

**27 APRIL 2007**

**ROYAL DECREE ON TAKEOVER BIDS**

(Belgian Official Gazette, 23 May 2007)

*(Unofficial consolidated text)*

*Last update:*

**Royal Decree of 5 December 2022**  
*(Belgian Official Gazette, 12 December 2022)*

In accordance with Article 331, paragraph 1, of the Royal Decree of 3 March 2011 (Belgian Official Gazette, 9 March 2011) the words “Banking, Finance and Insurance Commission” and the word “CBFA” shall be replaced by the words “Financial Services and Markets Authority” and the word “FSMA” respectively.

**CHAPTER I. - Definitions**

**Article 1**

§ 1. This Decree is intended in particular for the partial transposition of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

§ 2. For the purposes of this Decree, the following definitions shall apply:

1° “the Law”: the Law of 1 April 2007 on takeover bids;

[2° “credit institution”: a credit institution governed by the law of a member state of the European Economic Area (EEA), within the meaning of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms;]

***§ 2, 2°, replaced by Article 6, a), of the Royal Decree of 23 September 2018 – Belgian Official Decree, 5 October 2018***

[3° “stockbroking firm”: a stockbroking firm governed by the law of a member state of the European Economic Area, within the meaning of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms;]

***§ 2, 3°, replaced by Article 6, b), of the Royal Decree of 23 September 2018 – Belgian Official Decree, 5 October 2018***

4° “the EC Merger Regulation”: Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, or any regulation that may replace or supplement it;

5° “agreement to act in concert” or “action in concert”: an agreement as referred to in Article 3, § 1, 5°, a) or b), of the Law, on the understanding that connected persons are presumed to have entered into an agreement to act in concert or to be acting in concert. Such an agreement or such an action in concert also applies, in the case referred to in Article 51, to any agreement concluded among the holders of voting securities of the holding company, or of the person who controls it, to adopt - by exercising their voting rights in concert - a lasting common policy with respect to this holding company or to the person who controls it;

6° “holding company”: the company, the legal person other than a company, or a similar structure that holds more than 30% of the voting securities in an offeree company, provided its holding in the offeree company represents, in the last statutory financial statements filed, either more than half of its net assets, or more than half of its average net income during the three previous financial years. For the purposes of calculating the net asset value, the holding in the offeree company is valued in any case at the market price based on the average weighted trading price for the 30 calendar days preceding the acquisition referred to in Article 51.

## **CHAPTER II. - Voluntary takeover bid**

### **Section I. – Voluntary takeover bid for voting securities or for securities conferring access to voting rights**

#### **Article 2**

The provisions of this Section regulate voluntary takeover bids for voting securities or for securities conferring access to voting rights.

#### **Subsection I. - Bidding requirements**

#### **Article 3**

A takeover bid shall meet the following requirements:

1° the bid shall apply to all voting securities or securities conferring access to voting rights issued by the offeree company and not yet held by the offeror or by persons connected with the offeror;

2° in the case of a takeover bid, the funds needed to complete the bid shall be available either in an account with a credit institution or in the form of an irrevocable and unconditional credit provided to the offeror by a credit institution; these funds shall be blocked in order to ensure the payment of the price for the securities acquired under the terms of the bid or shall be allocated exclusively to that purpose;

3° in the case of an exchange bid, the offeror shall possess the securities that will be offered by way of consideration, or shall have the authority to issue such securities or the right to acquire sufficient numbers of them by the deadline for payment and, if the offeror does not have the authority to issue them, it must be able, *de jure* or *de facto*, to see to it that the legal person concerned issues the securities;

4° the bid, as well as its conditions and rules, shall comply with the provisions of the Law and of this Decree; the conditions of the bid shall, moreover, be such - in particular as regards the price - that they enable the offeror under normal circumstances to achieve the desired result;

5° if the bid is for different classes of securities, the prices paid for the various classes may not contain differences other than those resulting from the characteristics specific to each class;

6° the offeror must undertake, insofar as it depends on it, to complete the bid;

7° acceptances shall be collected and the payment of the price made by a credit institution or a stockbroking firm.

#### **Article 4**

Where the bid falls within the scope of a competition law regime as regards control of concentrations, the offeror may, as far as this point is concerned, make its bid conditional only upon the condition precedent that the European Commission or the competent national competition authorities reach a decision within the meaning of Article 6, paragraph 1, a) or b), of the EC Regulation on concentrations or within the meaning of a similar national legal provision.

An offeror that makes its bid conditional upon such a decision shall forward to the FSMA a copy of the notifications that have been made as soon as they have been filed with the competent authorities; the offeror shall also keep the FSMA informed of the progress of the bid process.

### Subsection II. - Bid notification and announcement thereof

#### **Article 5**

Anyone who intends to launch a takeover bid shall notify the FSMA prior to doing so.

The notification shall include information to the effect that the requirements provided for in Article 3 have been complied with. The notification shall also mention, inter alia, the price and conditions of the bid.

The notification shall be sent by registered letter or be delivered with acknowledgement of receipt to the FSMA's offices on a working day between 8 AM and 6 PM.

#### **Article 6**

The notification referred to in Article 5 shall be accompanied by a dossier drawn up in accordance with the rules laid down by the FSMA. This dossier shall include, in particular, the draft prospectus drawn up in accordance with Article 24, as well as the draft documents referred to in Article 31, § 1, of the Law.

In the case, as referred to in Articles 20 et seq., of a takeover bid for voting securities in a Belgian company launched by a person controlling the offeree company, the notification shall include the expert report as provided for in Article 23.

#### **Article 7**

When it receives a notification in accordance with Article 5, the FSMA shall announce this notification to the public at the latest on the working day following the date of receipt. This announcement shall be made at the expense of the offeror in accordance with the procedures laid down by the FSMA.

On the same working day, the FSMA shall inform the following of this announcement:

1° the market operator concerned, if securities of the offeree company are admitted to trading on a Belgian regulated market;

2° the offeree company;

3° the offeror.

## **Article 8**

§ 1. Where the proper functioning of the market so requires, the FSMA can require any person who may be involved in a potential takeover bid to publish a communication without delay and, failing which, publish one itself.

§ 2. Where a person has made statements, personally or through an intermediary, that raise questions on the part of the public as to that person's intention to launch a bid, the FSMA can require that person to publish a communication clarifying his/her intentions. The FSMA may set a deadline of up to ten working days by which the communication must be published.

Subject to the application of Article 39, a person who, in accordance with paragraph 1, has confirmed his/her intention to launch a bid, shall proceed to its notification, in accordance with Article 5, by the deadline set by the FSMA.

A person that fails to confirm, by the deadline set by the FSMA, its intention to launch a bid within a reasonable period of time, along with the persons acting in concert with it, shall be prohibited from launching a bid for the securities of the offeree company concerned for a period of six months from the date of publication of the aforementioned communication or from the expiry of the deadline set by the FSMA, unless the said person(s) can demonstrate that the circumstances, the situation of the offeree company, or the shareholding of the persons concerned have significantly changed.

§ 3. Except in the cases referred to in §§ 1 and 2, no one may announce the launch of a bid in any form whatsoever, prior to the announcement referred to in Article 7.

### Subsection III. - Obligations during the bid period

#### A. General provisions

## **Article 9**

The provisions of this subsection shall apply to all parties to the bid throughout the entire bid period, on the understanding that they already apply to the offeror and to persons acting in concert with the offeror as soon as the notification of the bid has taken place or, where applicable, as soon as the communication referred to in Article 8 has been published.

## **Article 10**

The parties to the bid, as defined in Article 3, § 1, 7°, of the Law, shall abstain from publishing or having published inaccurate or misleading statements, communications or documents relating directly or indirectly to a bid, a counterbid or a higher bid.

## **Article 11**

At the request of the FSMA,

1° the parties to the bid shall submit to the FSMA without delay all agreements that are likely to have a material impact on the evaluation of the bid, its progress and its outcome;

2° the parties to the bid shall publish, in accordance with the procedures laid down by the FSMA, the relevant clauses of any agreement that has been submitted to the FSMA in accordance with 1° and that is likely to have a material impact on the evaluation of the bid, its progress and its outcome.

## **Article 12**

§ 1. During the bid period, the persons referred to in § 2 shall notify the FSMA, on each working day, where appropriate after the closing of the most liquid market for the securities concerned, of the following transactions:

1° any acquisition or disposal of voting securities or securities conferring access to voting rights issued by the offeree company or, [where appropriate,] the company whose securities are offered by way of consideration;

***§ 1, 1°, amended by Article 7, a), of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018***

[2° ...]

***§ 1, 2°, abrogated by Article 7, b), of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018***

§ 2. The obligation to notify provided for in § 1 applies to the following persons:

1° the offeror;

2° the offeree company;

3° the members of the board, or of the body to which the board has transferred or delegated part of its powers, of the offeror or the offeree company;

4° the persons acting in concert with the offeror or the offeree company;

5° the persons who directly or indirectly hold at least 1% of the voting securities [...] of the offeree company.

***§ 2, 5°, amended by Article 7, c), of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018***

§ 3. Such notifications shall include the following information:

1° the name and position of the person who is obliged to notify;

2° the date of the transaction(s);

3° the number of securities acquired or disposed of, and the price paid;

4° the number of securities held at the end of the transaction.

### **Article 13**

The FSMA shall, each day, publish on its website the transactions that have been notified to the FSMA in accordance with Article 12. Where the notification is made by a natural person as referred to in Article 12, § 2, 5°, the publication shall be anonymized.

## **B. Specific obligations on the part of the offeror**

### **Article 14**

Where the voting securities in the offeree company are admitted to trading on a regulated market in another Member State, the offeror shall make available to the public in that Member State, in accordance with the rules applicable in those States, both the notification announcing the bid and the prospectus relating to the bid, in such a way that the holders of securities can easily and rapidly access this information and these documents.

### **Article 15**

§ 1. During the bid period, the offeror may not withdraw or change the bid, except to make it more favourable to the holders of securities of the offeree company.

§ 2. Where, during the bid period, the offeror or the persons acting in concert with the offeror acquire or commit to acquire, outside the bid, securities of the offeree company for a higher price than that of the bid, the bid price shall be raised to that higher price.

## **Article 16**

By way of derogation from Article 15, and subject to the authorization of the FSMA, the offeror may change or withdraw the bid within five working days of notification by the offeree company of:

1° the issue of new voting securities or securities conferring access to voting rights, unless this issue represents less than 1% of the total amount of voting securities or securities conferring access to voting rights issued and stems from commitments entered into before the bid period;

2° decisions or transactions that lead or may lead to a significant change in the composition of the assets or liabilities of the offeree company or in commitments entered into without any actual consideration.

The offeror shall advise the FSMA of its decision. At the latest on the working day following receipt of this notification, the potential change or withdrawal of the bid will be announced in accordance with the procedures laid down by the FSMA.

A modified bid shall meet the requirements laid down in Article 3.

If the offeree company issues voting securities or securities conferring access to voting rights in a manner described in paragraph 1, 1°, the offeror shall extend the bid if it does not withdraw it, to the newly issued securities, subject, where applicable, to amended conditions.

## **Article 17**

From the date of the announcement provided for in Article 7, the bid may not be withdrawn except in the cases referred to in Article 16 and in the following cases:

1° in the case of a counterbid or higher bid;

2° in the absence of the administrative authorization required to acquire the securities that are the subject of the bid, provided it is not an administrative authorization as referred to in Article 4;

3° where, beyond the offeror's control, a condition of the bid authorized by the FSMA and indicated in the notification referred to in Article 5 is not met;

4° with the reasoned authorization of the FSMA, in the case of exceptional circumstances in which the bid cannot take place on objective grounds that are beyond the offeror's control.

The withdrawal of the bid shall be notified to the FSMA. At the latest on the working day following receipt of that notification, the withdrawal shall be made public in accordance with the procedures laid down by the FSMA.

## **Article 18**

Where the offeror has made the bid subject to the condition authorized in Article 4, and provided that the offeror does not waive that condition, the bid shall lapse if the European Commission or the competent national competition authorities initiate the procedure provided for in Article 6, paragraph 1, c), of the EC Merger Regulation or in a similar national provision.

### C. Specific obligations on the part of the offeree company

## **Article 19**

The offeree company shall notify the FSMA and the offeror without delay of any decision to issue voting securities or securities conferring access to voting rights, and of any other decision the aim or likely consequence of which is to frustrate the bid, with the exception of the search for alternative bids.

D. Specific obligations in the case of a takeover bid launched by an offeror controlling the offeree company

#### **Article 20**

Articles 20 to 23 shall apply where a takeover bid for voting securities in a Belgian company is launched by an offeror who, upon notifying of his/her intention to launch a bid, controls the offeree company within the meaning of [Article 1:14 of the Code on Companies and Associations].

***Amended by Article 5, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

For the purpose of assessing the existence of such control, the shareholdings of persons connected with the offeror within the meaning of [Article 1:20 of the Code on Companies and Associations] shall be taken into account.

***Amended by Article 5, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

#### **Article 21**

The independent directors of the offeree company, within the meaning of [Article 7:87 of the Code on Companies and Associations], shall designate, at the expense of the offeror, one or more experts who shall be independent both from the offeror and the offeree company and from the companies connected with them. If the offeree company has not designated any independent directors within the meaning of [Article 7:87 of the Code on Companies and Associations], or if the offeree company is not a listed company, its board shall designate said expert(s) with the agreement of the FSMA.

***Amended by Article 6 of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

The expert shall provide evidence to the FSMA of its independence from the offeror, from the offeree company and from the companies connected with them. The report referred to in Article 23 shall include adequate evidence in this respect.

If the protection of the rights of securities holders so requires, the FSMA may require the offeror to designate, at his/her expense, an additional expert.

#### **Article 22**

§ 1. The following may not act as an independent expert:

1° the statutory auditor or accountant of the offeror, of the offeree company and of the companies connected with them;

2° any person who has a connection with the statutory auditor or the accountant of the offeror, of the offeree company or of companies connected with them within the meaning of [Article 3:62, § 4, of the Code on Companies and Associations];

***Amended by Article 7 of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

3° any person who is remunerated by the offeror, by the offeree company or by the companies connected with them for another assignment carried out as part of the operation.

§ 2. Without prejudice to the application of § 1, an expert who is in a situation of dependence or conflict of interest shall refuse the assignment, unless his/her report includes a comprehensive description of the circumstances concerned, and demonstrates convincingly that its independence is not compromised.

The following circumstances shall be deemed to result in a situation of dependence or conflict of interest:

1° the existence of a legal or financial relationship between the expert and the offeror, the offeree company, the companies connected with them, or their advisers;

2° the existence on the part of the expert of a pecuniary interest, other than as a result of the assignment, in the success of the operation;

3° the completion, during two years prior to the notification of the bid, of another assignment for the account of the offeror, of the offeree company or of the companies connected with them;

4° the existence on the part of the expert of a claim or debt with the offeror, the offeree company or the companies connected with them, if that claim or debt is likely to create economic dependence.

[§ 3. The method of remuneration of the independent expert shall not give rise to a conflict of interest on its part. The remuneration of the independent expert shall be determined on the basis of the scope and complexity of its assignment.

§ 4. The independent expert shall provide evidence of having the necessary expertise and adequate experience in the field of business valuation, in particular for companies of the same size and sector as the offeree company. Its structure and organization shall be appropriate to the scope of the assignment it proposes to undertake.]

***§§ 3 and 4 inserted by Article 8 of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018***

### **Article 23**

§ 1. The expert shall draw up a report as a professional and independent party.

The expert shall, on the basis of detailed calculations, value the securities that are the subject of the bid and, where applicable, the securities which are offered in exchange. To that end, the expert shall use methods that, given the nature and activity of the companies concerned, are relevant and based on relevant facts and hypotheses. The expert shall mention the valuation methods applied, the facts and hypotheses selected, the sources used, and the result obtained using the valuation methods applied.

[The report of the independent expert shall also include, in particular:

1° a statement confirming that the hypotheses and methods used by the independent expert in its report are reasonable and relevant;

2° an analysis of the valuation carried out by the offeror;

3° a declaration that the independent expert fully meets the requirements set out in Article 22, together with supporting evidence;

4° the remuneration received by the independent expert, an overview of the personnel employed and time spent, a description of the work carried out and the identity of the persons contacted.]

***§ 1, paragraphs 3 and 4, replaced by Article 9 of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018***

§ 2. The offeror shall publish the expert's report as an annex to the prospectus.

§ 3. In the case of an exchange bid, the offeror shall propose as an alternative a corresponding cash amount in the following cases:

1° if the price does not consist of liquid securities admitted to trading on a regulated market; or

2° if, in the twelve months preceding the notification of the bid or during the bid period, the offeror or a person acting in concert with the offeror has acquired or has committed to acquiring, against cash payment, securities representing more than 1% of the total amount of voting securities.



#### Subsection IV. - Prospectus

##### **Article 24**

Without prejudice to the application of Article 13, § 1, of the Law, the prospectus shall include at least the details provided for in Schedule I annexed to this Decree.

Where certain details as provided for in paragraph 1 appear not to be relevant to the activity or legal form of the offeror or the offeree company, equivalent details shall be provided.

##### **Article 25**

The conditions of the bid shall provide that:

1° a securities holder who has accepted a bid can always withdraw that acceptance during the acceptance period;

2° any increase in the price of the bid shall also benefit those securities holders who have already accepted the bid.

#### Subsection V. - Memorandum of response drawn up by the board of the offeree company

##### **Article 26**

Upon the announcement as referred to in Article 7 of the notification of the bid, the FSMA shall forward the draft prospectus referred to in Article 6 to the board of the offeree company.

If the board is of the opinion that the draft prospectus lacks information or contains information that is likely to mislead holders of securities of the offeree company, it shall advise the FSMA and the offeror thereof within a maximum of five working days of the date of receipt of the draft prospectus.

##### **Article 27**

Once the FSMA has approved the prospectus, it shall forward it to the offeree company.

Within five working days of the date when the prospectus was forwarded, the board of the offeree company shall submit a draft memorandum of response to the FSMA for approval.

##### **Article 28**

§ 1. The opinion of the offeree company on the bid, as referred to in Article 24, § 1, 3°, of the Law, shall contain a reasoned explanation of:

1° the effects of the implementation of the bid on all of the interests of the company, of the securities holders, of the creditors and of the staff, including its effects on employment;

2° the board's views on the offeror's strategic plans for the offeree company and their likely repercussions for that company's results, employment and the locations of its places of business, as indicated in the prospectus;

3° whether or not the board advises securities holders to transfer their securities to the offeror as part of the bid.]

***§ 1, 3°, inserted by Article 12, 1°, of the Royal Decree of 26 September 2013 – Belgian Official Gazette, 9 October 2013***

[If the members of the board do not reach a unanimous position, the opinion shall mention the divergent positions of the members, specifying the members that are to be considered as independent directors or as members who *de facto* represent certain securities holders.]

***§ 1, paragraph 2, inserted by Article 12, 2°, of the Royal Decree of 26 September 2013 – Belgian Official Gazette, 9 October 2013***

§ 2. The opinion shall mention the number of voting securities or securities conferring access to voting rights held by the members of the board or by the persons whom they *de facto* represent.

The opinion shall indicate whether, in their capacity as securities holders, the members of the board will transfer their securities to the offeror as part of the bid. The members of the board shall give the same indications for the securities holders whom they *de facto* represent; these securities holders shall provide the necessary information upon a simple request from the member of the board who *de facto* represents them.

If the members of the board or the securities holders whom they *de facto* represent do not reach a unanimous position on whether or not they intend to transfer their securities to the offeror as part of the bid, the opinion shall mention the divergent positions of the members, specifying the members that are to be considered as independent directors or as members who *de facto* represent certain securities holders.

[If the position taken by members of the board or by securities holders whom they *de facto* represent on their intention whether or not to transfer their securities to the offeror as part of the bid differs from the advice referred to in § 1, paragraph 1, 3°, or, as the case may be, from their divergent position referred to in § 1, paragraph 2, the members concerned must explain the reason therefor.]

**§ 2, paragraph 4, inserted by Article 12, 3°, of the Royal Decree of 26 September 2013 – Belgian Official Gazette, 9 October 2013**

If, after the approval of the memorandum of response, the persons referred to in paragraph 1 change their position on whether or not they intend to transfer their securities to the offeror as part of the bid, they shall advise the Board of the offeree company thereof. The Board shall draw up a supplement to the memorandum of response regarding this point, which it shall submit to the FSMA for approval.

The members of the board and the securities holders whom they *de facto* represent shall act in accordance with the indications they have given in the memorandum of response or in the supplement thereto, as approved.

§ 3. If the articles of association of the offeree company include approval or pre-emption clauses, the Board shall indicate:

1° whether these clauses apply to the offeror, taking into account any provisions of the articles of association that may have been adopted by the offeree company pursuant to Articles 46 and 47 of the Law;

2° in the event that these clauses apply to the offeror, whether the board will grant or refuse approval and whether it will require the application of the pre-emption clauses. The board can also reserve the right to refuse approval or to apply the pre-emption clauses.

#### **Article 29**

If the board has indicated, in accordance with Article 28, § 3, 2°, that it will refuse the approval or will require application of the pre-emption clauses, or that it reserves the right to refuse the approval or to apply the pre-emption clauses, the securities holders may nevertheless respond to the bid, under the resolute condition that [Article 7:79 of the Code on Companies and Associations] is complied with.

**Amended by Article 8, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022**

Paragraph 1 shall not apply to approval clauses that meet the provisions of [Article 7:80 of the Code on Companies and Associations].

**Amended by Article 8, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022**

Subsection VI. – Acceptance period and expiry of the bid

**Article 30**

The acceptance period of a bid shall be no less than two weeks and no more than ten weeks.

The acceptance period of the bid shall start at the earliest either five working days after the approval of the prospectus or after the approval of the offeree company's memorandum of response, if the latter occurs first.

**Article 31**

If a general meeting of the offeree company is convened to deliberate on the bid and, in particular, on an action that is likely to frustrate the bid, the acceptance period of the bid shall be prolonged by two weeks from the day on which said general meeting was held.

In the case of an acquisition as referred to in Article 15, § 2, or of a commitment entered into for this purpose by the offeror or a person acting in concert with the offeror, the acceptance period of the bid shall, where applicable, be prolonged in such a way that the securities holders who have not yet accepted the bid have five working days, after the publication of the price increase, to accept it.

**Article 32**

The offeror shall publish, within five working days of the expiry of the acceptance period of the bid, the results of the bid and the number of securities held by the offeror after the bid.

**Article 33**

If the bid is subject to certain conditions, the offeror shall communicate to the public, within five working days of the expiry of the acceptance period of the bid, whether said conditions have been met and, if this is not the case, whether the offeror waives them or not.

**Article 34**

If the bid succeeds, the offeror shall pay the price within ten working days of the publication of the results of the bid.

**Article 35**

The bid shall be reopened if:

1° at the expiry of the acceptance period of the bid, the offeror and the persons connected with the offeror hold 90% or more of the voting securities in the offeree company;

2° the offeror asks, within three months of the expiry of the acceptance period of the bid, that the securities of the offeree company be withdrawn from the regulated market or MTF on which they were admitted to trading;

3° the offeror committed, before the expiry of the bid period, to acquire securities of the offeree company at a higher price than the bid price, insofar as Article 31, paragraph 2, has not been applied.

**Article 36**

The reopening of the bid shall take place within ten working days of the publication of the results or the determination of the fact that led to the reopening. The acceptance period of the bid shall be no less than five working days and no more than fifteen working days.

In the case referred to in Article 35, 3°, the offeror shall reopen the bid at the higher price and shall pay the price difference to the securities holders who have responded to the previous bid or counterbid.

Subsection VII. - Counterbid and higher bid

**Article 37**

The price of a counterbid or of a higher bid shall exceed by at least 5% that of the (latest) bid, counterbid or higher bid.

**Article 38**

Without prejudice to the application of Articles 16 and 17, the conditions to which a counterbid or higher bid are subject shall not be more restrictive than those to which the (latest) bid, counterbid or higher bid was subject.

Paragraph 1 shall not prevent the offeror from making its counterbid conditional upon the condition precedent referred to in Article 4.

**Article 39**

The notification of the intention to launch a counterbid or a higher bid shall be published at least two days before the expiry of the acceptance period of the latest bid, counterbid or higher bid.

**Article 40**

§ 1. The provisions of this Section shall apply in the case of counterbids and higher bids.

In addition,

1° the draft prospectus drawn up by the counterofferor shall also be communicated by the FSMA to the offeror; if the FSMA has not yet approved the offeror's prospectus, it shall send the draft prospectus referred to in Article 6 to the counterofferor;

2° in its opinion, the board of the offeree company shall make a comparison between the bid and the counterbid. If it expresses a preference for the bid or the counterbid, it shall do so taking into account all of the interests of the company, of the securities holders, of the creditors and of the staff, including employment;

3° if, during the bid period, the offeror or a person acting in concert with the offeror has paid a price that is higher than the bid price, the bid price shall be increased pursuant to Article 15, § 2, so as to exceed the price of the counterbid by at least 5%;

4° the acceptance period of the bid shall be prolonged until the acceptance period of the counterbid expires, except if the bid is withdrawn in a regular manner pursuant to Article 16 or 17.

Paragraph 2 shall apply *mutatis mutandis* in the case of a higher bid. If, at the time of the notification of the counterbid, other counterbids have already been launched, the persons who launched these other counterbids shall be considered offerors for the purpose of paragraph 2.

§ 2. As regards the information provided by the offeree company, the offeror, counterofferor and higher offeror shall be treated on equal terms.

**Article 41**

Any higher offeror whose bid, counterbid or higher bid has already been the subject of a prospectus approved by the FSMA shall draw up a supplement to the prospectus pursuant to Article 17, § 1, of the Law.

Subsection VIII. - Squeeze-out bid and right to sell after a voluntary bid

**Article 42**

If, pursuant to [Article 7:82, § 1, paragraph 1, of the Code on Companies and Associations], the offeror holds, following a takeover bid or the reopening thereof, 95% of the capital carrying voting rights and 95% of the voting securities, it may require all other holders of voting securities or securities conferring access to voting rights to sell it those securities at the price of the bid, provided that the offeror has acquired, through the acceptance of the bid, securities representing not less than 90% of the capital carrying voting rights comprised in the bid.

***Amended by Article 9, 1° of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

For the purpose of paragraph 1, the securities held by persons acting in concert with the offeror within the meaning of [Article 7:82, § 1, paragraph 5, of the Code on Companies and Associations], shall be considered equivalent to the securities held by the offeror.

***Amended by Article 9, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

**Article 43**

Where Article 42 applies, the offeror shall reopen the bid within three months of the date of expiry of the acceptance period of the bid. This reopening shall be carried out under the same conditions as the bid; the acceptance period of the reopened bid shall be at least fifteen working days.

This reopening shall be equivalent to a squeeze-out bid within the meaning of [Article 7:82 of the Code on Companies and Associations], to which the Royal Decree on squeeze-out bids shall not apply.

***Amended by Article 10 of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

Any securities that have not been presented by the expiry of the acceptance period of the bid that was thus reopened shall be deemed to have been automatically transferred to the offeror. The funds or securities necessary for the payment of the price of the securities thus transferred shall be placed in safekeeping with the "*Deposito- en Consignatiekas/Caisse des dépôts et consignations*" for the benefit of the former owners of the said securities.

[Upon expiry of the bid, the market undertaking of a Belgian regulated market or the operator of a Belgian multilateral trading facility shall automatically withdraw from trading the securities that were admitted to trading on this market.]

***Paragraph inserted by Article 20 of the Royal Decree of 11 September 2016 – Belgian Official Gazette of 27 September 2016***

**Article 44**

§ 1. If, pursuant to [Article 7:82, § 1, paragraph 1, of the Code on Companies and Associations], the offeror holds, following a takeover bid or the reopening thereof, 95% of the capital carrying voting rights and 95% of the voting securities, any securities holder has the right to have his/her voting securities or securities conferring access to voting rights purchased by the offeror at the price of the bid, provided that the offeror has acquired, through the acceptance of the bid, securities representing not less than 90% of the capital carrying voting rights comprised in the bid.

***Amended by Article 11, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

For the purpose of paragraph 1, the securities held by persons acting in concert with the offeror within the meaning of [Article 7:82, § 1, paragraph 5, of the Code on Companies and Associations], shall be considered equivalent to the securities held by the offeror.

***Amended by Article 11, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

§ 2. Where § 1 applies, the securities holders concerned shall make their request known to the offeror or to the person the offeror has designated, within three months of the date of expiry of the acceptance period of the bid, by registered letter with acknowledgement of receipt. The FSMA shall be informed by the offeror of the requests introduced, as well as of the purchases made and the price charged.

#### Subsection IX. - Prohibitions after the bid period

##### **Article 45**

The offeror and the persons acting in concert with the offeror are prohibited from acquiring directly or indirectly, for a period of one year from the end of the bid period, securities which were the subject of the takeover bid, on conditions that are more favourable to the transferors than those provided under the takeover bid concerned, unless the price difference is paid to all securities holders who responded to the bid.

#### Section II. - Takeover bids for real-estate certificates and other debt securities

[Subsection I. – Takeover bid launched by another person than the issuer of the securities]

***Subsection I inserted by Article 10 of the Royal Decree of 23 September 2018 – Belgian Official Gazette of 5 October 2018***

##### **Article 46**

§ 1. The provisions of Section I shall apply to any takeover bid for real-estate certificates[, except where the bid is launched by the issuer of the certificates].

***§ 1 amended by Article 11 of the Royal Decree of 23 September 2018 – Belgian Official Gazette of 5 October 2018***

§ 2. By way of derogation from § 1, Articles 3, 1°, 16, 19 to 23, 24, paragraph 1, 28, §§ 1 and 3, 29, 31 and 42 to 44 shall not apply to takeover bids for real-estate certificates.

§ 3. In addition, takeover bids for real-estate certificates shall be subject to the following provisions:

1° the bid shall be for all real-estate certificates of the same category issued by the offeree company and not yet held by the offeror;

2° the prospectus shall include, without prejudice to the application of Article 13, § 1, of the Law, at least the information provided for in Schedule II annexed to this Decree;

3° the memorandum of response shall include, without prejudice to the application of Articles 22 to 30 of the Law, at least:

a) any remarks on the part of the offeree company as regards the prospectus;

b) the board's reasoned opinion on the bid as regards the effects of the implementation of the bid on the interests of all holders of real-estate certificates;

c) the number of real-estate certificates that are held by the members of the board or by the persons whom they *de facto* represent, and an indication as to whether or not they intend to respond to the bid;

d) if the members of the board or the securities holders whom they *de facto* represent do not reach a unanimous position on whether or not they intend to transfer their securities as part of the bid, an indication of the divergent positions of the members, specifying the members that are to be considered as independent directors or as members who *de facto* represent certain securities holders; 4° the offeree company's board which, in accordance with Article 40, 2°, indicates a preference for the bid or the counterbid shall take into account the interests of all holders of real-estate certificates.

The members of the board and the securities holders whom they *de facto* represent shall act in accordance with the indications given.

§ 3. Where the offeree company is not the owner of the asset or assets to which the income, yield and realizable value of the real-estate certificates relate(s), the board of the offeree company shall communicate to the owner the draft prospectus referred to in Article 6, at the latest on the day following its receipt pursuant to Article 26. In such a case, the owner shall also draw up a memorandum of response in accordance with Article 46, § 3, 3° and 4°.

#### **Article 47**

Except where the FSMA has granted a derogation, Article 46, §§ 1 and 2, shall apply *mutatis mutandis* to any takeover bid for securities as referred to in [Article 3, § 1, 8°, ii)], of the Law, other than real-estate certificates[, except where the bid is launched by the issuer of the securities].

**Article amended by Article 12, 1° and 2°, of the Royal Decree of 23 September 2018 – Belgian Official Gazette of 5 October 2018**

[Subsection II. - Takeover bid launched by the issuer of the securities

#### A. General provisions

##### **Art. 47/1.**

In the case of a takeover bid for securities as referred to in Article 3, § 1, 8°, a), ii), of the Law launched by the issuer of those securities, the following specific provisions shall apply:

1° Title II of the Law shall not apply, except where it concerns Articles 12, §§ 1 to 3, and § 5, and 19, that shall apply *mutatis mutandis*;

2° Section I of this Chapter shall not apply, except where it concerns Article 5, paragraph 1, Article 6, paragraph 1, Articles 9 to 11, 15, 17, 25 and 32 to 34, that shall apply *mutatis mutandis*;

For the purposes of paragraph 1, 1°, the period of ten working days referred to in Article 19, § 2, paragraph 1, and § 3, of the Law shall be reduced to seven working days.

For the purposes of the provisions referred to in paragraph 1 within the framework of this subsection, the term “prospectus” shall refer to the communication as mentioned in this subsection.

#### B. Publication of a communication

##### **Article 47/2**

§ 1. All takeover bids covered by this subsection shall require the prior publication of a communication.

However, in the case of a takeover bid by means of an exchange bid as referred to in Article 1, § 4, f), of Regulation 2017/1129, no prior publication of a communication is required, on condition that the requirements mentioned in this Article are met.

§ 2. The communication shall be published electronically on the offeror's website and, where applicable, on the websites of the financial intermediaries designated by the offeror to collect acceptances and payment of the price.

§ 3. The communication shall be published only after its approval by the FSMA.

This approval implies no judgment as to the advisability and intrinsic merits of the bid or the situation of the person who makes the bid.

#### **Article 47/3**

The communication shall comprise, inter alia:

1° the identity of the issuer;

2° the additional rules on the bid, and more specifically:

- the characteristics of the securities concerned;
- the price and/or exchange ratio proposed;
- the price justification;
- the duration of the acceptance period of the bid;
- the number of securities that the offeror undertakes to acquire, or the maximum amount of the bid;
- the conditions to which the bid is subject, and the way in which the offeror must indicate whether those conditions are fulfilled or whether it renounces them;
- the number of securities in circulation at the time of the bid and the number of securities already held by the offeror;
- where the bid does not relate to all securities of the same class issued by the issuer in question, the arrangements for selecting the securities in question;
- the resolution procedures.

#### C. Acceptance period of the bid

#### **Article 47/4**

The acceptance period of the bid shall neither be less than two working days, nor more than ten weeks.

The acceptance period of the bid shall start at the earliest on the working day on which the communication is published.]

***Subsection II inserted by Article 13 of the Royal Decree of 23 September 2018 – Belgian Official Gazette of 5 October 2018***

#### Section III. - Repurchase bid for voting securities

#### **Article 48**

The provisions of Section I shall apply to any repurchase bid for voting securities.

By way of derogation from paragraph 1, Articles 3, 1°, 11, 26 to 29, and 30, paragraph 2, shall not apply.



### CHAPTER III. - Mandatory bid

#### Article 49

This Chapter shall apply where the offeree company has its registered office in Belgium, provided that at least a portion of its voting securities are admitted to trading on a regulated market or on Alternext or the Free Market (*Marché libre/Vrije Markt*) for financial instruments organized by Euronext Brussels.

#### Section I. - Triggering the obligation to launch a bid by crossing a threshold

#### Article 50

§ 1. Where a person crosses the threshold of 30% of voting securities in an offeree company following an acquisition of voting securities in that offeree company, it is obliged to launch a takeover bid for all voting securities or securities conferring access to voting rights issued by the offeree company concerned.

§ 2. For the purpose of determining whether a person has crossed the 30% threshold referred to in § 1, the following securities shall also be taken into account:

1° the securities held by persons connected with that person within the meaning of [Article 1:20, 2°, of the Code on Companies and Associations];

***Amended by Article 12, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

2° the securities held by persons acting as intermediaries, within the meaning of [Article 1:16, § 2, of the Code on Companies and Associations], for that person and for the persons referred to in 1°.

***Amended by Article 12, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

§ 3. For the purpose of determining whether a person within the meaning of § 1 has made an acquisition, account shall also be taken of the acquisitions made by:

1° persons connected with that person within the meaning of [Article 1:20, 2°, of the Code on Companies and Associations];

***Amended by Article 12, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

2° persons acting as intermediaries, within the meaning of [Article 1:16, § 2, of the Code, on Companies and Associations]for that person and for the persons referred to in 1°.

***Amended by Article 12, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

§ 4. Where persons acting in concert cross the threshold of 30% of voting securities in an offeree company, following an acquisition by any one of them of voting securities in that offeree company, they shall be jointly and severally obliged to launch a takeover bid for all voting securities or securities conferring access to voting rights issued by the offeree company concerned.

However, where only one of the persons acting in concert crosses the 30% threshold in accordance with §§ 1 to 3, the obligation to launch the bid shall apply solely to that person.

§ 5. For the purpose of determining whether persons acting in concert have crossed the 30% threshold referred to in § 4, paragraph 1, the following securities shall also be taken into account:

1° the securities held by persons connected with these persons within the meaning of [Article 1:20, 2°, of the Code on Companies and Associations];

***Amended by Article 12, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

2° the securities held by persons acting as intermediaries, within the meaning of [Article 1:16, § 2, of the Code on Companies and Associations], for that person and for the persons referred to in 1°.

***Amended by Article 12, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

§ 6. For the purpose of determining whether an acquisition by a person within the meaning of § 4, paragraph 1, has taken place, account shall also be taken of acquisitions made by:

1° persons connected with that person within the meaning of [Article 1:20, 2°, of the Code on Companies and Associations];

***Amended by Article 12, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

2° persons acting as intermediaries, within the meaning of Article 1:16, § 2, of the Code on Companies and Associations], for that person and for the persons referred to in 1°.

***Amended by Article 12, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

§ 7. In addition, the following specific rules shall apply to persons acting in concert:

1° Persons who enter into an agreement to act in concert and together hold more than 30% of the voting securities of the offeree company, without any of them previously having crossed that threshold, shall be jointly and severally obliged to launch a bid for the first acquisition of securities as referred to above by any one of these persons, from a party not concerned by the action in concert that takes place within three years of the conclusion of the agreement. However, where only one of the parties to the action in concert exceeds the 30% threshold in accordance with §§ 1 to 3, the obligation to launch a bid shall apply solely to that party;

2° Where several persons acting in concert hold more than 30% of the voting securities of an offeree company and one of these persons transfers its securities, either directly or through the market, to a third party who joins the action in concert, the parties to the new action in concert shall be jointly and severally obliged to launch a mandatory bid, unless the parties to the initial action in concert continue uninterruptedly to hold more than 30% of the voting securities in the offeree company. If, however, only one of the parties to the new action in concert exceeds the 30% threshold in accordance with §§ 1 to 3, the obligation to launch a bid shall apply solely to that party.

3° §§ 5 and 6 shall apply to this paragraph.

§ 8. Where a person other than a connected person, alone or in concert crosses the threshold referred to in § 1 or § 4 following the cancellation of voting securities in the offeree company, the obligation to launch a bid is triggered upon the first acquisition of securities that takes place during the three years following the threshold being crossed.

The calculation for the crossing of thresholds as referred to in paragraph 1 shall be made in accordance with § 2 or § 5. The determination of the first acquisition of securities as referred to in paragraph 1 shall be carried out in accordance with § 3 or § 6.

§ 9. For the purpose of this Article, “initial action in concert” shall be understood to mean an action in concert notified and communicated in accordance with Article 74 of the Law, an action in concert that triggered the obligation to launch a bid as referred to in this Article, or an action in concert in which all parties have participated for over three years.

## Article 51

§ 1. Where a person, following an acquisition of securities, directly or indirectly acquires control of a holding company, it is obliged to launch a takeover bid for all voting securities, or securities conferring access to voting rights issued by the offeree company concerned.

§ 2. For the purpose of determining whether a person acquires control in accordance with § 1, the following securities shall also be taken into account:

1° the securities held by persons connected with that person within the meaning of [Article 1:20, 2°, of the Code on Companies and Associations];

***Amended by Article 13, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

2° the securities held by persons acting as intermediaries, within the meaning of [Article 1:16, § 2, of the Code on Companies and Associations], for that person and for the persons referred to in 1°.

***Amended by Article 13, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

§ 3. For the purpose of determining whether a person within the meaning of § 1 has made an acquisition, account shall also be taken of the acquisitions made by:

1° persons connected with that person within the meaning of [Article 1:20, 2°, of the Code on Companies and Associations];

***Amended by Article 13, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

2° persons acting as intermediaries, within the meaning of [Article 1:16, § 2, of the Code on Companies and Associations], for that person and for the persons referred to in 1°.

***Amended by Article 13, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

§ 4. Where persons acting in concert cross the threshold of 50% of voting securities in a holding company, following an acquisition by any one of them of voting securities in that holding company or, if they acquire in concert more than 50% of the voting securities of a person who directly or indirectly exercises legal control of that holding company, they shall be jointly and severally obliged to launch a takeover bid for all voting securities or securities conferring access to voting rights issued by the offeree company concerned.

However, where only one of the persons acting in concert acquires control, the obligation to launch a bid, in accordance with §§ 1 to 3, shall apply solely to that person.

§ 5. For the purpose of determining whether persons acting in concert have crossed the 50% threshold referred to in § 4, first paragraph, the following shall be added to their securities:

1° the securities held by persons connected with these persons within the meaning of [Article 1:20, 2°, of the Code on Companies and Associations];

***Amended by Article 13, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

2° the securities held by persons acting as intermediaries, within the meaning of [Article 1:16, § 2, of the Code on Companies and Associations], for those persons and for the persons referred to in 1°.

***Amended by Article 13, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

§ 6. For the purpose of determining whether an acquisition by a person within the meaning of § 4, first paragraph, has taken place, account shall also be taken of acquisitions made by:

1° persons connected with that person within the meaning of [Article 1:20, 2°, of the Code on Companies and Associations];

***Amended by Article 13, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

2° persons acting as intermediaries, within the meaning of [Article 1:16, § 2, of the Code on Companies and Associations], for that person and for the persons referred to in 1°.

***Amended by Article 13, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

§ 7. In addition, the following specific rules shall apply to persons acting in concert:

1° Persons who enter into an agreement to act in concert and together hold more than 50% of the voting securities of the holding company or of a person who directly or indirectly exercises legal control of that holding company, without any of them previously having crossed that threshold, shall be jointly and severally obliged to launch a bid for the securities of the offeree company concerned, on the occasion of the first acquisition of securities as referred to above by any one of these persons from a party not involved in the action in concert that takes place within three years of the conclusion of the agreement. However, where only one of the parties to the action in concert acquires control, in accordance with §§ 1 to 3, the obligation to launch a bid shall apply solely to that party;

2° Where several persons acting in concert hold more than 50% of the voting securities of a holding company and one of these persons transfers its securities, either directly or through the market, to a third party who joins the action in concert, the parties to the new action in concert shall be jointly and severally obliged to launch a mandatory bid for the securities of the offeree company concerned, unless the parties to the initial action in concert continue uninterruptedly to hold more than 50% of the voting securities as referred to above. If, however, only one of the parties to the new action in concert acquires control, in accordance with §§ 1 to 3, the obligation to launch a bid shall apply solely to that party.

3° §§ 5 and 6 apply to this paragraph.

§ 8. For the purpose of this Article, 'initial action in concert' shall be understood to mean an action in concert notified and communicated in accordance with Article 74 of the Law, an action in concert that triggered the obligation to launch a bid, as referred to in this Article, or an action in concert in which all parties have participated for over three years.

## Section II. - Derogations from the obligation to launch a bid

### Article 52

§ 1. The obligation to launch a bid laid down in Section I, shall not apply in the event of an acquisition:

1° made within the context of a regular, voluntary takeover bid;

2° made between connected persons within the meaning of [Article 1:20, 2° of the Code on Companies and Associations];

***Amended by Article 14, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

3° where it is demonstrated that a third party controls the company or has a shareholding higher than that of the person who, alone or in concert, holds 30% of the voting rights in the company;

4° made within the context of subscribing to a capital increase of a company facing difficulties within the meaning of [Article 7:228 of the Code on Companies and Associations], decided by the general meeting;

***Amended by Article 14, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

5° made within the context of subscribing to a capital increase of a company, with preferential rights, decided by the general meeting;

6° made within the context of a merger, insofar as the person who, alone or in concert, acquires more than 30% of the voting rights of the acquiring or new company, did not cast the majority of the votes when the merger was voted on at the general meeting of shareholders of the company to be merged, if the latter meets the requirements of Article 49;

7° giving rise to a temporary crossing of the threshold by a maximum of 2%, provided that the excess portion of the holding is disposed of within a period of twelve months and that the persons concerned do not exercise the voting rights attached to the excess portion of the holding;

8° made following an acquisition as a result of a death, a marriage contract or a statutory matrimonial property regime, or following a division resulting from a succession or from the dissolution of a marriage;

9° made following a donation *inter vivos*;

10° made for no consideration by a public benefit foundation governed by the Law of 27 June 1921, as amended by the Law of 2 May 2002, the not-for-profit mission of which is social, cultural, scientific or artistic in nature;

11° made within the context of underwriting by a financial intermediary or of the enforcement of a security interest, provided that the excess portion of the holding is disposed of within a period of twelve months and that the persons concerned do not exercise the voting rights attached to the excess portion of the holding;

12° made by a legal person with a view to issuing, with the company's cooperation, certificates relating to voting securities and accompanied by the obligation on the part of the legal person to reserve any returns or income therefrom to the holder of the said certificates, provided that these certificates can be exchanged at all times and without restriction for the voting securities concerned, for a period of three years following the acquisition.

[13° made within the context of the application of the resolution tools, powers and mechanisms provided for in Title IV of 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.]

***§ 1, 13°, inserted by Article 21 of the Royal Decree of 11 September 2016 – Belgian Official Gazette of 27 September 2016***

§ 2. The person who has made the acquisition referred to in § 1 shall provide evidence to the FSMA that he/she is not under the obligation to launch a bid as provided for by Articles 50 and 51.

§ 3. If, at the expiry of the period referred to in § 1, 7° or 9°, the threshold is still crossed, the obligation to launch a bid as referred to in Section I shall apply again. For the purposes of Section III, the situation which had originally led to the obligation to launch a bid shall be taken into account. In addition, the legal interest calculated as from the acquisition that initially led to the obligation to launch a bid shall be added to the price until at least the expiry of the period referred to in § 1, 7° or 9°.

The FSMA may, however, authorize the extension of the period during which the securities of the offeree company can be disposed of, without the obligation to launch a takeover bid.

§ 4. In the case referred to in § 1, 3°, the obligation to launch a bid shall apply again if, within three years of the acquisition that initially led to the obligation to launch a bid, the person has, following an additional acquisition, the highest holding in the offeree company, or acquires, following such an acquisition, *de jure* control over the offeree company.

In the case referred to in § 1, 12°, the obligation to launch a bid shall apply again if, within three years of the acquisition that initially led to the obligation to launch a bid, the certificates which were issued can no longer be exchanged at all times and without restriction for the voting securities concerned.

§ 5. Where the offeree company is a party to an agreement to act in concert, it shall not be subject to the obligation to launch a bid that falls upon persons acting in concert.

### Section III. - Price of the mandatory bid

#### **Article 53**

The price of the mandatory bid shall be at least equal to the higher of the two following amounts:

1° the highest price paid for the securities concerned during the twelve months preceding the announcement of the bid, by the offeror or a person acting in concert with the offeror;

2° the weighted average of the trading prices of the securities concerned, on the most liquid market, over thirty calendar days before the obligation to launch a bid was triggered.

In the event that Article 51 applies, the highest price referred to in paragraph 1, 1°, shall be determined by considering the implicit price of the shareholding in the offeree company included in the price paid for the acquisition of the voting securities of the holding company or of the person who controls it.

#### **Article 54**

§ 1. The price of the bid can consist of cash, securities or a combination of the two.

§ 2. If the price does not consist of liquid securities admitted to trading on a regulated market, or if, in the twelve months preceding the announcement of the bid or during the bid period, the offeror or a person acting in concert with the offeror has acquired or has committed to acquiring securities against cash payment, the offeror shall propose as an alternative the price in cash that applied at the time of the announcement of the bid.

#### **Article 55**

The FSMA can authorize or demand a change in the price if:

1° certain transferors have made specific commitments to the acquirers with regard to the company's assets or liabilities, provided that the consideration given is proportionate to the said commitments;

2° there is evidence that certain transferors of the securities concerned have obtained, in addition to the said consideration, other specific advantages, whether directly or indirectly;

3° there are serious indications that the trading prices of the securities concerned on the regulated market or MTF designated by the King are not appropriate, or that information or rumours giving or likely to give inaccurate or misleading signals with regard to these securities have been disseminated.

The FSMA can impose certain conditions together with its decision on a change in price. The FSMA's decision, and, where appropriate, any conditions imposed, will be published.

#### Section IV. - Implementation of the obligation to launch a bid

##### **Article 56**

The person who has made the acquisition which triggered the obligation to launch a bid as referred to in Section I shall advise the FSMA thereof within two working days.

Except in the case of a derogation from the obligation to launch a bid, the persons on which the obligation to launch a bid falls shall launch a takeover bid for all of the voting securities or securities conferring access to voting rights issued by the offeree company.

The bid shall be announced within three working days of the obligation to launch a bid being triggered.

The acceptance period of the bid shall start at the latest 40 working days following the event that triggered the obligation to launch a bid. In the event that the bid must be the subject of a notification pursuant to regulations under competition law as regards control of concentrations, the FSMA may allow the acceptance period of the bid to start after the European Commission or competent national competition authorities have reached a decision.

##### **Article 57**

The provisions of Chapter II, Section I, with the exception of Articles 16 to 18, 20 to 23, and 33, shall apply.

Articles 42 and 44 shall apply independently of the fact that the offeror has acquired, through acceptance of the bid, securities representing at least 90% of the capital carrying voting rights comprised in the bid.

[Section V – Specific provisions about the companies of which at least some of the voting securities or the securities conferring access to voting rights are admitted to trading on the Alternext and Free Market (*Marché libre/Vrije Markt*) MTFs

##### **Article 57/1**

This Section shall apply to the companies of which

1° at least some of the voting securities or the securities conferring access to voting rights are admitted to trading on the Alternext and Free Market (*Marché libre/Vrije Markt*) MTFs; and

2° none of the voting securities or securities conferring access to voting rights are admitted to trading on a regulated market.

##### **Article 57/2**

§ 1. For the purposes of Article 50, the 30% threshold shall be raised to 50% in the case of a company as referred to in Article 57/1.

§ 2. Article 52, § 1, 3° and 6°, shall not apply in the case of a company as referred to in Article 57/1.

However, the obligation to launch a bid laid down in Section I, shall not apply in the event of an acquisition:

1° where it is demonstrated that a third party controls the company;

2° made within the context of a merger, insofar as the person who, alone or in concert, acquires more than 50% of the voting rights of the acquiring or new company has not exercised the majority of the votes when deciding on the merger at the general meeting of shareholders of the company to be merged, if the latter meets the requirements of Article 49.

Article 52, §§ 2, 4 and 5, shall apply in the cases referred to in the second paragraph.]

***Section V inserted by Article 14 of the Royal Decree of 23 September 2018 – Belgian Official Gazette of 5 October 2018***

**CHAPTER IV. - Entry into force and transitional and abrogating provisions**

**Article 58**

Parts I and II and Articles 58, 60 and 62 to 77 of the Law, as well as this Decree, shall enter into force on 1 September 2007.

**Article 59**

With the exception of Article 18*bis*, Chapter II of the Law of 2 March 1989 on the disclosure of large shareholdings in companies listed on the stock exchange and regulating takeover bids, as amended by the Law of 16 June 1998, the Law of 10 March 1999, the Royal Decree of 13 July 2001, the Law of 2 August 2002 and the Law of 20 July 2004, as well as the Royal Decree of 8 November 1989 on takeover bids and changes in the control of companies, as amended by the Royal Decrees of 11 June 1997, 21 April 1999 and 7 July 1999, shall be repealed as from 1 September 2007.

Chapter II of the Law of 2 March 1989 and the Royal Decree of 8 November 1989 shall, however, continue to apply to the bids for which the FSMA has, in accordance with Article 6 of the same Royal Decree of 8 November 1989, published the notification and any counterbids and higher bids resulting from those bids before the date referred to in Article 58.

**Article 60**

Our Minister responsible for Finance is charged with the implementation of this Decree.



## **Annex I to the Royal Decree on takeover bids**

Prospectus schedule for takeover bids on voting securities or securities conferring access to voting rights

Without prejudice to the obligation referred to in Article 13, § 1 of the Law, the prospectus shall contain at least the following statements and information:

1. Approval of the prospectus by the FSMA and by the persons responsible for the prospectus:

1.1. The prospectus shall contain a statement to the effect that it has been approved by the FSMA but that such approval implies no judgement as to the advisability and intrinsic merits of the bid or the situation of the offeror.

1.2. The name and position or, in the case of legal persons, the name and registered office of the persons responsible for the prospectus; a declaration from these persons certifying that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.

2. The offeror:

2.1. A detailed description of his/her identity or, in the case of a company, its legal form, name, head office and its registered office if this differs from its head office; a detailed description of the structure and composition of its share ownership, of the group of companies to which it belongs, of its activities and the distribution thereof, as well as of its recent developments and the identity of its managers.

2.2.1. Its latest non-consolidated and/or consolidated annual financial statements, as well as a more recent statement if significant changes have taken place since the balance sheet date or if more than nine months have elapsed since then.

If the non-consolidated or consolidated annual financial statements do not comply with the provisions of Community law and do not give a true and fair view of the assets, of the financial situation and of the results of the offeree company, more detailed and/or additional information shall be provided.

2.2.2. Statutory auditors or persons in charge of auditing financial statements.

The name and address of the offeror's statutory auditors or the persons in charge of auditing its financial statements for the period covered by the historical financial information (indicating their membership in a professional organization).

If any statutory auditors or persons in charge of auditing financial statements have resigned, have been dismissed, or have not been reappointed during the period covered by the historical financial information, additional information must be provided on the subject if it is important.

2.3. The number of securities of the offeree company held by the offeror on the date of the prospectus as well as the number of securities of the offeree company that it has acquired during the twelve months preceding that date, including the information on the market on which such acquisitions occurred or a statement to the effect that they have occurred outside the market, the date of those acquisitions, and the price(s) paid.

The information referred to in the previous paragraph regarding the securities of the offeree company held and acquired by persons connected with the offeror, by persons acting in concert with the offeror and by persons acting as intermediaries within the meaning of [Article 1:16, § 2 of the Code on Companies and Associations].

***Amended by Article 15, 1°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

2.4. If the bid emanates from several offerors, if the bid is made wholly or partly on behalf of a third party, if the offeror has undertaken to transfer to a third party all or a portion of the securities which it will hold in the offeree company after the bid, or if the offeror is acting in concert with other persons:

- the identity of these persons and, if these are companies, their legal form, their name, their head office and their registered office if this differs from their head office, as well as their relationship with the offeror and, where possible with the offeree company;
- the share and methods of intervention of each of them in the bid.

3. The offeree company:

3.1. A detailed description of its identity, of the structure and composition of its shareholdership, of the group of companies to which it belongs, of its activities and the distribution thereof, as well as its recent developments and the identity of its senior managers.

3.2. The identity of the persons acting in concert with the offeree company and, where these are companies, their legal form, their name, their head office and their registered office if this differs from their head office, as well as their relationship with the offeree company and, where possible, with the offeror.

3.3.1. Its latest non-consolidated and/or consolidated annual financial statements, as well as a more recent statement if significant changes have taken place since the balance sheet date or if more than nine months have elapsed since then.

If the non-consolidated or consolidated annual financial statements do not comply with the provisions of Community law and do not give a true and fair view of the assets, the financial situation and the results of the offeree company, more detailed and/or additional information must be provided.

3.3.2. Statutory auditors or persons in charge of auditing financial statements.

The name and address of the offeree company's statutory auditors or of the persons in charge of auditing its financial statements for the period covered by the historical financial information (indicating their membership in a professional organization).

If any statutory auditors or persons in charge of auditing financial statements have resigned, have been dismissed, or have not been reappointed during the period covered by the historical financial information, additional information must be provided on the subject if it is important.

3.4. A detailed statement of the capital and how it is represented, of the voting securities not representing capital in circulation, of the convertible bonds and subscription rights in circulation, with information on the period and the terms for conversion or exercise.

3.5. The decisions authorizing the issue of shares, convertible bonds or subscription rights within the context of the authorized capital, and information on the beneficiaries of those conversions or subscription rights.

3.6. The number of securities of the offeree company held by itself or by its subsidiaries.

3.7. The evolution of the trading prices of the securities of the offeree company on the regulated market or on an MTF during at least the last twelve months.

4. The bid:

4.1. The characteristics of the bid

4.1.1. The terms of the bid

4.1.2. The securities or, where appropriate, the class or classes of securities that are the subject of the bid;

4.1.3. The consideration offered, where applicable per class of securities, as well as the valuation methods applied and the detailed calculations performed for determining this consideration.

4.1.4. Information on whether the bid is conditional or unconditional; if the bid is conditional, information on the conditions.

4.1.5. If several classes of securities are acquired at different prices, information on those prices and a justification of the differences in price.

[4.1.6. In the event of an exchange bid, the information that has to be provided for (i) in the exemption document as referred to in Commission Delegated Regulation (EU) 2021/528 of 16 December 2020 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the minimum information content of the document to be published for a prospectus exemption in connection with a takeover by means of an exchange offer, a merger or a division or (ii) if there is no exemption document, in the prospectus as referred to in Commission Delegated Regulation 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004 must be given about the securities offered as consideration and about the issuer of those securities.]

***Replaced by Article 15, 2°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

4.1.7. Number and type of securities that the offeror intends to acquire.

Any information on the possibility of reopening the bid for at least fifteen working days, in accordance with Articles 42 and 43 of the Decree, in order to proceed to a squeeze-out bid within the meaning of pursuant to [Article 7:82 of the Code on Companies and Associations].

***Amended by Article 15, 3°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

4.1.8. Statement of the fact that, if the offeror and persons acting in concert with the offeror possess – following a takeover bid or its reopening – 95% of the voting securities, all securities holders benefit from the right of repurchase by the offeror of their voting securities or securities conferring access to voting rights at the price of the bid, provided the offeror acquires, by accepting the bid, securities representing at least 90% of the voting securities subject to the bid. Where applicable, the holders of the securities concerned shall make their request known to the offeror, or to the person designated by the offeror, within a period of 90 working days of the end of the acceptance period of the bid, by registered letter with acknowledgement of receipt.

4.2. Objectives of the offeror

4.2.1. The objectives sought by the offeror by launching the bid and the intentions of the offeror vis-à-vis the offeree company if the bid is successful, in particular the place that the offeror assigns to the offeree company within its group, any intention to modify the articles of association of the offeree company, any initiative envisaged with respect to the admission of the securities of the offeree company to trading on a regulated market or on an MTF, and the shareholder remuneration policy.

4.2.2. The intentions of the offeror with regard to the pursuit of the activities and/or the potential restructuring of the offeree company and the companies with which it is connected and – insofar as its activity is affected by the bid – of the offeror and the companies with which it is connected, as well as with regard to its effects on employment of its personnel, managers and administrators, including any important change in employment conditions, and in particular any of the offeror's strategic plans

for the aforementioned companies, including the likely repercussions for employment and the locations of the places of business of these companies.

4.2.3. The advantages of the transaction for the companies concerned and their shareholders; the synergies envisaged as well as the amount and the approximate date of the economic gain expected from the transaction.

#### 4.3. Lawfulness of the bid

4.3.1. The body of the offeror which has decided to launch the bid and the date of that decision. Evidence that this is the body authorized by law and by the articles of association for this purpose.

4.3.2. Proof that the requirements of Article 3 of the Decree have been complied with.

4.3.3. Information on any authorization to which the bid is subject.

#### 4.4. Acceptance of the bid; payment

4.4.1. Acceptance period of the bid as well as the possible extension or reopening of that period.

4.4.2. Location for the deposit of acceptances.

4.4.3. Information on the option for the offeror to acquire the securities proposed, even if the number of securities proposed is less than the minimum desired.

Date of publication of the decision of the offeror to acquire the securities proposed even if their number is less than the minimum desired.

4.4.4. Statement to the effect that securities holders who accept the bid will be released from their obligation in the event of a valid and more favourable counterbid; affirmation that, in the event of a higher bid made by the offeror, all securities holders who have already accepted the bid will benefit from that increase.

4.4.5. Dates and methods of payment.

4.4.6. Whether any taxes or costs are to be borne by the securities holders or by the offeror.

#### 4.5. Other aspects of the bid

4.5.1. Any opinions expressed by financial institutions or independent experts regarding the conditions of the bid; identification of those natural and/or legal persons.

4.5.2. Information concerning the financing of the bid and its effect on the assets, the results, and the activities of the companies concerned. In the case of a bid settled in cash, an estimation of the impact of the acquisition on the assets (items on the balance sheet) and the profit (profit and loss statement) of the offeror.

4.5.3. National law governing any agreements entered into between the offeror and the holders of the offeree company's securities as a result of the bid, and the competent courts.

4.5.4. Any compensation offered for the rights which might be removed as a result of the breakthrough rule laid down in Article 46, § 1, paragraph 1, 5° of the Law or Article 11, paragraph 4, of Directive 2004/25/EC, as well as the payment method of this compensation and the method employed for determining it.

4.6. The pertinent clauses of the agreements to which the offeror, persons connected with the offeror, persons acting in concert with the offeror and persons acting as intermediaries within the meaning of [Article 1:16, § 2, of the Code on Companies and Associations] are party and which could have a substantial effect on the valuation of the bid, its progress, or its outcome.

***Amended by Article 15, 4°, of the Royal Decree of 5 December 2022 – Belgian Official Gazette, 12 December 2022***

5. If the prospectus contains several parts, information on where the other parts are available.
6. Inclusion of the memorandum of response in annex, or information on where this document is available.
7. Inclusion of the opinion of the works council, or failing a unanimous decision, the position of each of the members, in annex, or information on where this document is available.
8. In the case referred to in Article 23, inclusion of the expert's report in annex, or information on where this document is available.

## **Annex II to the Royal Decree on takeover bids**

### Prospectus schedule for takeover bids relating to real-estate certificates

Without prejudice to the obligation referred to in Article 13, § 1, of the Law, the prospectus shall contain at least the following statements and information:

1. Approval of the prospectus by the FSMA, and persons responsible for the prospectus:

1.1. The prospectus shall contain a statement to the effect that it has been approved by the FSMA but that such approval implies no judgement as to the advisability and intrinsic merits of the operation or the situation of the offeror.

1.2. The name and position or, in the case of legal persons, the name and registered office of the persons responsible for the prospectus; a declaration from these persons certifying that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.

2. The offeror:

2.1. A detailed description of his/her identity or, in the case of a company, its legal form, its name, its head office and its registered office if this differs from its head office; a detailed description of the structure and composition of its share ownership, of the group of companies to which it belongs, of its activities and the distribution thereof, as well as its recent developments and the identity of its senior managers.

2.2.1. Its latest non-consolidated and/or consolidated annual financial statements, as well as a more recent statement if significant changes have taken place since the balance sheet date or if more than nine months have elapsed since then.

If the non-consolidated or consolidated annual financial statements do not comply with the provisions of European Community law and do not give a true and fair view of the assets, the financial position and the results of the offeree company, more detailed and/or additional information must be provided.

2.2.2. Statutory auditors or persons in charge of auditing financial statements.

The name and address of the offeror's statutory auditors or the persons in charge of auditing its financial statements for the period covered by the historical financial information (indicating their membership in a professional organization).

If any statutory auditors or persons in charge of auditing financial statements have resigned, have been dismissed, or have not been reappointed during the period covered by the historical financial information, additional information must be provided on the subject if it is important.

2.3. The number of real-estate certificates of the offeree company held by the offeror on the date of the prospectus as well as the number of real-estate certificates of the offeree company that it has acquired during the twelve months preceding that date, including the information on the market on which such acquisitions occurred or a statement to the effect that they have occurred outside the market, the date of those acquisitions, and the price(s) paid.

The information referred to in the preceding paragraph regarding the real-estate certificates of the offeree company held and acquired by persons connected with the offeror, by persons acting in concert with the offeror and by persons acting as intermediaries within the meaning of Article 7, § 2, of the Companies Code.

2.4. If the bid emanates from several offerors, if the bid is made wholly or partly on behalf of a third party, if the offeror has undertaken to transfer to a third party all or a portion of the real-estate certificates that it would hold in the offeree company after the bid, or if the offeror is acting in concert with other persons:

- the identity of these persons and, if these are companies, their legal form, their name, their head office and their registered office if this differs from their head office, as well as their relationship with the offeror and, where possible, with the offeree company;

- the share and the methods of intervention of each of them in the bid.

3. The offeree company:

3.1. A detailed description of its identity, of the structure and composition of its shareholdership, of the group of companies to which it belongs, of its activities and the distribution thereof, as well as its recent developments and the identity of its managers.

3.2. The identity of the persons acting in concert with the offeree company and, if these are companies, their legal form, their name, their head office and their registered office if this differs from their head office, as well as their relationship with the offeree company and, where possible, with the offeror.

3.3.1. The latest financial statements relating to the use of the asset(s) attached to the real-estate certificates as well as a more recent statement if significant changes have occurred since the balance sheet date or if more than nine months have elapsed since then.

3.3.2. Statutory auditors or persons in charge of auditing financial statements.

The name and address of the statutory auditors or the persons in charge of auditing the financial statements for the period covered by the historical financial information (indicating their membership in a professional organization).

If any statutory auditors or persons in charge of auditing financial statements have resigned, have been dismissed, or have not been reappointed during the period covered by the historical financial information, additional information must be provided on the subject if it is important.

3.4. A statement of the real-estate certificates issued.

3.6. The number of real-estate certificates of the offeree company held by itself or by its subsidiaries.

3.7. The evolution of the price of the real-estate certificates of the offeree company on the regulated market or on the MTF during at least the last twelve months.

4. The bid:

4.1. The characteristics of the bid

4.1.1. The terms of the bid

4.1.2. The real-estate certificates or, where appropriate, the class or classes of real-estate certificates for which the bid is made.

4.1.3. Information on whether the bid is conditional or unconditional; if the bid is conditional, information on the conditions.

4.1.4. In the case of a purchase bid, price information and a justification of the same based on detailed figures. If several classes of real-estate certificates are acquired at various prices, price information and a justification of the differences in price.

4.1.5. In the case of an exchange bid, the information provided for pursuant to Articles 26 and 46 of the Law of 16 June 2006 and its implementing decrees must be given for the securities offered as consideration.

4.1.6. Number and type of real-estate certificates that the offeror intends to acquire.

#### 4.2. Objectives of the offeror

The objectives sought by the offeror by launching the bid and the intentions of the offeror vis-à-vis the real-estate certificates if the bid is successful, in particular any initiative envisaged with respect to (the withdrawal of) the admission to trading on a regulated market or on an MTF or with regard to change or removal of the structure under which the real-estate certificates have been issued.

#### 4.3. Regularity of the bid

4.3.1. The body of the offeror which has decided to launch the bid and the date of that decision.

Evidence that this is the body authorized by law and by the articles of association for this purpose.

4.3.2. Proof that the requirements of Article 3 of the Decree have been complied with.

#### 4.4. Acceptance of the bid; payment

4.4.1. Acceptance period of the bid as well as the possible extension or reopening of that period.

4.4.2. Locations for the deposit of acceptances (and real-estate certificates).

4.4.3. Information on the option for the offeror to acquire the real-estate certificates proposed, even if the number of certificates proposed is less than the minimum desired.

Date of publication of the decision of the offeror to acquire the real-estate certificates proposed, even if their number is less than the minimum desired.

4.4.4. Statement to the effect that holders of real-estate certificates who accept the bid will be released from their obligation in the event of a valid and more favourable counterbid; indication that, in the event of a higher bid made by the offeror, all holders of real-estate certificates who will have already accepted the bid will benefit from that increase.

4.4.5. Dates and methods of payment.

4.4.6. Whether any taxes or costs are to be borne by the holders of real-estate certificates or by the offeror.

#### 4.5. Other aspects of the bid

4.5.1. Any opinions expressed by financial institutions or independent experts regarding the conditions of the bid; identification of those natural or legal persons.

5. Inclusion of the memorandum of response in annex or information on where this document is available.