

Directive 2004/25/EC of the European Parliament and of the Council
of 21 April 2004 on takeover bids (Text with EEA relevance)

Article 4

Supervisory authority and applicable law

1 Member States shall designate the authority or authorities competent to supervise bids for the purposes of the rules which they make or introduce pursuant to this Directive. The authorities thus designated shall be either public authorities, associations or private bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. Member States shall inform the Commission of those designations, specifying any divisions of functions that may be made. They shall ensure that those authorities exercise their functions impartially and independently of all parties to a bid.

2

- a The authority competent to supervise a bid shall be that of the Member State in which the offeree company has its registered office if that company's securities are admitted to trading on a regulated market in that Member State.
- b If the offeree company's securities are not admitted to trading on a regulated market in the Member State in which the company has its registered office, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the company's securities are admitted to trading.

If the offeree company's securities are admitted to trading on regulated markets in more than one Member State, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the securities were first admitted to trading.

- c If the offeree company's securities were first admitted to trading on regulated markets in more than one Member State simultaneously, the offeree company shall determine which of the supervisory authorities of those Member States shall be the authority competent to supervise the bid by notifying those regulated markets and their supervisory authorities on the first day of trading.

If the offeree company's securities have already been admitted to trading on regulated markets in more than one Member State on the date laid down in Article 21(1) and were admitted simultaneously, the supervisory authorities of those Member States shall agree which one of them shall be the authority competent to supervise the bid within four weeks of the date laid down in Article 21(1). Otherwise, the offeree company shall determine which of those authorities shall be the competent authority on the first day of trading following that four-week period.

- d Member States shall ensure that the decisions referred to in (c) are made public.
- e In the cases referred to in (b) and (c), matters relating to the consideration offered in the case of a bid, in particular the price, and matters relating to the bid procedure, in particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid, shall be dealt with in accordance with the rules of the Member State of the competent authority. In matters relating to the information to be provided to the employees of the offeree company and in matters relating to company law, in particular the percentage of voting rights which confers control and any derogation from the obligation to launch a bid, as well as the conditions

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under which the board of the offeree company may undertake any action which might result in the frustration of the bid, the applicable rules and the competent authority shall be those of the Member State in which the offeree company has its registered office.

3 Member States shall ensure that all persons employed or formerly employed by their supervisory authorities are bound by professional secrecy. No information covered by professional secrecy may be divulged to any person or authority except under provisions laid down by law.

4 The supervisory authorities of the Member States for the purposes of this Directive and other authorities supervising capital markets, in particular in accordance with Directive 93/22/EEC, Directive 2001/34/EC, Directive 2003/6/EC and Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading shall cooperate and supply each other with information wherever necessary for the application of the rules drawn up in accordance with this Directive and in particular in cases covered by paragraph 2(b), (c) and (e). Information thus exchanged shall be covered by the obligation of professional secrecy to which persons employed or formerly employed by the supervisory authorities receiving the information are subject. Cooperation shall include the ability to serve the legal documents necessary to enforce measures taken by the competent authorities in connection with bids, as well as such other assistance as may reasonably be requested by the supervisory authorities concerned for the purpose of investigating any actual or alleged breaches of the rules made or introduced pursuant to this Directive.

5 The supervisory authorities shall be vested with all the powers necessary for the purpose of carrying out their duties, including that of ensuring that the parties to a bid comply with the rules made or introduced pursuant to this Directive.

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.

[^{F1}Member States shall ensure that Article 5(1) of this Directive does not apply in the case of use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council⁽¹⁾.]

6 This Directive shall not affect the power of the Member States to designate judicial or other authorities responsible for dealing with disputes and for deciding on irregularities committed in the course of bids or the power of Member States to regulate whether and under which circumstances parties to a bid are entitled to bring administrative or judicial proceedings. In particular, this Directive shall not affect the power which courts may have in a Member State to decline to hear legal proceedings and to decide whether or not such proceedings affect the outcome of a bid. This Directive shall not affect the power of the Member States to determine the legal position concerning the liability of supervisory authorities or concerning litigation between the parties to a bid.

Textual Amendments

- F1** Inserted by Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (Text with EEA relevance).

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- (1) [^{F1}Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).]

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