied voluntarily by the target company
- It is generally applied voluntarily by the target company
- It is sometimes applied voluntarily by the target company, sometimes applied as a result of an enforcement action by national authorities (courts or supervisors)
- It is generally applied as a result of enforcement action by national authorities (courts or supervisors)
- It is always applied as a result of enforcement action by national authorities (courts or supervisors)

Q 6.4.3(b): If the board passivity rule is **not mandatory** in your country, **how often** is it voluntarily applied?

Always Frequently Sometimes Rarely Never Don't know

Q 6.4.3(c): Where the board passivity rule is **not applied**, what is the **consequence?**

The takeover is:	<input type="checkbox"/> Frequently frustrated <input type="checkbox"/> Sometimes frustrated <input type="checkbox"/> Rarely frustrated <input type="checkbox"/> Don't know
The price of the bid is:	<input type="checkbox"/> Frequently increased <input type="checkbox"/> Sometimes increased <input type="checkbox"/> Rarely increased <input type="checkbox"/> Don't know

Q 6.4.3(d): Where the board passivity rule is **applied**, what is the **consequence?**

The takeover is:	<input type="checkbox"/> Frequently frustrated <input type="checkbox"/> Sometimes frustrated <input type="checkbox"/> Rarely frustrated <input type="checkbox"/> Don't know
The price of the bid is:	<input type="checkbox"/> Frequently increased <input type="checkbox"/> Sometimes increased <input type="checkbox"/> Rarely increased <input type="checkbox"/> Don't know

Q 6.4.4: How often is the **break-through** rule applied?

Always Frequently Sometimes Rarely Never Don't know

Q 6.4.4(a): If the break-through rule is **mandatory** in your country, **how is it applied in practice?**

- It is always applied voluntarily by the target company
- It is generally applied voluntarily by the target company
- It is sometimes applied voluntarily by the target company, sometimes applied as a result of an enforcement action by national authorities (courts or supervisors)
- It is generally applied as a result of enforcement action by national authorities (courts or supervisors)
- It is always applied as a result of enforcement action by national authorities (courts or supervisors)

EU Study on Takeover Bids Directive

supervisors)

Q 6.4.4(b): If the break-through rule is **not mandatory** in your country, **how often** is it voluntarily applied?

Always Frequently Sometimes Rarely Never Don't know

Q 6.4.4(c): If the break-through rule is **not applied**, what is the **consequence**?

The takeover is:	<input type="checkbox"/> Frequently frustrated <input type="checkbox"/> Sometimes frustrated <input type="checkbox"/> Rarely frustrated <input type="checkbox"/> Don't know
The price of the bid is:	<input type="checkbox"/> Frequently increased <input type="checkbox"/> Sometimes increased <input type="checkbox"/> Rarely increased <input type="checkbox"/> Don't know

Q 6.4.4(d): Where the break-through rule is **applied**, what is the **consequence**?

The takeover is:	<input type="checkbox"/> Frequently frustrated <input type="checkbox"/> Sometimes frustrated <input type="checkbox"/> Rarely frustrated <input type="checkbox"/> Don't know
The price of the bid is:	<input type="checkbox"/> Frequently increased <input type="checkbox"/> Sometimes increased <input type="checkbox"/> Rarely increased <input type="checkbox"/> Don't know

Q 6.4.5: Is the **reciprocity rule** applied?

Always Frequently Sometimes Rarely Never Don't know

Q 6.4.5(a): On what basis is the **reciprocity rule most often** applied?

On the basis of a prior authorization of the shareholders Don't know
 On the basis of an authorization granted by the shareholders during the bid

Q 6.4.5(b): **Against what type of offeror** has the reciprocity rule been applied? (More than one box may be ticked)

Non-listed non-EU offerors Non-listed EU offerors
 Non-EU State-controlled offerors³⁴ EU State-controlled offerors
 Listed non-EU offerors not applying the passivity rule
 Listed EU offerors not applying the passivity rule Don't know

Q 6.4.5(c): Where the reciprocity rule is **not applied**, what are the **consequences**?

The takeover is:	<input type="checkbox"/> Frequently frustrated <input type="checkbox"/> Sometimes frustrated <input type="checkbox"/> Rarely frustrated <input type="checkbox"/> Don't know
------------------	--

³⁴ State-controlled offerors include all public or private entities directly or indirectly controlled by public authorities, such as States, public pension schemes, sovereign wealth funds and State-owned companies.

EU Study on Takeover Bids Directive

The price of the bid is:	<input type="checkbox"/> Frequently increased <input type="checkbox"/> Sometimes increased <input type="checkbox"/> Rarely increased <input type="checkbox"/> Don't know
--------------------------	---

Q 6.4.5(d): Where the reciprocity rule is **applied**, what are the **consequences**?

The takeover is:	<input type="checkbox"/> Frequently frustrated <input type="checkbox"/> Sometimes frustrated <input type="checkbox"/> Rarely frustrated <input type="checkbox"/> Don't know
The price of the bid is:	<input type="checkbox"/> Frequently increased <input type="checkbox"/> Sometimes increased <input type="checkbox"/> Rarely increased <input type="checkbox"/> Don't know

Q 6.4.6: Below, you will see a list of mechanisms that may be used as **defensive measures**. How often do companies **apply** these mechanisms?

Pre-bid measures	Always	Frequently	Some times	Rarely	Never	Don't know
Multiple voting rights shares			X			
Non-voting shares						X
Non-voting preference shares						X
Pyramid structure						X
Priority shares						X
Depository certificates						X
Voting rights ceilings			X			
Ownership ceilings			X			
Supermajority provisions			X			
Golden shares				X		
Partnership limited by shares			X			
Cross-shareholdings			X			
Shareholder agreements			X			
Other:						X
Post-bid measures	Always	Frequently	Some times	Rarely	Never	Don't know
Seeking a white knight ³⁵			X			
Seeking a white squire ³⁶			X			
Capital increase		X				

³⁵ A "white knight" is an alternative merger or acquisition partner who is friendly with management of the target, generally solicited to buy a majority block of shares.

³⁶ A "white squire" is an alternative merger or acquisition partner who is friendly with management of the target, generally solicited to buy a large minority interest (as opposed to a majority interest as is the case with a "white knight") in the target company,

EU Study on Takeover Bids Directive

Debt increase			X			
Share buy-back		X				
Acquisition of assets				X		
Sale of assets ³⁷			X			
Dividend payment			X			
Sale of treasury shares			X			
"Pacman defense" ³⁸				X		
Offer launched on other company				X		
Merger				X		
Issue of warrants ³⁹			X			
Other:						X

Q 6.4.7: Below, you will see a list of mechanisms that may be used as **defensive measures**. Are **companies successful when applying** these mechanisms?

Pre-bid measures	Always	Frequently	Some times	Rarely	Never	Don't know
Multiple voting rights shares			X			
Non-voting shares			X			
Non-voting preference shares			X			
Pyramid structure						X
Priority shares						X
Depository certificates						X
Voting rights ceilings			X			
Ownership ceilings			X			
Supermajority provisions			X			
Golden shares			X			
Partnership limited by shares			X			
Cross-shareholdings			X			
Shareholders agreement			X			
Other:						X
Post-bid measures	Always	Frequently	Some times	Rarely	Never	Don't know

³⁷ This includes, but is not limited to, the "crown jewel defense", in which the target company engages in sale of its most attractive assets to a friendly third party.

³⁸ Bid launched by the offeree company on the offeror company.

³⁹ This includes "poison pills" or "shareholder rights plans" in which, for instance, the target company facilitates the issuing of shares to its shareholders at a discount.

EU Study on Takeover Bids Directive

Seeking a white knight ⁴⁰			X			
Seeking a white squire ⁴¹			X			
Capital increase			X			
Debt increase			X			
Share buy-back			X			
Acquisition of assets			X			
Sale of assets ⁴²			X			
Dividend payment			X			
Sale of treasury shares			X			
"Pacman defense" ⁴³			X			
Offer launched on other company			X			
Merger			X			
Issue of warrants ⁴⁴			X			
Other:						X

Q 6.4.8: Below, you will see a list of mechanisms that may be used as **defensive measures**. **How frequently have these been applied** since the Directive was implemented?

Pre-bid measures	Much more frequent	More frequent	Equally frequent	Less frequent	Much less frequent	Don't know
Multiple voting rights shares						X
Non-voting shares						X
Non-voting preference shares						X
Pyramid structure						X
Priority shares						X
Depository certificates						X
Voting rights ceilings						X
Ownership ceilings						X
Supermajority provisions						X

⁴⁰ *Supra* note 35

⁴¹ *Supra* note 36

⁴² *Supra* note 37

⁴³ *Supra* note 38

⁴⁴ *Supra* note 39

EU Study on Takeover Bids Directive

Golden shares						X
Partnership limited by shares						X
Cross-shareholdings						X
Shareholder agreements						X
Other:						X
Post-bid measures	Much more frequent	More frequent	Equally frequent	Less frequent	Much less frequent	Don't know
Seeking a white knight ⁴⁵						X
Seeking a white squire ⁴⁶						X
Capital increase						X
Debt increase						X
Share buy-back						X
Acquisition of assets						X
Sale of assets ⁴⁷						X
Dividend payment						X
Sale of treasury shares						X
"Pacman defense" ⁴⁸						X
Offer launched on other company						X
Merger						X
Issue of warrants ⁴⁹						X
Other:						X

Q 6.4.9: Below, you will see a list of actions. Have these been more or less **frequent since the Directive** was implemented?

	Much more frequent	More frequent	Equally frequent	Less frequent	Much less frequent	Don't know
A hostile takeover bid is launched ⁵⁰						X

⁴⁵ *Supra* note 35

⁴⁶ *Supra* note 36

⁴⁷ *Supra* note 37

⁴⁸ *Supra* note 38

⁴⁹ *Supra* note 39

⁵⁰ For instance, if hostile takeover bids have been more often frequently completed after the Directive was implemented (as compared to before the transposition), the box "more frequent" should be ticked.

EU Study on Takeover Bids Directive

A threat of hostile takeover bid is made (but no offer follows the threat)						X
--	--	--	--	--	--	---

Q 6.4.10: Below, you will see a list of actions. Have these been more or less **successful since the Directive** was implemented?

	Much more successful	More successful	Equally successful	Less successful	Much less successful	Don't know
A hostile takeover bid is launched ⁵¹						X
A shareholder puts pressure on an issuer based on a takeover threat ⁵² (no offer follows the threat)						X

Part VII - Squeeze-out rule (article 15) and sell-out rule (article 16)

7.1. Clarity

Q 7.1.1: Is there **uncertainty in the Directive** relating to squeeze-out and sell-out rules and other such rules?

Yes No Don't know

7.2. Implementation and enforcement

Q 7.2.1: Are the squeeze-out and sell-out rights **exercised in practice**?

Squeeze-out right	<input type="checkbox"/> Always	<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Sometimes	<input type="checkbox"/> Rarely	<input type="checkbox"/> Never	<input type="checkbox"/> Don't know
Sell-out right	<input type="checkbox"/> Always	<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Sometimes	<input type="checkbox"/> Rarely	<input type="checkbox"/> Never	<input type="checkbox"/> Don't know

Q 7.2.1(a): Where the **squeeze-out right is not exercised** in practice, what is typically the cause? (More than one box may be ticked)

The offer price was too low, so that the 90% or 95% threshold was not reached
 Speculative investors purchased (at least) 5.1% or 10.1% of the shares

⁵¹ For instance, if hostile takeover bids have been more often successfully completed after the Directive was implemented (as compared to before the transposition), the box "more successful" should be ticked.

⁵² For instance, a shareholder publicly requires a certain action to be performed by the issuer (such as an increase in dividends, a change of strategy or a change in management) and threatens to launch a bid if its demand is not satisfied. The result would be deemed successful if it obtains satisfaction in any material respect.

EU Study on Takeover Bids Directive

- The bidder did not want to exercise this right
- Don't know
- Other:

Q 7.2.1(b): Where the **sell-out right is not exercised** in practice, what is typically the cause?
(More than one box may be ticked)

- The offer price was too low, so that the 90% or 95% threshold was not reached
- Speculative investors purchased (at least) 5.1% or 10.1% of the shares
- The implementation of the squeeze-out right has been announced
- Don't know
- Other:

Q 7.2.2: Does the fair-price rule **work adequately in practice**?

- Yes
- No
- Don't know

Q 7.2.2(a): **If not**, please explain how and why?

N/A

Q 7.2.3: How often have shareholders **challenged the fair price**?

- Always
- Frequently
- Sometimes
- Rarely
- Never
- Don't know

Q 7.2.4: Are there **sufficient legal remedies** available to challenge the fair price?

- Yes
- No
- Partially
- Don't know

7.3. Effects of the rule

Q 7.3.1: The Directive provides for **90% and 95% thresholds** for the implementation of the sell-out and squeeze-out procedures. Are these thresholds:

- Too low
- Appropriate
- Too high
- Don't know

Q 7.3.2: Does the **existence of different thresholds** within the EU cause any problems?

- Yes
- No
- Don't know

Q 7.3.3: Which **threshold is more appropriate**?

- 90%
- 95%
- Don't know

Q 7.3.4: Is the **three-month period** provided to implement a squeeze-out appropriate, too short or too long?

EU Study on Takeover Bids Directive

Too short Appropriate Too long Don't know

Q 7.3.5: What are the **effects** of the existence of the **squeeze-out right**? (More than one box may be ticked)

<input checked="" type="checkbox"/> Bids are promoted ⁵³	<input type="checkbox"/> Significantly <input checked="" type="checkbox"/> Slightly <input type="checkbox"/> No visible effect
<input type="checkbox"/> Other:	<input type="checkbox"/> Significantly <input type="checkbox"/> Slightly <input type="checkbox"/> No visible effect
<input type="checkbox"/> Don't know	<input type="checkbox"/> Significantly <input type="checkbox"/> Slightly <input type="checkbox"/> No visible effect

Q 7.3.6: What are the **effects** of the existence of the **sell-out right**? (More than one box may be ticked)

<input checked="" type="checkbox"/> Bids are less attractive ⁵⁴	<input type="checkbox"/> Significantly <input checked="" type="checkbox"/> Slightly <input type="checkbox"/> No visible effect
<input type="checkbox"/> Other:	<input type="checkbox"/> Significantly <input type="checkbox"/> Slightly <input type="checkbox"/> No visible effect
<input type="checkbox"/> Don't know	<input type="checkbox"/> Significantly <input type="checkbox"/> Slightly <input type="checkbox"/> No visible effect

Q 7.3.7: Is one of the **effects** of the application of the **fair price rule** increased protection of the minority shareholders?

Always Frequently Sometimes Rarely Never Don't know

Part VIII – Impact of the Takeover Bids Directive on employees and the labor market

Q 8.1: Are the **obligations set forth in the Directive** with regard to protection of employees **sufficient**?

Yes No Don't know

Q 8.2: Are **disclosure requirements** regarding employee protection **appropriately enforced**?

Yes No Don't know

Q 8.2.1: **If not**, what could be improved and why?

Part IX – Impact of the Takeover Bids Directive on the EU economy

Q 9.1: Are **environmental concerns** taken into account in the conduct of takeover bids?

Always Frequently Sometimes Rarely Never Don't know

Q 9.2: Is the **impact of local communities** taken into account in the conduct of takeover bids?

⁵³ Bidders may be further incentivized to launch a bid if they believe that the squeeze-out procedure may limit the risk of having post-bid minority shareholders.

⁵⁴ The sell-out right potentially increases the overall price of the bid.

EU Study on Takeover Bids Directive

Always Frequently Sometimes Rarely Never Don't know

Q 9.3: Do takeovers make **economic sense**?

Always Frequently Sometimes Rarely Never Don't know

Q 9.4: Do takeovers **result in more efficient companies**?

Always Frequently Sometimes Rarely Never Don't know

Q 9.5: Are **anticipated benefits** realized in **practice**?

Always Frequently Sometimes Rarely Never Don't know

Part X - Improvement of the Takeover Bids Directive

Q 10.1: In **what ways** could the EU takeover rules be improved?

N/A

Q 10.2: Has the application of the Directive's legal framework **caused increased litigation**?

Significant increase Moderate increase Remained stable
 Significant decrease Moderate decrease Don't know

Q 10.2.1: If litigation increased, **what is the cause?** (More than one box may be ticked)

Increased takeover activity Increased availability of legal proceedings
 Lack of clarity of the regulation Lack of expertise within national authorities
 Lack of independence of national authorities Don't know
 Increased awareness of stakeholders concerning their rights
 Other:

Appendix A: List of main obligations contained in the Directive

1	Compliance with general principles (article 3 of the Directive)
2	Designation of supervisory authority competent to supervise a bid (article 4 of the Directive)
3	Mandatory bid rule (article 5 of the Directive)
4	Information and disclosure rules regarding the bid (articles 6, 8, 10 of the Directive)
5	Maximum duration of a bid (article 7 of the Directive)
6	Rules regarding the opinion of the board of the offeree company (articles 9.5 and 14 of the Directive)
7	Rules regarding the provision of information to the employee representatives of the offeree company (article 9.5 of the Directive)
8	Rule regarding the neutrality of the board of the offeree company (articles 9.2, 9.3, 12 of the Directive)
9	Rule regarding break-through (articles 11 and 12 of the Directive)
10	Reciprocity principles (article 12.3 of the Directive)
11	Rules regarding squeeze-out (article 15 of the Directive)
12	Rules regarding sell-out (article 16 of the Directive)

Appendix B: List of principles contained in the Directive

1 Equal treatment	All holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.
2 – A Informed decision	The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid.
2 – B Opinion of the offeree company	Where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business.
3 – A Interests of the company	The board of an offeree company must act in the interests of the company as a whole.
3 – B Interests of the shareholders	The board of an offeree company must not deny the holders of securities the opportunity to decide on the merits of the bid.
4 Prohibition of false markets	False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.
5 Bid funding	An offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.
6 Reasonable time for the offer	An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities