

1 APRIL 2007

## Law on Takeover Bids

(Belgian Official Gazette, 26 April 2007)

*(Unofficial consolidated text)*

*Last update: Law of 17 July 2013 (Belgian Official Gazette, 6 August 2013)*

This unofficial consolidated text of the law is a purely formal consolidation. As a consequence, no attempt has been made to rectify references to legislation that has meanwhile been abrogated.

### PART I - INTRODUCTORY PROVISIONS

#### Article 1.

This Law regulates a matter referred to in Article 78 of the Constitution.

#### Article 2

This law is intended in particular to transpose Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and abrogating Council Directive 93/22/EEC, as well as Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organizational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

As regards the provisions of Part II, this Law can be cited under the title 'Law on takeover bids'.

### PART II - TAKEOVER BIDS

#### TITLE I - General provisions

##### CHAPTER I - Definitions and scope

#### Article 3

§ 1. The following definitions shall apply for the application of Part II of this Law and its implementing decrees:

1° 'takeover bid' or 'bid': a public offer made to the holders of securities of the offeree company, whether mandatory or voluntary, aimed at acquiring all or some of their securities;

2° 'offeror(s)': one or more natural or legal person(s) governed by public or private law who launch(es) a bid or on whose behalf the bid is launched in whole or in part, as well as the persons to whom the offeror has committed to reassign all or some securities issued which it will hold in the offeree company after the takeover bid;

3° 'offeree company': the company the securities of which are the subject of a bid, or will become the subject of a bid following an acquisition of securities;

4° 'Board': the Board of directors of a Belgian limited company (*société anonyme/naamloze vennootschap*) or the equivalent body in the other cases;

5° 'persons acting in concert':

a) natural or legal persons who cooperate with the offeror, the offeree company or other persons, on the basis of an agreement, either express or tacit, either oral or written, aimed at acquiring control of the offeree company, at frustrating the successful outcome of a bid, or at maintaining control over the offeree company;

b) ) the natural or legal persons who have concluded an agreement to adopt, by exercise in concert of their voting rights, a lasting common policy towards the company in question;

6° 'control': control within the meaning of Articles 5 and 7 of the Companies Code;

7° 'parties to the bid': the offeror, the members of the Board of the offeror and of the body to which this Board has delegated part of its powers, the offeree company, the holders of securities of the offeree company, and the members of the Board of the offeree company and of the body to which that Board has delegated part of its powers, as well as the persons acting in concert with such parties;

8° 'securities':

a) all classes of investment instruments which are negotiable on the capital markets, including in particular:

i) shares in companies and other investment instruments equivalent to shares in companies, partnerships or other entities, including investment instruments issued by undertakings for collective investment, whether under contractual or trust form, representing the rights of participants to the assets of these undertakings, as well as depositary receipts in respect of shares;

ii) bonds and other debt securities, including certificates representing such securities and real estate certificates;

iii) any other securities conferring the right to acquire or sell any such securities, or giving rise to a cash settlement determined by reference to securities or other assets;

b) other investment instruments as referred to in Article 4 of the Law of 16 June 2006;

9° 'securities conferring access to voting rights': securities conferring the right to acquire any voting security of the offeree company following a conversion or exercise of this right, provided that these securities are issued by the issuer of the securities carrying voting rights to be created;

10° 'real-estate certificates': debt securities incorporating rights to the income from, the yield of and the realization value of one or more of the immovable properties, ships or aircraft specified when issuing the certificates;

11° 'regulated market': any Belgian or foreign regulated market as defined in Article 2, 5° or 6°, of the Law of 2 August 2002;

12° 'Belgian regulated market': any Belgian regulated market as defined in Article 2, 5°, of the Law of 2 August 2002;

13° 'multilateral trading facility' or 'MTF': a multilateral system governed by Belgian law, operated by an investment firm or a market operator which brings together multiple third-party buying and selling interests in financial instruments - in the system and in accordance with non-discretionary rules - in such a way as to result in a contract;

14° 'principal market':

a) the Member State in which the voting securities of the offeree company are admitted to trading on the regulated market; or

b) where the offeree company's voting securities are admitted to trading on regulated markets in more than one Member State, the Member State in which those securities were first admitted to trading on the regulated market; or

c) where the offeree company's voting securities are or were first admitted to trading on regulated markets in more than one Member State simultaneously, one of the Member States concerned as designated by the offeree company;

15° 'Directive 83/349/EEC': the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54, third paragraph, g) of the Treaty on consolidated accounts;

16° 'Directive 93/22/EEC': Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field;

17° 'Directive 2001/34/EC': Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities;

18° 'Directive 2003/6/EC': Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse);

19° 'Directive 2003/71/EC': Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC;

20° 'Directive 2004/25/EC': Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

21° 'Directive 2004/39/EC': Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and abrogating Council Directive 93/22/EEC;

22° 'Directive 2004/109/EC': Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC;

23° 'the Companies Code': the Companies Code introduced by the Law of 7 May 1999;

24° 'the Law of 2 August 2002': the Law of 2 August 2002 on the supervision of the financial sector and on financial services;

25° 'the Law of 16 June 2006': the Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on regulated markets;

26° 'FSMA': the Financial Services and Markets Authority;

27° 'working day(s)': working day(s) in the banking sector, with the exception of Saturdays and Sundays;

28° 'Member State': a Member State of the European Economic Area;

29° 'bid period': the period commencing with the publication of the announcement of the offeror's intention to launch a bid - or with the publication, upon the FSMA's request, of the communication of a potential offeror's intention to launch a bid - and ending with the publication of the results of the bid, counterbid and any higher bid, or with the lapsing thereof;

30° 'period for acceptance': the period during which the holders of securities can accept the bid;

31° 'price': the consideration offered to holders of the securities which are the subject of the bid;

32° 'person(s)': one or more natural or legal person(s).

§ 2. For the application of § 1, 5°, natural or legal persons who are connected, within the meaning of Article 11 of the Companies Code, with other legal or natural persons, shall be deemed to be persons acting in concert with these other persons and among themselves.

#### Article 4

§ 1. Part II of this Law and its implementing decrees shall apply:

1° to all voluntary takeover bids for securities within the Belgian territory;

2° to all mandatory takeover bids for voting securities or for securities conferring access to voting rights issued by a company with its registered office in Belgium and with at least a portion of its voting securities admitted to trading on a regulated market or on a multilateral trading facility designated by the King;

3° to matters relating to the consideration offered and to the bidding procedure in the event of a mandatory takeover bid for voting securities issued by a company that has its registered office in another Member State but that is not admitted there to trading on a regulated market, provided that its principal market is Belgium;

4° to matters relating to the provision of information in the event of a mandatory takeover bid not referred to in 2° or 3°, where the bid is extended to Belgium;

5° to a squeeze-out bid within the meaning of Article 513, § 1, of the Companies Code.

§ 2. By way of derogation from § 1, 1°, in the case of a voluntary takeover bid – other than a bid launched by the offeree company itself – which relates to voting securities and is launched in order to acquire control of an offeree company at least a portion of whose voting securities is admitted to trading on a regulated market, the provisions below shall apply as follows:

1° with the exception of Articles 20 and 31 to 34, Part II of this Law and its implementing decrees shall not apply where both the registered office and the principal market of the offeree company are in another Member State;

2° apart from Articles 20 and 31 to 34, the provisions of Belgian law shall apply only to matters relating to the information to be provided to employees, and to matters specified in company law where the offeree company has its registered office in Belgium but is not admitted to trading on a Belgian regulated market, and where its principal market is another Member State;

3° where the offeree company has its registered office in another Member State but is not admitted there to trading on a regulated market and where its principal market is Belgium, Part II of this Law and its implementing decrees shall apply only to matters relating to the consideration offered and to the bidding procedure.

§ 3. By way of derogation from § 1, 2°, in cases where the registered office of an offeree company is in Belgium without the securities of that company being admitted to trading on a Belgian regulated market, and where that company's principal market is another Member State, only the following shall apply:

1° Articles 20 and 31 to 34;

2° the provisions of Belgian law concerning matters relating to the information to be provided to employees and matters relating to company law;

3° the provisions of Part II of this Law and its implementing decrees concerning matters relating to determining and calculating the threshold for a mandatory bid.

§ 4. Without prejudice to the application of § 1, 1°, and of the second paragraph, a takeover bid that falls within the scope of Directive 2004/25/EC shall be extended to Belgium if the voting securities of the offeree company are admitted to trading on a Belgian regulated market.

A mandatory bid shall be extended to Belgium if the offer is of a public nature in Belgium, as defined in Article 6.

#### Article 5

Where, following an acquisition by a person, by persons acting in concert with that person, or by persons acting for the account of those persons, a person directly or indirectly holds more than 30% of the voting securities of a company with its registered office in Belgium and with at least a portion of its voting securities admitted to trading on a regulated market or on a multilateral trading facility designated by the King, that person shall, under the conditions determined by the King, launch a takeover bid for all of the company's voting securities or securities conferring access to voting rights and notify the FSMA thereof.

For the application of the preceding paragraph, the King may, after consideration by the Council of Ministers and upon the recommendation of the FSMA, determine another percentage or an additional percentage of the voting securities, in order to take into account the developments on the financial markets, and, if need be, take transitional measures.

#### Article 6

§ 1. A takeover bid launched within the Belgian territory shall be deemed to be of a public nature:

1° where an announcement to persons, under any form and by any means, is disseminated on Belgian territory, provided that it includes sufficient information on the conditions of the bid for a holder of securities to be able to make a decision on the sale of its securities, and that it is made by the offeror, by a person acting in concert with the offeror, or by a person acting for the account of these persons;

2° as soon as advertisements of any nature with a view to announcing or recommending the takeover bid takes place on Belgian territory at the initiative of the offeror, a person acting in concert with the offeror, or a person acting for the account of these persons.

§ 2. For the application of § 1, any person who directly or indirectly receives a remuneration or an advantage on the occasion of the bid shall be deemed to be acting for the account of the offeror or of a person acting in concert with the offeror.

For the application of § 1, 2°, the following shall be considered as advertisements:

1° the dissemination of information in the written press or in periodic or other publications, on the radio, television or any other audiovisual media;

2° the dissemination of circulars or any other standardized documents relating to the operation, even if they are addressed personally to the addressee;

3° the dissemination of information by telephonic means or through an electronic information system;

4° the use of other techniques to make the operation known to the public.

§ 3. By way of derogation from § 1, the following categories of bid shall not be deemed to be of a public nature:

1° bids launched on the Belgian territory for securities held exclusively by qualified investors within the meaning of Article 10 of the Law of 16 June 2006;

2° bids that are addressed, under identical conditions, on the Belgian territory, to fewer than [150] natural or legal persons other than qualified investors within the meaning of Article 10 of the Law of 16 June 2006;

*2°, amended by Article 53, § 1, 1°, of the Law of 17 July 2013 - Belgian Official Gazette, 6 August 2013*

3° bids for securities with a denomination per unit of at least EUR [100,000].

*3°, amended by Article 53, § 1, 2°, of the Law of 17 July 2013 - Belgian Official Gazette, 6 August 2013*

This derogation shall not apply to mandatory bids as referred to in Article 4, § 1, 2°.

[§ 4. By way of derogation from § 1 and without prejudice to any obligation the offeror may have to open its takeover bid in Belgium, the following shall not be considered a takeover bid on the Belgian territory:

1° The communication by a qualified intermediary established in Belgium to clients who hold their securities for safe-keeping with this intermediary of the launch of a takeover bid outside the Belgian territory on these securities in order that, where applicable, they may contribute their securities to that bid;

2° The acceptance by the offeror of the securities as referred to in 1°, where these are contributed by Belgian residents.]

*§ 4, inserted by Article 53, § 2, of the Law of 17 July 2013 - Belgian Official Gazette, 6 August 2013*

## Article 7

Part II of this Law and its implementing decrees shall not apply to takeover bids for securities issued by:

1° companies, the object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of those companies. Action taken by such companies to ensure that the stock exchange value of their units does not

vary significantly from their net asset value shall be regarded as equivalent to such repurchase or redemption;

2° the Member States' central banks.

## CHAPTER II - The powers of the King

### Article 8

The King determines, upon the recommendation of the FSMA, the implementing measures aimed at regulating the operations referred to in Article 4, taking into account in particular the provisions of Directive 2004/25/EC.

He may in particular (possibly distinguishing according to the nature of the operation and of the securities concerned):

1° determine the obligations and prohibitions applicable to the parties to the bid, to the parties that, according to the competent authority, can reasonably be presumed to be involved in a potential takeover bid and, in the case of a bid for real-estate certificates, to the parties that were involved in the issue of said certificates, and promulgate provisions aimed at ensuring the smooth operation of the market;

2° regulate the conditions and progress of a voluntary bid, in particular the irrevocability of a bid, the lapsing of a bid, the revision and withdrawal of a bid, competing bids, the methods for accepting a bid, the publication of the results, the methods for the payment of the price, the reopening of a bid and the authorized conditions;

3° regulate the takeover bid launched by one or more holders of securities who, taking into account any securities held by persons affiliated with them, exercise control over a Belgian company, in particular specifying the rules on the procedure to be followed, as well as the designation, independence, and activities of one or more experts;

4° determine the procedure and the methods for implementing the obligation to launch a bid, determine the applications as well as the methods for the obligation to launch a bid following an indirect acquisition of control over the offeree company, determine the price at which the mandatory bid must be made and the procedure to be followed, and determine such derogations from the obligation to launch a bid as may apply to one of the persons acting in concert;

5° regulate the squeeze-out bid referred to in Article 513, § 1, of the Companies Code, in particular specifying the rules on the procedure to be followed, the possible designation, the independence and the activities of one or more experts, as well as the manner in which the price should be determined;

6° determine the obligations incumbent on the parties to the bid after the closing of the bid;

7° determine the conditions under which the holders of voting securities or of securities conferring access to voting rights may demand that an offeror who, either alone or in concert, holds 95% of the voting securities after the closing of the bid, should purchase their voting securities or securities conferring access to voting rights, and determine the procedure to be followed and the manner in which the price should be determined;

8° provide for the conditions in which, following the closing of a squeeze-out bid, the operator of a Belgian regulated market or the operator of a Belgian multilateral trading facility should delist the securities that had been admitted to trading;

9° determine, by reference to the guidelines defined in Article 9, the circumstances in which general derogations from the provisions of Part II of this Law and its implementing decrees can be granted.

#### Article 9

Where He takes the implementing measures referred to in Article 8, the King takes into account the following guidelines:

1° all holders of securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of voting securities or securities conferring access to voting rights must be protected;

2° the holders of securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of voting securities or of securities conferring access to voting rights, the Board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

3° the Board of an offeree company must act in the interests of the company as a whole;

4° false markets must not be created - because of the bid or behaviours on the part of parties to the bid - in the securities of the offeree company, of the offeror company, or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

5° an offeror must announce a bid only after ensuring that it can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration;

6° an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

### CHAPTER III - Intermediation

#### Article 10

§ 1. Only the following persons or institutions are allowed to carry out intermediation on the Belgian territory with a view to the implementation of a bid:

1° the European Central Bank, the National Bank of Belgium and the other central banks of the Member States of the European Economic Area;

2° credit institutions registered on the list provided for in Article 13 of the Law of 22 March 1993 on the legal status and supervision of credit institutions, with the exception of municipal savings banks;

3° branches established in Belgium of credit institutions governed by the law of another Member State of the European Economic Area and registered according to Article 65 of the aforementioned Law of 22 March 1993;

4° credit institutions not established in Belgium that are governed by the law of another Member State of the European Economic Area and carry out activities in Belgium in accordance with Article 66 of the aforementioned Law of 22 March 1993;

5° stockbroking firms referred to in Book II, Title II, of the Law of 6 April 1995 on the legal status and supervision of investment firms, on intermediaries and investment advisers;

6° investment firms governed by the law of another Member State of the European Economic Area operating in Belgium in accordance with Book II, Title III, of the aforementioned Law of 6 April 1995;

7° branches established in Belgium of investment firms governed by the law of another Member State of the European Economic Area and operating in Belgium in accordance with Book II, Title IV, of the aforementioned Law of 6 April 1995;

8° investment firms that are governed by the law of another Member State of the European Economic Area and operating in Belgium by providing services, provided that the intermediation complies with their status pursuant to the decrees taken in application of Book II, Title IV, of the aforementioned Law of 6 April 1995.

§ 2. For the application of § 1, 'intermediation' shall mean any intervention, even temporary or incidental, and in any capacity, with respect to holders of securities in the context of a bid made for the account of the offeror, of a person acting in concert with the offeror, or of a person acting for the account of these persons, against remuneration or any advantage granted directly or indirectly by the offeror, by a person acting in concert with the offeror, or by a person acting for the account of these persons.

## TITLE II - Information

### CHAPTER I - Prospectus

#### Section I - Obligation to publish a prospectus and the publication of the prospectus

##### Article 11

Any bid requires the prior publication of a prospectus. In addition, an announcement indicating the methods of publication of the full prospectus shall be published in one or more nationally - or widely - distributed newspapers in Belgium.

##### Article 12

§ 1. The prospectus shall be published in accordance with at least one of the following methods:

1° insertion in one or more nationally - or widely - distributed newspapers in Belgium;

2° in print made available to the public free of charge through financial intermediaries designated by the offeror to ensure receipt of acceptances and the payment of the price;

3° electronically on the offeror's website and, where applicable, on the websites of the financial intermediaries designated by the offeror to ensure receipt of acceptances and the payment of the price.

The offerors who publish their prospectus in accordance with 1° or 2° must publish it in accordance with 3° if they have a website.

§ 2. Where the prospectus is made available to the public electronically, a hard copy must however be provided to any holder of securities, free of charge, upon the latter's request, by the offeror or the financial intermediaries designated by the offeror to ensure receipt of acceptances and the payment of the price.

§ 3. The FSMA shall publish on its website the list of prospectuses it has approved or recognized in the course of the twelve preceding months, specifying in what manner they were made available to the public and where they can be obtained and, where applicable, including a hyperlink to the prospectus published on the offeror's website.

By way of derogation from the preceding paragraph, the FSMA may publish all of the prospectuses it has approved or recognized on its website or that of a third party mandated to that end by the FSMA.

§ 4. Where the prospectus comprises several documents, the documents can be published and distributed separately, provided that they are made available to the public free of charge in the manner provided for in § 1. Each document shall indicate where the other elements constituting the full prospectus can be obtained.

Where the prospectus is in the form of a single document, the summary of the prospectus can also be distributed separately. In that case, it shall indicate where the full prospectus, including the summary, can be obtained.

§ 5. The published form and content of the prospectus and/or of its supplements shall always be identical to the original approved version.

§ 6. Where the offeree company's securities are admitted to trading on a regulated market in another Member State, the offeror shall publish the prospectus, after it has been recognized by the competent authority, in such a way that guarantees that in the Member State concerned, the holders of securities and the staff representatives, or, where there are no such representatives, the offeror's and the offeree company's staff themselves can easily and rapidly access it.

## Section II - Content, form and language of the prospectus

### Article 13

§ 1. Without prejudice to Article 35, § 1, second paragraph, the prospectus shall mention the conditions of the bid and contain the information that is necessary to enable the holders of securities of the offeree company to make a properly informed assessment of the operation taking into account the characteristics of the offeror, of the offeree company, of securities that are the subject of the bid and, in the case of an exchange bid, of securities offered by way of consideration.

This information shall be presented in a manner that is easy to analyze and understand.

§ 2. The prospectus shall include a summary that presents briefly and in non-technical terms the main characteristics of the bid, of the offeror, of the offeree company, of the offeror's intentions and, in the case of an exchange bid, of the securities offered by way of consideration as well as of the issuer of the securities offered by way of consideration.

The summary of the prospectus shall also include a warning indicating:

1° that it must be read as an introduction to the prospectus; and

2° that any decision as to whether or not to respond to the bid must be based on a comprehensive examination of the prospectus; and

3° that no civil liability can be attributed to anyone solely on the basis of the summary or the translation thereof, except for any content that might be misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

§ 3. The FSMA can accept that information be included in the prospectus by reference to one or more previously or simultaneously published documents, under the conditions provided for in Article 50 of the Law of 16 June 2006. These documents shall be made available free of charge to the public in accordance with Article 12, § 1. The summary of the prospectus shall not include any information by reference.

#### Article 14

The King determines, upon the recommendation of the FSMA, the rules that apply to the content of the prospectus. To that end, He may distinguish according to the nature of the operation and of securities that are the subject of the bid.

#### Article 15

The prospectus shall contain a statement to the effect that it has been approved by the FSMA in accordance with Article 19, § 3, but that such approval implies no judgement as to the advisability and intrinsic merits of the operation or the situation of the offeror.

Except for the statement referred to in the first paragraph and the statement on the approval of the memorandum of response, no mention whatsoever of the intervention of the FSMA shall be made in the prospectus or any supplements thereto.

#### Article 16

§ 1. The prospectus shall be drawn up in French and in Dutch.

Where the offeror demonstrates that the offeree company usually publishes its financial information in only one national language or another language customary in the sphere of international finance, the FSMA can accept that the prospectus be drawn up in that one national language or other customary language.

§ 2. The summary of the prospectus shall be drawn up in - or translated into - French and Dutch. Such translation shall be made under the offeror's responsibility. By way of derogation from this rule, where advertisements and other documents and publications concerning the bid, as referred to in Article 31, § 1, are distributed in a single national language, the summary can be drawn up in, or translated into that one language.

### Section III - Supplement to the prospectus

#### Article 17

§ 1. Any new significant fact or any substantial mistake or inaccuracy concerning the information contained in the prospectus, such as may influence the assessment of the bid, which occurs or is observed between the approval of the prospectus and the final closing of the period for acceptance of the bid, shall be mentioned in a supplement to the prospectus.

§ 2. The supplement to the prospectus shall be approved within a maximum of seven working days, in the same manner - and published at least according to the same terms and conditions -

as the initial prospectus. The summary of the prospectus and any translation thereof shall also be the subject of a supplement if such appears necessary to take into account the new information included in the supplement to the prospectus.

#### Section IV - Approval and recognition of the prospectus

##### Sub-section 1 - Approval of the prospectus

##### Article 18

The prospectus shall be published only after it has been approved by the FSMA.

This approval implies no judgement as to the advisability and intrinsic merits of the operation or the situation of the offeror.

##### Article 19

§ 1. Where an offeror notifies the FSMA of its intention to launch a bid, it shall provide the FSMA with a draft prospectus.

The offeror shall without delay communicate all the documents that are relevant for the examination of the prospectus.

§ 2. Where the FSMA is of the opinion, based on reasonable grounds, that the documents it has received are incomplete or that additional information is necessary, it shall advise the offeror within ten working days from receipt of the notification referred to in § 1 so that the offeror can complete its dossier.

The FSMA can in particular demand that the offeror should include in the prospectus additional information where the protection of the holders of securities so requires.

§ 3. The FSMA shall, within ten working days of the submission of a complete dossier, inform the offeror of its decision to either approve or refuse to approve the prospectus.

§ 4. Where the FSMA has not made any of the decisions referred to in § 3, the persons who have submitted the notification referred to in § 1 may give the FSMA formal notice, by registered letter or by recorded delivery, to make a decision. That formal notice may be given at the earliest ten working days after the reply to the FSMA's latest request in application of § 2, or, if no such request has been made, at the earliest ten working days after the notification referred to in § 1. If, within ten working days after the formal notice referred to in this paragraph was given, the FSMA has failed to either decide that the dossier is incomplete, indicating the missing elements, or make one of the decisions referred to in § 3, the request for approval of the prospectus shall be deemed to have been rejected.

§ 5. Only the persons who have made the notification referred to in § 1 may lodge an appeal, in accordance with Article 121 of the Law of 2 August 2002, against a refusal by the FSMA to approve the prospectus or against the decision, referred to in § 4, that the dossier could not yet be considered complete. No appeal may be lodged against the decision by the FSMA to approve the prospectus.

§ 6. The final version of the approved prospectus, duly signed by the offeror, shall be filed with the FSMA prior to being published.

§ 7. The King may determine, upon the recommendation of the FSMA, what particular circumstances can suspend the period of time within which to approve the prospectus.

## Sub-section 2 - Recognition of the prospectus

### Article 20

§ 1. The offeror may request recognition of the prospectus relating to the bid if the prospectus has been previously approved by the authority that according to Article 4 of Directive 2004/25/EC is competent for that purpose. In such cases, Sections II and III and sub-section 1 of Section IV shall not apply.

§ 2. In order to obtain recognition of the prospectus, the offeror shall submit to the FSMA a dossier containing the following documents:

1° the prospectus for which recognition is sought;

2° where applicable, a translation of that document into Dutch, French or a language customary in the sphere of international finance and accepted by the FSMA, prepared under the authority of the offeror with a view to publication in Belgium;

3° confirmation by the competent authority that it has approved the prospectus.

§ 3. If this information is not contained in the prospectus, the FSMA may require that supplementary information be provided, in the prospectus or in an annex thereto, intended specifically for the Belgian market and concerning the formalities that must be fulfilled in order to accept the offer and receive the consideration owing upon the completion of the bid, as well as the tax regulations that will apply to the consideration offered to the holders of securities.

§ 4. The FSMA shall, within ten working days of the submission of a complete dossier, inform the offeror of its decision to recognize the prospectus.

§ 5. Where the FSMA has not made a decision as referred to in § 4, the persons who submitted the request referred to in § 1 may give the FSMA formal notice, by registered letter or by recorded delivery, to make a decision; that formal notice may be given at the earliest ten working days after the request referred to in § 1 was submitted. If, within ten working days after the formal notice referred to in this § 5 was given, the FSMA has failed to either decide that the dossier is incomplete, indicating the missing elements, or recognize the prospectus, the request for approval of the prospectus shall be deemed to have been accepted.

§ 6. Only the persons who have submitted the request referred to in § 1 may lodge an appeal, in accordance with Article 121 of the Law of 2 August 2002, against the decision, referred to in § 5, that the dossier could not yet be considered complete. No appeal may be lodged against the decision by the FSMA to recognize the prospectus.

§ 7. The procedure set out in §§ 1 to 6 shall also apply when requesting recognition of the approval of a supplement to the recognized prospectus.

§ 8. The King may specify other cases in which the procedure determined in §§ 2 to 7 shall apply.

## Section V - Responsibility for the prospectus

### Article 21

§ 1. The prospectus submitted to the FSMA for approval shall mention clearly who is responsible for the prospectus and for any supplements thereto, with the exception, where applicable, of the attached memorandum of response. The persons responsible shall be

identified by their name and position or, if they are legal persons, by their name and registered office.

The prospectus shall contain a declaration by the persons responsible, to the effect that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and contains no omission likely to affect its import.

Without prejudice to the first paragraph, the prospectus may indicate the names of the persons responsible for part of the prospectus and any supplements thereto.

§ 2. Notwithstanding any such provision to the contrary unfavourable to the holders of securities, the persons indicated in accordance with § 1, first paragraph, shall be jointly and severally liable towards the parties involved for any loss as a result of misleading or inaccurate information within the prospectus and any supplements, or the absence in the prospectus and in any supplements of the information required in accordance with Part II of this Law or its implementing decrees.

Loss incurred by the holder of the securities of the offeree company shall, in the absence of evidence to the contrary, be deemed to be a result of absent or misleading or inaccurate information in the prospectus and any supplements.

§ 3. Noliability can be attributed to anyone solely on the basis of the summary or the translation thereof, except for any content that might be misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

## CHAPTER II - Memorandum of response

### Article 22

In the cases provided for by the King, and without prejudice to the application of Article 24, § 1, the Board of the offeree company shall issue a memorandum of response to the bid.

### Article 23

The memorandum of response shall be published by the offeree company in accordance with the provisions of Article 12, unless the offeror includes the memorandum of response as an annex to the prospectus.

For the purposes of the first paragraph, the obligations of the offeror as regards the methods of publication of the prospectus such as provided for in Article 12 shall be understood as obligations on the part of the offeree company as regards the methods of publication of the memorandum of response.

### Article 24

§ 1. In the case of a takeover bid for voting securities or securities conferring access to voting rights, the memorandum of response shall include at least:

1° any remarks on the part of the offeree company as regards the prospectus;

2° the provisions of the articles of association that imply a limitation on the possibility to sell or acquire voting securities or securities conferring access to voting rights, and, insofar as the Board of the offeree company is aware of such information, a list of any preferential rights that have been granted to certain persons with a view to acquiring such securities;

3° the reasoned opinion on the bid.

§ 2. The King determines, upon the recommendation of the FSMA and without prejudice to the application of § 1, the rules that shall apply to the content of the memorandum of response and its various elements, and the methods for filing a memorandum of response with a view to its approval by the FSMA. To that end, He may distinguish according to the nature of the operation and of the securities that are the subject of the bid.

#### Article 25

The memorandum of response shall contain a statement to the effect that it has been approved by the FSMA in accordance with Article 28, § 3, but that such approval implies no judgement as to the advisability or intrinsic merits of the bid.

Save for the statement on the approval of the prospectus and the statement referred to in the first paragraph, no mention whatsoever of the intervention of the FSMA shall be made in the memorandum of response or any supplements thereto.

#### Article 26

The memorandum of response shall be drawn up in French and in Dutch.

Where the offeree company demonstrates that it usually publishes its financial information in only one national language or another language customary in the sphere of international finance, the FSMA can accept that the memorandum of response be drawn up in that single national language or other customary language.

#### Article 27

The memorandum of response shall be published only after it has been approved by the FSMA.

The approval implies no judgement as to the advisability and intrinsic merits of the bid.

#### Article 28

§ 1. The offeree company shall provide the FSMA with a draft memorandum of response and all the documents that are relevant for the examination of the memorandum of response.

§ 2. Where the FSMA is of the opinion, based on reasonable grounds, that the documents it has received are incomplete or that additional information is necessary, it shall advise the offeree company within five working days from receipt of the draft referred to in § 1 so that the offeree company can complete its dossier.

The FSMA can in particular demand that the offeree company should include additional information in the memorandum of response where the protection of the holders of the securities so requires.

§ 3. The FSMA shall, within five working days of the submission of a complete dossier, inform the offeree company of its decision to either approve or refuse to approve the memorandum of response.

§ 4. Only the offeree company may lodge an appeal, in accordance with Article 121 of the Law of 2 August 2002, against a refusal by the FSMA to approve the memorandum of response. No appeal may be lodged against a decision by the FSMA to approve the memorandum of response.

§ 5. The final version of the memorandum of response, duly signed by the offeree company, shall be filed with the FSMA prior to being published.

§ 6. The memorandum of response shall be published as soon as it has been approved.

#### Article 29

§ 1. The memorandum of response submitted to the FSMA for approval shall mention clearly who is responsible for the memorandum of response and for any supplements thereto. The persons responsible shall be identified by their name and position or, if they are legal persons, by their name and registered office.

The memorandum of response shall contain a declaration by the persons responsible to the effect that, to the best of their knowledge, the information contained in the memorandum of response is in accordance with the facts and contains no omission likely to affect its import.

Without prejudice to the first paragraph, the memorandum of response may indicate the names of the persons responsible for part of the memorandum of response and any supplements thereto.

§ 2. Notwithstanding any stipulation to the contrary that may be disadvantageous to the holder of securities, the persons indicated in accordance with § 1, first paragraph, shall be jointly and severally liable towards the parties involved for any loss as a result of misleading or inaccurate information within the memorandum of response and any supplements, or of the absence, within the memorandum of response and any supplements, of the information required in accordance with Part II of this Law or its implementing decrees.

Loss incurred by the holder of securities of the offeree company shall, in the absence of evidence to the contrary, be deemed to be a result of absent or misleading or inaccurate information in the memorandum of response and any supplements thereto.

#### Article 30

§ 1. Any new significant fact or any substantial mistake or inaccuracy concerning the information contained in the memorandum of response, such as may influence the assessment of the bid, which occurs or is observed between the approval of the memorandum of response and the final closing of the period for acceptance of the bid, shall be mentioned in a supplement to the memorandum of response.

§ 2. The supplement to the memorandum of response shall be approved within a maximum of five working days, in the same manner - and published at least according to the same methods - as the initial memorandum of response.

### CHAPTER III - Advertisements

#### Article 31

§ 1. All announcements that refer to a specific takeover bid and are aimed specifically at influencing the possible acceptance of the bid, regardless of the information medium used (hereinafter 'advertisements') and other documents and publications relating to a bid, disseminated on the Belgian territory at the initiative of the offeror or of intermediaries appointed by it, must fulfil the following requirements:

1° state that a prospectus and memorandum of response have been, are being, or will be published, and indicate where holders of securities may obtain these documents;

2° the information contained therein must not be inaccurate or misleading;

3° the information contained therein must be consistent with the information in the published prospectus or, if the prospectus will be published later, with the information that is to be provided therein.

§ 2. The advertisements and other documents and publications relating to a takeover bid that are distributed on the Belgian territory at the initiative of the offeree company or of intermediaries appointed by it must fulfil the following requirements:

1° state that a prospectus and a memorandum of response have been, are being, or will be published, and indicate where holders of securities may obtain these documents;

2° the information contained therein must not be inaccurate or misleading;

3° the information contained therein must be consistent with the information in the published memorandum of response or, if the memorandum of response will be published later, with the information that is to be provided therein.

§ 3. The advertisements referred to in the above §§ 1 and 2 must be clearly identifiable as such.

§ 4. Without prejudice to § 1, all information on the takeover bid provided by the offeror or by intermediaries appointed by it must always be consistent with the information contained in the prospectus, regardless of the form in which it is disseminated and even if it is not intended for advertising purposes.

§ 5. Without prejudice to § 2, all information on the takeover bid provided by the offeree company or by intermediaries appointed by it must always be consistent with the information contained in the memorandum of response, regardless of the form in which it is disseminated and even if it is not intended for advertising purposes.

§ 6. Without prejudice to §§ 1 to 5, the King may, upon the recommendation of the FSMA, impose other requirements concerning the advertisements and other documents and publications referred to in §§ 1 and 2 that relate to a takeover bid on Belgian territory, distinguishing, where appropriate, according to the type of security concerned.

#### Article 32

Information that is important for assessing the bid, provided directly or indirectly by the offeror or the offeree company and aimed at qualified investors or at special categories of investors, including the information given to financial analysts, shall be provided to all holders of securities to whom the bid is addressed.

#### Article 33

§ 1. Advertisements and other documents and publications relating to a takeover bid that are distributed at the initiative of the offeror, the offeree company or intermediaries appointed by them shall be made public only after they have been approved by the FSMA, taking into account the requirements mentioned in Articles 31, §§ 1 to 5, and in the decisions made pursuant to Article 31, § 6.

§ 2. The FSMA shall make a decision within five working days of receiving the advertisements or other documents or publications referred to in § 1.

§ 3. Only the offeror, the offeree company and/or the intermediaries appointed by them may lodge an appeal, in accordance with Article 121 of the Law of 2 August 2002, against a refusal of the FSMA to approve the advertisements or other documents or publications submitted to it.

No appeal may be lodged against the decision of the FSMA to approve advertisements or other documents or publications.

§ 4. No mention may be made, in the advertisements or in the other documents or publications referred to in § 1, of the role of the FSMA or of any other competent authority of a Member State of the European Economic Area, with the exception of the mention that it has approved the prospectus and/or the memorandum of response.

#### Article 34

§ 1. Notwithstanding any stipulation to the contrary that may be disadvantageous to holders of securities, the offeror and any intermediary appointed by it are required to compensate for any loss caused by information contained in advertisements, other documents or publications relating to the transaction, published at their initiative, that is misleading, inaccurate or inconsistent with the information in the prospectus, or by the non-compliance of such advertisements, other documents or publications, with the provisions of Article 31, §§ 1, 3 and 4 or those adopted pursuant to Article 31, § 6.

§ 2. Notwithstanding any stipulation to the contrary that may be disadvantageous to holders of securities, the offeree company, and any intermediary appointed by it, is required to compensate for any loss caused by information contained in advertisements, other documents or publications relating to the transaction, published at its initiative, that is misleading, inaccurate or inconsistent with the information in the memorandum of response, or by the non-compliance of such advertisements, other documents or publications, with the provisions of Article 31, §§ 2, 3 and 5 or those adopted pursuant to Article 31, § 6.

§ 3. Loss incurred by holders of securities of the offeree company shall, in the absence of evidence to the contrary, be deemed to be a result of the misleading or inaccurate nature of the information contained in the advertisements or other documents or publications relating to the transaction published at that company's initiative, of the inconsistency of that information with the contents of the prospectus or the memorandum of response, as the case may be, or of the non-compliance of these advertisements, documents or publications, with the provisions of Article 31, §§ 1 to 5 or those adopted pursuant to Article 31, § 6.

### TITLE III - Enforcement

#### CHAPTER I - The powers of the FSMA

##### Article 35

§ 1. The FSMA is solely responsible for enforcing Part II of this Law and its implementing decrees.

In special cases, the FSMA may permit justified derogations from Part II of this Law or its implementing decrees, and may attach conditions thereto. The FSMA shall justify its decisions to derogate from the said provisions, making explicit reference to the guidelines specified in Article 9.

§ 2. Without prejudice to the application of Article 4, the FSMA sees to it, as part of its supervision of takeover bids, that the actions of the offeree company that are likely to frustrate the bid comply with the regulations; in particular, it supervises compliance with the provisions of Articles 510, 511, 512, 556, 557, 607 and 620 of the Companies Code, and with the provisions of the articles of association as determined in accordance with Articles 46 and 47.

Where the FSMA has reasons to believe that the provisions referred to in the first paragraph have not been duly complied with, it notifies the company concerned accordingly. Where it is of the opinion that its notification has not - or not sufficiently - been taken into account, it can make its notification public.

#### Article 36

§ 1. Without prejudice to the application of Article 19, § 2, and of Article 78, of the Law of 2 August 2002, the FSMA may take the necessary measures and issue orders to ensure that the provisions of Part II of this Law and of its implementing decrees are duly complied with.

In particular, the FSMA may:

1° if it should become aware of a transaction, practice or omission that contravenes the provisions of the Law or its implementing decrees, order any person responsible for the contravention to comply with the said provisions, put an end to the irregularity observed or reverse the effects thereof;

2° forbid the person responsible for the contravention to make use of any rights or advantages he or she may have gained from the transaction, practice or omission that contravenes the provisions of the Law or its implementing decrees;

3° require the parties to a bid, or parties whom the FSMA has good reason to believe are obliged to launch a mandatory bid, as well as persons who control or who are controlled by the said parties, to provide the FSMA with information and documents;

4° order the offeror to take certain measures if the FSMA deems that a bid is likely to be made or is being made under conditions that could mislead the public;

5° where it has reasonable grounds to believe that the provisions of Part II of this Law or its implementing decrees have been contravened, suspend a bid or the publication of the announcement of a bid for a maximum of ten successive working days.

6° where it has determined or has reasonable grounds to believe that the provisions of Part II of this Law or of its implementing decrees have been contravened, prohibit a bid or the publication of the announcement of a bid;

7° where it has reasonable grounds to believe that the provisions of Part II of this Law or its implementing decrees have been contravened, suspend the dissemination of advertisements and other documents and publications referred to in Article 31 for a maximum of ten successive working days;

8° where it has reasonable grounds to believe that the provisions of Part II of this Law or of its implementing decrees have been contravened, forbid the dissemination or order the withdrawal of advertisements and other documents and publications referred to in Article 31;

9° order a party to a bid to publish a correction of an advertisement, other document or publication that was disseminated in contravention of the provisions of Part II of this Law or of its implementing decrees;

10° where appropriate, itself publish the correction required pursuant to 9° if the correction has not been made by the deadline specified;

11° disclose to the public every decision made in accordance with the provisions of 1°, 2°, 4° to 9°, 14° and 15°, unless such disclosure would seriously jeopardize the financial markets or cause disproportionate damage to the parties involved;

12° disclose to the public the fact that a party to the offer is not meeting its obligations, unless such disclosure would seriously jeopardize the financial markets or cause disproportionate damage to the parties involved;

13° carry out on-site inspections and expert appraisals, take cognizance of and copy, on site, any document, file and recording, and have access to any IT system, in order to verify compliance with the provisions of Part II of this Law and of its implementing decrees, on the understanding that such powers of investigation do not extend to private premises;

14° require any person who has omitted to launch a mandatory bid, despite the obligation to do so pursuant to the Law and its implementing decrees, to take any necessary measures to that end;

15° require an offeree company that has omitted to draw up and publish a memorandum of response, despite the obligation to do so pursuant to the Law and its implementing decrees, to take any necessary measures to that end.

§ 2. The decisions referred to in § 1 shall be notified in the most appropriate manner to the person in charge.

Any decision made in application of this provision is enforceable as soon as it has been notified.

§ 3. In the cases referred to in § 1, 5° and 7°, the FSMA may renew the suspension measure, each time for a period of ten consecutive working days at the most.

§ 4. To any person who fails to comply, within the time period determined by the FSMA, with an order or prohibition addressed to the person under the terms of § 1, the FSMA may impose a penalty which shall not be more per calendar day than EUR 50,000 nor more than EUR 2,500,000 for a failure to comply with the same order or prohibition.

§ 5. Any disclosure to the public as referred to in § 1 shall, according to the case, be carried out at the expense of the offeror, the offeree company, the other parties to the bid, or the persons designated by them.

#### Article 37

Without prejudice to other measures taken in accordance with Part II of this Law, the FSMA may, where it establishes an infringement of the provisions of Part II of this Law or of its implementing decrees, impose on the infringer an administrative fine that shall not be less than EUR 2,500 nor, for the same offence or same sum of offences, more than EUR 2,500,000.

#### Article 38

The following are liable to a term of imprisonment of between one month and one year, and to a fine amounting to EUR 75 to EUR 15,000 or to one of these penalties alone:

1° those who hinder the verifications to which they must submit themselves pursuant to this Law, who refuse or omit to give the information or documents that are required of them pursuant to this Law, or who knowingly give inaccurate or incomplete information or documents;

2° those who contravene Articles 10, 11, 18, 20, §§ 1 to 3, 31, §§ 1 and 2, 32 and 33, § 1;

3° those who fail to comply with a suspension or prohibition delivered pursuant to Article 36 or a refusal to approve the prospectus or who ignore an order that has been addressed to them in application of Article 36;

4° those who knowingly publish in Belgium a prospectus or supplement that contains inaccurate or incomplete information which is likely to mislead the public as regards the conditions of the bid;

5° those who knowingly publish in Belgium any advertisement that contains deceitful or inaccurate information which is likely to mislead the public as regards the conditions of the bid;

6° those who, in publishing in Belgium a prospectus or supplement, refer to the approval of the FSMA or of the competent authority of another Member State of the European Economic Area whereas such approval has not been granted;

7° those who knowingly publish in Belgium a prospectus or supplement which is different from that which has been approved by the FSMA or by the competent authority of another Member State of the European Economic Area;

8° those who knowingly publish in Belgium any advertisement which is different from that which has been approved by the FSMA pursuant to Article 33;

9° those who knowingly fail to comply with the prohibition referred to in Article 48.

The provisions of Book 1 of the Penal Code, including Chapter VII and Article 85, shall apply to infringements that are punishable under this Article.

#### Article 39

The penalties and administrative fines imposed in application of Articles 36, § 4, and 37 shall be recovered in favour of the Treasury by the Land Registry, Public Records and Crown Lands Office.

#### Article 40

In order to see to it that the provisions of Part II of this Law and its implementing decrees are duly complied with, the FSMA may require the operators of the regulated markets, the operators of the multilateral trading facilities, and the financial intermediaries as defined in Article 2, 9°, of the Law of 2 August 2002, as well as their principals, to communicate to the FSMA any information, document or item which the FSMA deems necessary to fulfil its tasks. The persons who intervene successively in the transmission of the orders or in the execution of the transactions concerned, as well as their principals, shall be subject to the same obligation. Communication of the documents and items shall take place on site.

Intermediaries shall give advance notice to the person at whose request or on whose behalf they are acting that their action is subject to their being authorized to disclose to the FSMA the identity of the final beneficiary of the transaction.

Where the provisions of the preceding paragraph are not complied with, the intermediary shall not execute the transactions.

## CHAPTER II - Appeal to the judicial authorities

### Article 41

[§ 1. Any request to decide on the substance of the case or to decide provisionally, considering the urgency, that is based wholly or partially on one or more provisions of this Law, as well as any request the objective or likely consequence of which is to bring about a takeover bid or to modify the results, the conditions or the progress of a takeover bid, shall be within the exclusive jurisdiction of the Brussels Court of Appeal.

The previous paragraph shall not apply to the appeal which can be lodged against a decision of the FSMA in accordance with Article 121, § 1, first paragraph, 2°, of the Law of 2 August 2002.

§ 2. Under penalty of being deemed to have lapsed, the request shall be introduced within 15 calendar days from the date on which the petitioner was able to take cognizance of the fact on which the request is based.

§ 3. Under penalty of being deemed automatically inadmissible, the requests referred to in § 1 shall be introduced in writing at the court office of the Brussels Court of Appeal in as many copies as there are parties to the request.

Under penalty of being deemed inadmissible, the request shall include the following indications:

1° day, month and year:

2° where the petitioner is a natural person, the name, first name and residence; where the petitioner is a legal person, the name, legal form, registered office and the representing corporate body;

3° where the defendant or the party who is summoned is a natural person, the name, first name and residence, or, in the absence of a residence, the current address; where the defendant or the party who is summoned is a legal person, the name, legal form and registered office;

4° the statement of pleas;

5° the place, date and time specified in the summons by the registrar of the Court of Appeal.;

6° an inventory of the supporting items and documents that have been filed with the court office at the same time as the request.

The request shall be notified by the registrar of the Brussels Court of Appeal to all of the parties that have been summoned by the claimant. Any interested third party can intervene in the proceedings.

The Brussels Court of Appeal shall determine the deadline by which the parties should communicate their written remarks and file a copy thereof with the registrar. It shall also determine a date on which the proceedings shall begin.

Each party can file their written remarks with the registrar of the Brussels Court of Appeal and take cognizance of the dossier on the spot. The Brussels Court of Appeal shall determine the deadline by which such remarks must be made. The registrar shall communicate the remarks to all parties.

§ 4. Except in the case of duly motivated circumstances, the Brussels Court of Appeal shall reach a decision within 60 calendar days from the date on which the request was filed.

§ 5. The Brussels Court of Appeal shall make a decision in the first and last instance. It shall not handle in the first instance any request other than those referred to in § 1, it being understood that the rules of the Judicial Code on counterclaims and connexity shall not apply.

However, the previous paragraph shall be without prejudice to the competence of the Brussels Court of Appeal to handle a frivolous and vexatious counterclaim.

§ 6. Should this be absolutely necessary, the Brussels Court of Appeal may receive an ex parte application with a view to ordering provisional measures until it can proceed on an adversarial basis.]

[Inserted by Article 5 of the Law of 1 April 2007 (Belgian Official Gazette, 26 April 2007)]

#### TITLE IV - Employee information and consultation

##### Article 42

As soon as a bid relating to voting securities or securities conferring access to voting rights has been made public, the boards of the offeree company and of the offeror shall inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.

##### Article 43

As soon as the prospectus relating to a bid for voting securities or for securities conferring access to voting rights has been made public, the boards of the offeree company and of the offeror shall communicate it to the representatives of their respective employees or, where there are no such representatives, the employees themselves.

##### Article 44

The Board of the offeree company shall at the same time communicate to the representatives of its employees or, where there are no such representatives, to the employees themselves, its opinion on the takeover bid for voting securities or for securities conferring access to voting rights.

Where the Board of the offeree company receives in due time a separate opinion from the works council on the bid, in particular as regards its effects on employment, that opinion shall be appended to the document; where the works council is unable to form a unanimous opinion, the opinions of the various components of the works council shall be appended to the document.

##### Article 45

Where there is a works council in the offeree company, it shall hear the representatives of the Board of the offeror, except where the members of the works council unanimously decide against such a hearing.

The hearing referred to in the first paragraph shall take place at the latest 10 days after the period for acceptance of the bid has started. The works council of the offeree company shall communicate the date of that hearing at the latest three days in advance to the Board of the offeror.

At the hearing referred to in the first paragraph, the representatives of the Board of the offeror may be assisted by persons of their choice. The representatives of the offeror shall present to the works council of the offeree company the offeror's industrial and financial policy and strategic plans for the offeree company, including its likely repercussions on employment and the locations of the offeree company's places of business. The representatives of the offeror shall take cognizance of any remarks on the part of the works council of the offeree company.

As long as the offeror who was invited has not attended the hearing referred to in the first paragraph, it shall not exercise at the general meeting of the offeree company the voting rights attaching to the securities it has acquired as part of the bid.

## TITLE V - Additional rules on takeover bids

### CHAPTER I - Optional schemes

#### Article 46

§ 1. The articles of association of a company with its registered office in Belgium and with at least a portion of its voting securities admitted to trading on a regulated market may provide:

1° that, during the bid period, the Board and the body to which this Board has delegated part of its powers shall not take any action which is likely to frustrate the bid unless they have previously and specifically been authorized to do so by the general meeting;

2° that decisions likely to frustrate the bid which may have been made before the start of the bid period by the Board or the body to which this Board has delegated part of its powers and which have not yet been implemented or have been implemented only in part, will have to be approved or confirmed by the general meeting, unless they are part of the usual activities of the company;

3° that any restrictions on the transfer of voting securities or of securities conferring access to voting rights provided for in the articles of association or contractual agreements with or between holders of securities shall not apply vis-à-vis the offeror during the period for acceptance of the bid;

4° that any restrictions on voting rights provided for in the articles of association or contractual agreements with or between holders of securities shall not apply at a general meeting convened during the bid period with an agenda that includes in particular proposals for defensive measures;

5° that such restrictions on the transfer of securities or of voting rights, including multiple voting rights, as referred to in 3° and 4°, or extraordinary rights of shareholders concerning the appointment or removal of Board members, shall not apply at the first general meeting convened at the initiative of the offeror at the earliest within two weeks, and at the latest within two months after publication of the results of the bid in order to amend the articles of association or to appoint or remove Board members, provided that the offeror holds 75% or more of the capital carrying voting rights.

The first paragraph, 1° and 2°, shall apply as from the start of the bid period or as from receipt by the Board of the offeree company of the offeror's decision to launch a bid, whichever happens first.

For the purpose of obtaining prior authorization, approval or confirmation as referred to in the first paragraph, 1° or 2°, the general meeting can be held two weeks after it was convened.

§ 2. Where rights are removed on the basis of the provisions of the articles of association referred to in § 1, 3°, 4° and 5°, equitable compensation shall be provided for any loss suffered by the holders of those rights.

[The amount of the compensation referred to in the first paragraph shall be determined by the Court of Appeal in accordance with the procedure provided for in Article 41.]

§ 3. Decisions made in application of § 1, must be communicated without delay to the FSMA and to the supervisory authorities of all Member States in which securities of the company are admitted to trading on a regulated market, or where a request has been introduced to that effect.

[Inserted by Article 6 of the Law of 1 April 2007 (Belgian Official Gazette, 26 April 2007)]

#### Article 47

A company that has established certain provisions pursuant to Article 46 in its articles of association may provide, in the said articles of association, that if its securities are the subject of a bid launched by a company that does not apply Article 9, second and third paragraphs and/or Article 11 of Directive 2004/25/EC, it will not in turn have to apply the corresponding provisions. Acts or decisions of the company and provisions of the articles of association or conventional provisions to the effect that transfers of securities or of voting rights are restricted, shall be governed by the rules provided by the Code on Companies and, as a complement, by the company's articles of association or contractual agreements concerned.

This scheme is established in the articles of association with the authorization of the general meeting; this authorization must have been received at the earliest eighteen months before publication of the announcement of the bid.

The first paragraph shall also apply where the bid is launched by a subsidiary that is directly or indirectly under the control of a company that does not apply Article 9, second and third paragraphs and/or Article 11 of Directive 2004/25/EC.

### CHAPTER II - Other obligations and prohibitions

#### Article 48

Any communication on the Belgian territory, to the attention of 100 or more natural or legal persons, other than qualified investors, with a view to providing information or advice or to give rise to requests for information or advice on a bid, where such communication is initiated by the offeror, a person acting in concert with the offeror, or a person acting for the account of these persons, is prohibited, except where:

- a) the bid falls within one of the categories referred to in Article 6, § 3;
- b) the authority competent for the approval of the takeover bid prospectus has previously been requested to approve it and has not yet made a decision;
- c) the takeover bid prospectus has duly been approved by the FSMA or by the competent authority of another Member State of the European Economic Area.

Any person who directly or indirectly receives, on the occasion of the bid, a remuneration or an advantage from the offeror or from a person acting in concert with the offeror, shall be

deemed to be acting for the account of the offeror or of a person acting in concert with the offeror.

#### Article 49

If a company's voting securities are first admitted to trading on regulated markets in more than one Member State simultaneously but the company's voting securities are not admitted to trading on a regulated market in the Member State where its registered office is located, the company shall determine which of the supervisory authorities of those Member States shall be the authority competent to supervise a bid by notifying those regulated markets and their supervisory authorities on the first day of trading.

The first paragraph shall apply only insofar as the company has its registered office in Belgium or is admitted to trading on a Belgian regulated market.

The company shall make public any decision as referred to in the first paragraph.

### CHAPTER III - Cooperation between authorities

#### Article 50

§ 1. The FSMA shall cooperate with the other authorities of a Member State in charge of supervising the capital markets, in application in particular of Directive 93/22/EEC, Directive 2001/34/EC, Directive 2003/6/EC, Directive 2003/71/EC, Directive 2004/39/EC and Directive 2004/109/EC.

This cooperation shall include in particular the exchange of information to the full extent which is necessary for the application of the rules determined in accordance with Directive 2004/25/EC, the ability to notify the legal acts necessary to apply the measures taken by the supervisory authorities in relation to bids, and any other help that can reasonably be requested by a supervisory authority with a view to investigating effective or purported violations of the rules adopted or introduced in accordance with Directive 2004/25/EC.

§ 2. For the application of § 1, the FSMA may, in this respect, require the parties to a bid, as well as the persons who control the said parties or are controlled by the said parties, to provide the FSMA with information and documents.

### PART III - MISCELLANEOUS PROVISIONS

#### CHAPTER I - Transposition of the directives relating to markets in financial instruments

##### Article 51

This provision has not been included here.

[...]

#### CHAPTER II - The fight against financial crime

##### Articles 52 to 57

These provisions have not been included here.

[...]

## CHAPTER III - Modifying, transitional and abrogating provisions

### Article 58

If on 20 May 2006 the voting securities of a company had already been admitted to trading on regulated markets in more than one Member State without the voting securities being admitted to trading on a regulated market in the Member State where its registered office is located, and they have been admitted to them simultaneously, the company shall determine without delay which supervisory authority shall be the competent authority.

Article 49, second and third paragraphs, shall apply.

### Articles 59 to 73

Modifying and abrogating provisions have not been included here.

[...]

### Article 74

§ 1. The natural or legal persons who, on the date that Article 5 enters into force, hold - either alone or in concert - more than 30% of the voting securities of a company referred to - or designated - pursuant to the said Article, shall not be subject to the obligation to launch a bid as established in accordance with Articles 5 and 8, provided that:

1° the notification referred to in § 6 and the communication referred to in § 7 have duly been made within the prescribed deadline;

2° where the notification has been made by a company, by a legal person other than a company or by a similar structure, the identity of the natural or legal person controlling that company, legal person or structure has been notified and communicated in accordance with §§ 6 and 7.

§ 2. Where the persons referred to in § 5 acquire additional voting securities of the company concerned, such acquisition shall therefore not entail the obligation to launch a bid, provided that the provisions of §§ 6 to 8 are complied with.

An obligation to launch a bid shall therefore similarly not apply to cases where voting securities of a company referred to - or designated - pursuant to Article 5 are acquired by third parties who are not covered by the exemption referred to in § 1 and who act in concert with one or more persons referred to in § 5, provided that the persons referred to in § 5 have complied with the provisions of §§ 6 to 8 and that they continue to hold more than 30% of the voting securities of the company concerned.

§ 3. In the case of a person who has made the notification referred to in § 6 alone, the exemption shall cease to apply as soon as that person no longer holds, either alone or following the intervention of persons affiliated with that person, more than 30% of the voting securities in the company concerned.

Where persons referred to in § 5, 3° or 4°, have acquired notified securities of a person who has made the notification referred to in § 6 alone, the exemption shall cease to apply as soon as those persons no longer hold, as the case may be, together with the latter person or following the intervention of persons affiliated with that person, more than 30% of the voting securities in the company concerned.

In the case of persons acting in concert, the exemption shall cease to apply as soon as those persons no longer hold, either jointly or following the intervention of persons affiliated with them, more than 30% of the voting securities in the company concerned.

The exemption on the part of any of the persons involved in an action in concert shall cease to apply as soon as that person crosses, either alone or following the intervention of persons affiliated with that person, the threshold of 30% of the voting securities in the company concerned.

However, the exemption from the obligation to launch a bid shall be maintained where the threshold has been crossed upward after having been crossed downward by a maximum of 2%, provided that the upward crossing remedies the downward crossing within a period of twelve months.

§ 4. Where the voting securities in the company concerned are held by a company or by a legal person other than a company, the exemption shall cease to apply as soon as control over the latter company or over that legal person is transferred.

Where the voting securities in the company concerned are held by a similar structure within the meaning of § 9, second paragraph, the exemption shall cease to apply as soon as the majority of the rights of controlling persons within the meaning of § 9, second paragraph, ceases to be held by the persons referred to in § 5.

§ 5. The exemption from the obligation to launch a bid as provided for in § 1 shall be to the benefit of the following persons:

1° the natural or legal persons who, on the date that Article 5 enters into force, hold, either alone or in concert, more than 30 % of the voting securities of a company as referred to or designated pursuant to the said Article;

2° where the voting securities in the company concerned are held by a company, by a legal person other than a company or by a similar structure, the natural or legal persons controlling those entities;

3° the spouse, parents or relatives up to the fourth degree of a natural person referred to in 1° or 2° who, following a transfer *inter vivos* or as the result of a death, acquire voting securities which have been the subject of a notification in accordance with § 6 and may remain subject to a notified action in concert;

4° the companies of which at least 95% of the voting securities are held by persons as referred to in 1° to 3°, and the other legal persons or structures control over which is exercised by the persons referred to in 1° to 3°, who acquire voting securities which have been the subject of a notification in accordance with § 6 and may remain subject to a notified action in concert.

§ 6. Within 120 working days following the date on which Article 5 entered into force, the persons referred to in § 5, 1° and 2°, shall address a notification to the FSMA by registered mail with recorded delivery.

The notification shall mention the identity of each holder of securities, whether or not the person is acting in concert, and if so the parties acting in concert, the size of the shareholding and the identity of any controlling natural or legal persons. In the case of persons acting in concert, the notification addressed to the FSMA shall be accompanied by a communication of the terms and conditions of the agreement to act in concert.

§ 7. Within 120 working days following the date on which Article 5 entered into force, the persons referred to in § 5, 1° and 2°, shall address a communication to the company concerned by registered mail with recorded delivery.

The communication shall mention the identity of each holder of securities, whether or not the person is acting in concert, and if so, the parties acting in concert, the size of the shareholding and the identity of any controlling natural or legal person; however, the communication need not mention the names of the natural persons and of the controlling natural persons referred to in § 5, 2°, who directly or indirectly have an economic interest in the company concerned representing less than 3% of the voting securities in that company.

This communication shall be published by the company concerned in its annual report as long as it remains relevant.

§ 8. Any transfer of voting securities in the company concerned or any change in the shareholding of the natural or legal person controlling a company, a legal person other than a company or a similar structure that holds securities in the company concerned, shall be notified annually to the FSMA as from the date on which Article 5 entered into force. It shall also be communicated, according to the same frequency, to the company concerned.

§ 9. The definitions and assumptions provided for in Article 3 shall apply to this Article.

For the application of this Article, a 'controlling natural or legal person' shall mean a natural or legal person who directly or indirectly exercises control over a company or over a legal person other than a company, whatever the entity's legal form and whatever law governs it, or, in the case of a 'similar structure', the natural or legal persons who are directly or indirectly eligible for assets in a trust company, a fiduciary company or a similar structure, whatever the entity's legal form and whatever law governs it.

#### Article 75

Modifying and abrogating provisions have not been included here.

[...]

#### Article 76

The King takes the decrees implementing this Law upon the proposal of the Minister of Finance, except as regards Articles 8, second paragraph, 5°, and 61.

The King takes the decrees implementing Article 61 upon the proposal of the Minister of Justice.

The King takes the decrees implementing Article 8, second paragraph, 5°, upon the proposal of the Minister of Justice and of the Minister of Finance.

#### Article 77

The King determines, possibly article by article or per groups of articles, the date on which this Law enters into force. In this respect, He may determine the manner in which the pending dossiers enter into force.

By way of derogation from the first paragraph, Articles 52 to 57 shall enter into force on the day on which this Law is published in the Belgian Official Gazette.