INTERNATIONAL
HELLENIC
UNIVERSITY

School of Economics and Business Administration
LLM in Transnational and European Commercial Law & Alternative Dispute Resolution

DISSERTATION

‘’ Criticizing the mandatory bid rule of the takeover bid Directive ‘’

IOANNA BALTA

Stud. ID: 1104120054

Under the supervision of Dr. Thomas Papadopoulos

Thessaloniki, 29 November 2013

Acknowledgements

The writing of this dissertation has been one of the most significant academic challenges I have ever had to face. Without the support, patience and guidance of the following people, this study would not have been completed.

I owe my gratitude to Dr. Thomas Papadopoulos, who undertook to act as my supervisor despite his many other academic and professional commitments. His wisdom, kindness and knowledge to the highest standards inspired and motivated me.

I will always be grateful to my family, that have supported, encouraged and believed in me, and in all my endeavours who so lovingly and unselfishly cared for me.

This dissertation is dedicated to my family.

ABSTRACT

This paper analyses the efficiency of the mandatory bid rule under the framework of Directive 2004/25/EC on takeover bids. The rule requires that anyone acquiring control of a listed company is obliged to make an offer to be addressed to all the shareholders of the target company for all their holdings at an equitable price. In the efforts of the EU to promote more efficient capital structures in Europe, the rule is mainly regarded as a protection mechanism for the minority shareholders. Apart from that, the rule offers certain additional advantages. However, the significance of the mandatory bid rule is limited mostly due to the wide discretion the Directive leaves to Member States. In light of cultural, structural and pre-existing regulatory differences among Member States, it is sensible that their flexibility in establishing additional bid measures and exceptions has prevented the purposes of the rule from materialising. Furthermore, the rule itself suffers from vague definitions which further create problems of interpretation and make its proper implementation much more difficult.

Many scholars have commented on the rule's failure to achieve its legislative goals. After nearly a decade since the issuance of the Takeover Directive, it is a real challenge to examine this issue.

Keywords: *EU Takeover Directive, Mandatory Bid Rule, Market Rule, protection of minority shareholders, equal treatment principle, exit right, Member States' discretion, mandatory bid threshold, mandatory bid price, concerted parties, squeeze-out right, sell-out right, market integration, harmonization.*

List of Abbreviations

CMC	Capital Market Commission
COM	European Commission Documents
ECB	European Central Bank
ECJ	European Court of Justice
EU	European Union
MBR	Mandatory Bid Rule
MR	Market Rule
TOD	Takeover Directive
UK	United Kingdom
US	United States

Table of Contents

Introduction

The last few years have seen a remarkable increase in the rate of acquisitions of listed companies. Market demands have become extremely high due to the rapid evolution in the area of economy. Thus, businesses are seeking to become more competitive and gain market control. To achieve their goal, many companies choose to acquire their competitors so as to join their forces and ensure their dominance in the market. Therefore, takeovers have become the ultimate means of corporate restructuring and an important corporate governance mechanism worldwide.

In general, a takeover of a listed company is a process followed by natural or legal persons to acquire control over its assets, by making an offer to buy all the company's shares.

The acquisition process is not as simple as it sounds. In fact, it is a rather complicated process with a number of practical problems. In particular, the position of the shareholders in the target company and their attitude towards a potential bidder constitute crucial factors in achieving an acquisition.

Some of these problems have been overridden through the adoption of legislative acts, which facilitate the process of takeovers and further contribute to the improvement of economic activities.

In Europe, the institutional framework of acquisitions is based on Directive 2004/25/EC on takeover bids[1]. The Directive itself highlights the significance of takeovers through an effort to mitigate the many problems a bidder has to confront with during a takeover process.

It could be said that the whole takeover process is enshrined in one single provision, the Mandatory Bid Rule (MBR) of article 5 of the Takeover Directive (TOD). Issues like the protection of minority shareholders, the principle of equal treatment, the mandatory bid price and the control threshold have so far been the most debated.

To better understand the nature and function of the EU MBR, a comparison with the US regulatory regime seems necessary. In the United States, the acquisition procedure is subject to entirely different requirements. The major difference of the US "Market Rule" (MR) lies in the fact that it gives considerable freedom of action to both

[1] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

acquirers and target companies. In contrast, the European regime has placed more stringent restrictions through the adoption of a ''sharing rule'' in the form of the MBR.

This paper basically outlines the rationale, the scope and the efficiency of the MBR application. Quite a few commentators, who have studied these issues, have adopted the view that takeovers are in general beneficial for the market. It will be argued, though, that the MBR have various deficiencies which prevent the completion of its destined objectives.

Under this context, a lot of controversy has also been raised about the MBR in relation to the breakthrough rule (Article 11 of the TOD) as well as the squeeze-out and the sell-out rights (Articles 15 and 16 of the TOD) which are granted after the launch of a mandatory bid (made to all shareholders for all their holdings); within a period of three months of the end of the bid, the acquirer that holds the majority of the company's shares[2] is able to "throw out" from the company the minority shareholders (squeeze-out right). Within the same period, the remaining shareholders, who did not accept the bid, have the right to sell their shares to the bidder afterwards and leave the company (sell-out right). The breakthrough rule and the squeeze-out and sell-out rights constitute regulatory devices which together with the MBR were introduced to enhance takeover activity throughout the EU while protecting the interests of minority shareholders.

Nevertheless, the deficiencies of the MBR are pervasive in the majority of the EU legal systems and this view is reinforced by the existing case law, as set forth below. Particularly in a country like Greece which is afflicted by deep economic recession, it would be a great challenge to investigate the legislative framework under which the rule applies.

In sum, this paper is divided as follows: in the first place *(Part I)*, a comprehensive overview of the EU takeover regime is given. This is done through a comparison approach to the US regulatory regime and the detailed presentation of the MBR scheme, as laid down in article 5 of Directive 2004/25/EC on takeover bids. The second section *(Part II)* provides an overall assessment of the MBR impact on European markets. That assessment is supplemented by a brief description of the way the rule has been so far implemented in the different EU legal systems *(Part III)*. Attention is

[2] 90 % by reference to capital and 90 % by reference to the voting rights (or 95% depending on the Member State's choice), according to Article 15(2) of the Takeover Directive

particularly drawn to certain acquisitions of Greek listed companies. Finally, a summary of the findings is presented.

Part I. The Mandatory Bid Rule

1.1. The European Takeover Directive

The MBR is the product of a lengthy period of European legislative efforts. The last 15 years, the European Union Authorities, wishing to promote capital structures and create a fair takeover market by offering businesses greater certainty while protecting both shareholders and employees, submitted a series of proposals for the establishment of common rules on takeovers for all EU Member States. However, those proposals failed to be adopted mainly due to the disagreements between Member States.

After so many efforts, in April 2004, the European Parliament and the Council finally issued Directive 2004/25/EC on takeover bids -the text now in force- which each Member State had to adopt until May 2006. The process involved in that last document was remarkable.

More specifically, the Directive lays down the minimum standards for the conduct of takeover bids under a framework of general principles, such as the equivalent treatment of shareholders, the protection of minority shareholders in case of change of control, the prohibition of market manipulation or abuse, the right of the shareholders to have sufficient time and information so as to make a proper decision on the bid, as they are all listed in article 3 of the Directive[3].

In the recent Audiolux case[4], the ECJ found that the use of the term ‘general principles’ in the heading of Article 3 does not imply that the principles listed therein should be treated in the same way as the general principles of Community law. Instead, the above principles constitute just guiding principles for the implementation of the Directive and therefore, should be construed narrowly. Any derogation established by Member States must comply with the principles laid down in the Takeover Directive[5].

[3] See Article 3 of the Takeover Directive, *General principles*

[4] Case C-101/08. Audiolux SA and Others. v. Groupe Bruxelles Lambert SA (GBL) and Others and Bertelsmann AG and Others, Judgement of the Court of 15 October 2009

[5] Commission report on the application of the Directive on Takeover Bids, Brussels, 28.06.2012, COM (2012) 347 final, p 2-3.

Further, recital (1) of the Directive's preamble defines Article 50(2)(g) TFEU (ex Article 44(2)(g) EC Treaty) as its legal basis. The purpose of the provision is the safeguarding of the freedom of establishment as it is set out in Article 49 TFEU (ex Article 43 TEC). Therefore, the Directive must be implemented in consistence with the EU fundamental freedom of establishment and the aims of the company law harmonization programme as an integral part of it *(13th Company Law Directive)*[6].

The main body of the TOD contains mandatory and non-mandatory provisions for Member States. One of the most important obligatory provisions is the MBR of article 5. Its significance lies in that it protects the interests of minority shareholders. According to this provision, in the event of a takeover, the person (natural or legal person) that has acquired a threshold of shares and therefore, the control of the target company, is obliged to address a bid to the remaining shareholders (minority shareholders) to buy all their shares at an equitable price, so as to acquire the full control over the target company[7].

The MBR appears to have its origins back in the UK City Code on Takeovers and Mergers (1968), aiming at providing fair and equitable treatment to shareholders[8]. Following the City Code, the TOD requires the buyer to treat all shareholders on equal terms by making a bid to buy all their shares at the same price.

Within the TOD framework, Member States enjoy a certain amount of freedom to the extent that they are free to establish more detailed norms into their national legal systems, namely to define the threshold percentage of control and to adjust the equitable price. Most countries have chosen to apply a threshold of 30%, such as UK

[6] For an analysis of the freedom of establishment and harmonization of European company law see: Papadopoulos, T. 2007. The mandatory provisions of the EU Takeover Bid Directive and their deficiencies. Law and Financial Markets Review, 525-533. Available at http://ssrn.com/abstract=1088894; Papadopoulos, T. 2013. Acquisition of corporate control and clear criteria in the adjustment of the mandatory bid price. Law and Financial Markets Review, 7, 97-106. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2238603

[7] See Article 5(1) of the Takeover Directive

[8] The City Code was, until recently, a self-regulatory, formally non-binding body of 'soft law', administered by the Takeover Panel. With the implementation of the Takeover Directive, the City Code has been put on a statutory footing, which, however, did not substantially change the 'soft law' approach; See Schuster, E.-P. 2010. Efficiency in private control sales–the case for mandatory bids. p. 4-5. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1610259

and Germany[9]. However, the MBR still remains an obligatory rule once the threshold is met.

Almost all Member States have already transposed the Directive into their national legal systems, enhancing the harmonization level in the field of private sale-of-control transactions[10] throughout Europe.

Outside Europe, the framework under which acquisitions are put into effect is different. Thus, before proceeding to the analysis of the MBR nature and purpose under the EU Directive regime, we will provide an overview of the second approach in regulating private sales of corporate control, the so-called ‘’Market Rule’’, which has been adopted mostly in the United States.

1.2. Mandatory Bid Rule vs. Market Rule

The fundamental difference between the MBR and the MR is that the latter allows an acquirer to gain control of a company without any obligation towards the remaining shareholders.

More specifically, under the MR or ‘’private negotiation rule’’, any transfer of control is effected by private agreements among the seller and the potential buyer. Therefore, the seller is allowed to sell his shares at the best achievable price without any requirement to share the consideration paid. Similarly, the acquirer is not obliged to make an offer to the remaining shareholders to buy all their shares. Instead, he/she enjoys the freedom to choose whether or not to buy the residual shares and at which price.

This deregulatory approach treats sales of corporate control like private property sales[11]. From an economic perspective, the MR is supported to be more efficient than

[9] For the UK see Rule 9.1 of the City Code on Takeovers and Mergers. For Germany see §§ 29, 35 Wertpapiererwerbs-und Übernahmegesetz (WpÜG).

[10] According to Sepe, the private sale-of-control transactions are considered to be the ‘’friendly’’ form of a takeover ; unlike hostile takeovers, they are private agreements for the transfer of control in a company resulting from direct negotiations between the current owner of a controlling block and the potential buyer outside the stock exchange.
For an analysis of sale-of-control transactions see: Sepe, S. 2010. Private sale of corporate control: Why the European mandatory bid rule is inefficient. Arizona Legal Studies Discussion Paper. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1086321

the MBR, as the latter is believed to create high costs and reduce incentives for potential buyers, therefore preventing value-increasing transactions.

However, Americans have subjected the unlimited freedom of shareholders to sell their shares into three exclusive exceptions; the ‘’looting of the corporation’’, ‘’payment for a sale of office” and ‘’diversion-of-corporate-opportunity’’[12]. Whenever one of these exceptions applies, an ‘equal sharing rule’ is actuated, replacing the basic MR.

The main reason for the absence of compulsory public offers in the US takeover regulation is that US financial markets are powerful and corporations have widespread ownership structures. Thus, the US corporate governance rules were drafted to favour the boards of directors. In contrast, EU regulation aims at protecting the minority shareholders of the structurally more concentrated EU corporations. Even in the largest EU corporations, ownership may be concentrated in few hands.

However, corporate structures are not universal even within Europe; For instance, British corporations have widespread ownership structures. On the contrary, Continental European companies are more concentrated, usually held by families or institutions which exercise control over the management. According to Marco Ventoruzzo, the divergence in ownership structures explains why the US takeover regime differs from the EU takeover legislation[13].

The disparities in the ownership patterns of US and EU Continental corporations reflect the different commercial, cultural and historical background of the US and the EU and therefore, the different rationale behind their legal rules. While US takeover approach is based more on the role of financial markets, either implicitly or explicitly[14], EU takeover regulation is based on Community legislation and principles and therefore, is intended to ensure fairness for all shareholders, especially minority ones, in a corporate transaction. This value of fairness is predominant even if it makes takeovers

---

[11] Schuster, E.-P. 2010. Efficiency in private control sales–the case for mandatory bids. p. 3. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1610259

[12] Sepe, S. 2010. Private sale of corporate control: Why the European mandatory bid rule is inefficient. Arizona Legal Studies Discussion Paper. p. 17-18. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1086321

See, e.g, the case of Perlman v. Feldmann, 219 F.2d 173 (2d Cir.), cert. Denied, 349 U.S. 952 (1955)

[13] Marco Ventoruzzo, The Thirteen Directive and the Contrasts Between European and U.S. Takeover Regulation : Different (Regulatory) Means, Not So Different (Political and Economic) Ends? Bocconi University Institute of Comparative Law "Angelo Sraffa" (I.D.C.). Research Paper No. 06-07. p. 32. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=819764

[14] In US, takeovers are regulated by a combination of state and federal-level legislation. Each set of rules has a different scope.

more expensive[15]. With this in mind, importing a ‘’market rule’’, developed within the American institutional setting, into the EU Takeover regulation would rather undermine the EU governance system and its purposes. For the same reasons, in forming new takeover regulation after the UK City Code, EU Continental states rejected the American model and its divergent approach towards shareholder protection[16].

On this point, a detailed description of the basic scheme underpinning the adoption of the MBR is a necessary premise for better understanding the European approach.

1.3. The Mandatory Bid Rule scheme

As seen above, the MBR requires the acquirer -either acting individually or in concert with other persons- to make a bid for the entire corporation and offer the same price to all shareholders once acquired beyond a certain percentage of shares. In the words of its supporters, the necessity of the rule is dictated by three interactive rationales, the principle of equal treatment, the protection of minority shareholders and the efficiency and integration of the European equity market. For reasons of convenience, each one of them is separately presented.

[15] Marco Ventoruzzo, The Thirteen Directive and the Contrasts Between European and U.S. Takeover Regulation : Different (Regulatory) Means, Not So Different (Political and Economic) Ends? Bocconi University Institute of Comparative Law "Angelo Sraffa" (I.D.C.). Research Paper No. 06-07. p. 77. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=819764

[16] Kirchmaier, T., J. Grant, et al. (2009). Financial Tunnelling and the Mandatory Bid Rule (January 2009). FMG Discussion Paper No. 536. p. 5. Available at SSRN: http://ssrn.com/abstract=613945 or http://dx.doi.org/10.2139/ssrn.613945

The increasing globalization has raised discussions on the best corporate model and the barriers to the establishment of a single, unified system of corporate governance. See also Goergen, M., M. Martynova, et al. (2005). "Corporate governance convergence: evidence from takeover regulation reforms in Europe." Oxford Review of Economic Policy 21(2): 243-268.

1.3.1. The principle of equal treatment

Under the equal treatment principle, controlling shareholders, managers and any other persons participating in the company, must treat all shareholders within each separate class of shares on equal terms. Equal treatment must prevail each time a change in the controlling ownership of the company takes place.

Article 3(1)(a) of the Directive specifically provides that: ''*All holders of the securities of an offeree company of the same class must be afforded equivalent treatment* ''.

In other words, the bidder must make the same offer to all holders of the same class of securities and not discriminate among them within the bid ("equality within the bid")[17].

At first glance, this principle seems to have been introduced on the basis of the principle of equality that is inherent in Company Law. It should be noted, though, that the latter only refers to the relationship between a company and its shareholders, not the relationship amongst the existing shareholders and a potential shareholder. Instead, the principle of equal treatment applies with regard to public takeover bids made by prospective shareholders in the stock market. It also applies to all bids, either voluntary or mandatory[18].

Moreover, the equal treatment principle appears to be intrinsically linked to the so called ''sharing rule'' or ''equal opportunity rule'', and therefore to the MBR. According to that rule, all shareholders are entitled to share the control premium[19] that was paid by the acquirer to the former controlling shareholder. This process requires the person that has obtained above the threshold percentage of control to offer the remaining shareholders of the company the same price for their shares as that paid for the controlling blocks. To that effect, the right to equal treatment means the right of all shareholders to tender their shares under the same terms, namely to obtain the same price.

[17] Mucciarelli Federico, Cross-border Tender Offers, the Exclusion of Certain Shareholders and the Principle of Equal Treatment, Uniform Law Review, Vol. 14, Issues 1/2 (2009), pp. 176

[18] Maul, S. and A. Kouloridas (2004). "Takeover Bids Directive, The German LJ 5: 355. p. 356, 361-362

[19] The control premium is an amount above the current market price which an investor is willing to pay in order to acquire control of a corporation.

Following the distinction between the EU and the US approach on takeovers, a reference to the US view on the issue of the premium distribution is important, as well. Thus, outside the scope of the European MBR, there is the US ‘’deregulatory’’ school of thought which supports that the seller of a controlling block should never be obliged by law to share the control premium[20]. Both schools of thought attract significant criticism, demonstrating the weaknesses of each one.

Still, the overall philosophy behind the European ‘’egalitarian’’ approach is equality of all shareholders. And as there is a strong likelihood the control of a company to pass at the acquirer’s hands to the detriment of the remaining shareholders, the latter should equally have an exit opportunity by selling their interests.

Hence, the role of the MBR is primarily to protect the minority shareholders by offering them the chance to leave the company on terms no less favourable than those under which the former controlling shareholder sold his/her controlling block[21].

1.3.2. The protection of minority shareholders

Article 5 (1) of the Takeover Directive provides:

‘’ *Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company as referred to in Article 1(1) which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of* ***protecting the minority shareholders*** *of that company. Such a bid shall be addressed at the earliest*

[20] Jennings, Nicholas. Mandatory Bids Revisited [article], Journal of Corporate Law Studies , Vol. 5, Part 1 (April 2005), p. 44

[21] The possibility to exit from the company is also given to minority shareholders through the sell-out mechanism (article 16 of the TOD), which follows a mandatory bid. The mechanism aims at protecting the remaining shareholders from staying trapped in a company with the new controller by providing them a second opportunity to sell their shares at a fair price and leave the company.

opportunity to all the holders of those securities for all their holdings at the equitable price as defined in paragraph 4.''

As can be seen from the wording of the above article, in combination with the general principles of article 3 of the Directive[22], the protection of minority shareholders is, in essence, the ''raison d'être'' of the MBR. This is also evident from recital 9 of the Directive's preamble (*Member States should take the necessary steps to protect the holders of securities in particular those with minority holdings, when control of their companies has been acquired...*).

In any event, the protection of minority shareholders is grounded on the principle of equal treatment upon a change of control, as was cited beforehand. Therefore, it should be interpreted with respect to the granting to all shareholders of both the right to share the premium and the right to exit the company. The exit right, in particular, gives the minority shareholders the opportunity to decide on whether they will remain a minority or sell their shares *(reinstatement of choice)*[23].

This dilemma is born whenever a person acquires control of a company and that control results in crucial changes. First of all, the incumbent management, which used to conduct the company affairs without any pressure or intervention in the decision making-process, stops to exist. Hereinafter, the acquirer has the full power to exert pressures over the management decisions so as to be in line with his/her wishes[24].

Apart from the changes to the structure of the company, the control acquisition affects the nature of the investment, as well. The ''share in an independent company'' becomes a ''share in an acquired target''[25]. Therefore, the element of choice that characterized the shareholders' decision on the original investment suddenly disappears at the expense of that investment. Imagine, for example, a company which

[22] Article 3(1)(a) of the Directive specifically states: ''.. if a person acquires control of a company, the other holders of securities must be protected; ''

[23] Jennings, Nicholas. Mandatory Bids Revisited [article], Journal of Corporate Law Studies , Vol. 5, Part 1 (April 2005), p. 41

[24] Even if the acquirer does not conduct business at the expense of minority shareholders, it is supported that any change in the company's strategy by him justifies a 'reinstatement of choice'. See Jennings N., supra n 25, p. 42.

[25] Jennings, Nicholas. Mandatory Bids Revisited [article], Journal of Corporate Law Studies , Vol. 5, Part 1 (April 2005), p. 41

used to produce cars and now manufactures armaments[26]. Imagine also each target company that is taken over by a large corporate group; inevitably, the corporate group determines the nature of the businesses of the target company and the way they are conducted.

In fact, many EU jurisdictions provide only for the MBR as an effective defence mechanism against acquisitions of control which do not entail a full offer to all shareholders. This means that the right to exit may be the result of the absence of other minority protection remedies provided for by law. In general, a minority shareholder will likely fail to achieve an appropriate price for his/her share in the market, compared to that paid by the bidder in gaining control. To that end, the MBR guarantees that, in any case, each shareholder will receive an equitable price for his/her stake.

In this context, the MBR constitutes the most essential statutory tool for the protection of minority shareholders against adverse changes of control. It also constitutes a substitute for other minority protection devices to ensure fair conduct of the controlling shareholders. Similar reasons justify the introduction of the sell-out and squeeze-out provisions, which are subsequently presented.

1.3.3. Efficiency and Integration on equity markets

The Explanatory Memorandum of the Commission Proposal recognizes integration of European financial markets as a key objective of the TOD[27]. Furthermore, according to the Commission Report on the implementation of the Directive, the very purpose of its adoption is to promote integration of European capital markets. This would be further achieved by creating favourable conditions: efficient takeover mechanisms, a common regulatory framework and strong rights for shareholders, including minority shareholders[28].

[26] This is an example often used by Lee Peter, Deputy Director-General of the UK Panel on Takeovers and Mergers (until 2002); see Jennings, Nicholas. Mandatory Bids Revisited [article], Journal of Corporate Law Studies , Vol. 5, Part 1 (April 2005), p. 42

[27] Proposal for a European Parliament and Council Directive on Takeover Bids (COM (2002) 534) of 2 October 2002, Explanatory Memorandum

[28] Commission report on the implementation of the Directive on Takeover Bids, Brussels, 21.02.2007, SEC (2007) 268, p 3.

In the eyes of the EU legislators, a “level playing field” instrument is necessary for the achievement of allocative efficiency. Under this framework, Member States are not allowed to raise national barriers to foreign bidders. The MBR, therefore, becomes a neutral, homogeneous element of the mechanism aiming to create uniformity across Europe. In turn, uniformity and harmonization in the field of takeovers prevent national laws from distorting the market and therefore, promote corporate restructuring and higher firm valuations.

In other words, the MBR was planned to foster EU integration and the emergence of robust market players, who will become competitive inside Europe but also at a global level[29]. Sepe agrees that Europe needs corporate restructuring and capital market integration to be competitive in a worldwide market economy[30].

In this context, the salutary benefits accrued to the minority shareholders entail benefits for the financial markets in general, which means greater market integration within the Union. The equal treatment principle in combination with the exit right are considered to lead to the reduction of equity capitals and ultimately, in corporate efficiency.

Efficiency means that corporate assets are allocated to their most productive uses. In this sense, the underpinning argument in favour of the MBR is that the rule prevents inefficient (value-decreasing) transfers of control. More specifically, the obligation of the controlling shareholders to share the control premium is a guarantee that the acquisition creates sufficient added value to be set off with the acquisition costs.

Even if Member States are free to adopt further protective measures at national level, uniformity and harmonization of takeover regulation are considered to be an important step towards a pan-European acquisitions market and therefore, towards the full integration of capital markets.

[29] especially against USA and China

[30] Sepe, S. 2010. Private sale of corporate control: Why the European mandatory bid rule is inefficient. Arizona Legal Studies Discussion Paper. p. 24. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1086321

Part II. The deficiencies of the Mandatory Bid Rule

2.1. The operation of the rule: emerging issues

After almost a decade of the introduction of the MBR, an overall assessment of its operation may be well-founded. Despite its intuitive nature, the rule has received much criticism.

There are several reasons why a bidder may wish to acquire control of a company. First of all, the prospective acquirer may be confident that he will run the business in a more profitable way than the existing management. In this case, the result is a value-increasing transaction in the interest of all shareholders.

The acquirer may also wish to gain control of a corporation for his own interests. That is the other side of the coin, meaning diverting corporate opportunities to the detriment of the minority shareholders. However, opportunistic buyers seem to be discouraged by the MBR veil protection (equal sharing rule and exit right) over the minority shareholders.

Whatever the case may be, the MBR is still criticized by legal scholars to create disincentives for both the acquirer and the shareholders. The acquirer may not afford the increased costs of the takeover transaction, namely the purchase of all the shares and the cash consideration, while the shareholders may not wish to sell their controlling blocks, as they are not permitted to exploit the premium for their holding. All these data make sale-of-control transactions much more expensive.

From an economic perspective, in particular, the MBR is considered to prevent rather than promote value-maximizing transactions. In practice, the enhanced protection of minority shareholders leads to the reduction of equity capital while increasing the value of minority shareholdings[31]. The higher the price of the bid, the greater the benefit of minority shareholders, but the cost of acquiring control is similarly greater. What happens, in reality, is that the seller of a controlling block usually spends time and effort to negotiate the best achievable price whereas the minority shareholders are ensured that they will receive the same price without suffering any costs. This means that the

[31] Sepe, S. 2010. Private sale of corporate control: Why the European mandatory bid rule is inefficient. Arizona Legal Studies Discussion Paper. p. 27-28. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1086321

latter will grab the opportunity to free ride on the efforts of both the acquirer and the controller and benefit from the respective wealth transfer. In turn, investors will buy the minority shareholdings at the higher price and the incumbent shareholders' private benefits of control will be higher than those of the potential acquirer[32].

These problems are likely to prevail in economies characterized by concentrated corporate ownerships, as in Continental Europe. Instead, in UK for instance, the absence of controlling blocks in listed corporations makes the adverse effects of the MBR of little, if any, importance. For investors that wish to acquire a control stake in a widely dispersed corporation, with many shareholders, the MBR seems an unattractive rule with minor effects. On the contrary, in Continental systems the MBR has been proved to have an adverse, ''chilling'' effect, due to the concentration of the company shares in few groups of shareholders, usually families, which select the management and monitor the decision-making process. In this context, majority shareholders in EU Continental corporations are also able to extract or preserve benefits to the detriment of minority shareholders[33]. Considering all the above, in combination with the high costs of acquiring control, one can realize that the MBR leads to the reduction of corporate wealth by preventing a large number of value-increasing transactions[34]. When ownerships are highly concentrated, the rule actually functions as an anti-takeover defence, preventing corporate acquisitions.

Moreover, the bidder who wishes to acquire control of a company that consists of different classes of share capital, will have to make ''comparable'' offers to the holders of those different classes of shares[35]. As far as a potential buyer may be willing to pay more for a multiple-voting share that will give him higher level of control, this situation seems inconsistent with the equal sharing principle, as it was described above.

---

[32] Enriques L. 2004. "The Mandatory Bid Rule in the Takeover Directive: Harmonization Without Foundation?" European Company and Financial Law Review, p. 449-450

[33] For a comprehensive analysis on the issue of private benefits of control see Ehrhardt O&Nowak E "Private Benefits and Minority Shareholder Expropriation – Empirical Evidence from IPOs of German Family-Owned Firms" (March 22, 2002), CFS Working Paper No. 2001/10. Available at http://www.econstor.eu/bitstream/10419/25376/1/346207533.PDF

[34] Sepe, S. 2010. Private sale of corporate control: Why the European mandatory bid rule is inefficient. Arizona Legal Studies Discussion Paper. p. 5. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1086321

[35] Jennings, Nicholas. Mandatory Bids Revisited [article], Journal of Corporate Law Studies , Vol. 5, Part 1 (April 2005), p. 54

In view of the diversified ownership corporate patterns that exist inside the Union, harmonization in the area of takeovers seems still far from purpose. Eventually, taking into consideration that the Directive provides a certain degree of discretion to Member States, harmonization throughout Europe is also precluded by the various national mandatory bid regimes, regulating further bid details or establishing derogations that offer more or less protection to minority shareholders.

In the eyes of its opponents, it seems that the destined functions of the MBR as a key mechanism in the dynamic, efficient allocation of corporate control and as a gatekeeper of the protection of minority shareholders are not completed. However, both the principle of equivalent treatment and the protection of minority shareholders as well as market efficiency and integration are still used as arguments in favour of the introduction of the MBR. Even the keen supporters of the rule, though, recognize the many imperfections stemming from the vagueness of its wording.

2.2. Issues related to the wording of the rule

In order to implement the MBR, each Member State has to supplement it with more specific norms and details, such as the bid threshold and the bid price.

2.2.1. The mandatory bid threshold

As previously discussed, the MBR guarantees that the acquirer is obliged to make a bid to all shareholders of securities for all their holdings at an equitable price once he/she reaches a certain percentage of voting rights giving him the control of the target company[36]. In few words, the point at which the bidder is obliged to make a public offer is called the *control threshold.*

According to paragraph (3) of article 5, the control threshold and the method of its calculation are left to be defined by the Member States. In this context, national

[36] Article 5(1) of Directive 2004/25/EC

authorities should define control thresholds at a level that represents the percentage of voting rights needed for gaining control of a corporation in the different Member States.

It is evident that the provision on the control threshold is not very clear. The major issue raised from the wording of the above provision is the wide discretion granted to the Member States in appointing a threshold. This may be the result of the efforts to compromise the different positions of Member States on the issue.

In any case, the absence of a clear definition of the control threshold or a method of its calculation does not contribute to the harmonisation on takeovers throughout the EU. It is, in particular, inconsistent with the minimum harmonization technique adopted by the Community legislature in Article 3(2) of the Takeover Directive. Thus, since the adoption of the Directive, there have been twenty-eight[37] widely divergent control thresholds within the Union.

2.2.2. The mandatory bid price

As discussed above, in case an acquirer reaches the control threshold, the mandatory bid should be addressed to all the shareholders of the target company, for all their holdings, at *an equitable price*. The equitable price is defined in paragraph 4 of article 5 of the TOD.

The above paragraph declares as its primary purpose the protection of minority shareholders to the extent that the latter are provided an exit on fair price. Either someone perceives the rule as an exit right or as a ramification of the equivalent treatment principle, the point is that the minority shareholders are able to sell their shares to the acquirer of control.

The price of sale is left to the discretion of Member States. This means that different national laws may define different bid prices by taking into consideration different criteria.

[37] The twenty-eighth Member State joined the European Union was Croatia on July 2013.

The above differences result, in particular, from two major issues; first, which should be the calculation basis of the price. Second, how much of the controlling premium should be divided[38].

Starting with the first issue, the Directive has chosen the calculation technique of the highest price paid. Thus, the meaning of the ‘’equitable price’’ in the above provision is the highest price paid for the same securities by the offeror, over a period of time prior to the offer. That period must not be less than six months and not more than twelve months prior to the offer of the bid. The exact period is left to be determined by the Member States.

The justification and the benefits of the highest price paid are to be found in the report of the High Level Group on takeover bids, namely the inalienable right of minority shareholders to share the premium under the above period and the right of the acquirer to determine the maximum price he will pay in order to acquire all the securities of the target company[39].

Provided that no exception has been made by the relevant national supervisory authorities, the highest price paid rule guarantees that any discrimination between the price paid by the acquirer to the seller of the controlling shares and that offered to the minority shareholders is prohibited.

On the other hand, the national supervisory authorities may provide for the adjustment of the mandatory bid price or for exemptions from the application of the rule under certain circumstances (subparagraph 2 of article 5(4)). This provided power should not derive from the need to adjust the takeover regulation to the idiosyncrasy of each Member State; it should be an issue of the enforcement of the MBR in individual cases[40], a case-by-case decision on the application of the rule. An arbitrary, unjustified use of this power on behalf of the national authorities contradicts the purpose of the MBR itself and further constitutes a violation of article 3 of the TOD, unless some other equivalent form of protection is provided[41].

[38] Testa Pedro, 2006, “The mandatory bid rule in the European Community and in Brazil: a critical view”. p.33-34. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=943089

[39] Report of the high level group of company law experts on issues related to takeover bids, Brussels, 10 January 2002, section 4.1, Benefits associated to the highest price paid rule, p. 50

[40] Papadopoulos, T. 2007. The mandatory provisions of the EU Takeover Bid Directive and their deficiencies. Law and Financial Markets Review, 526. Available at http://ssrn.com/abstract=1088894

[41] Enriques L. 2004. “The Mandatory Bid Rule in the Takeover Directive: Harmonization Without Foundation?” European Company and Financial Law Review, 443

Hence, apart from the single exception provided in the Directive concerning voluntary bids[42], the national authorities are entitled to establish derogations from the highest price paid rule. These derogations, however, must be interpreted in a narrow sense, in accordance with the general principles of article 3 of the Directive[43].

In the previously mentioned Audiolux case, the ECJ dealt, in particular, with the issue of whether the requirement for equal treatment of all shareholders constitutes a general principle of EU law in the event of a change in corporate control. The Court found that the references to the protection of minority shareholders in certain secondary legislative acts, such as the TOD, do not provide evidence on the existence of a general principle of EU law. The MBR provided for in the TOD constitutes a specific provision, applicable only to situations falling within its scope. Likewise, it cannot be deduced from the use of the term 'general principles' in Article 3 of the TOD that the principles cited therein should be treated in the same way as the general principles of Community law. By contrast, from the wording of the article *(''for the purposes of implementing this Directive'')*, it is implied that those principles constitute only guiding principles for the implementation of the Directive[44].

The above judgment weakens the adjustment mechanism of the bid price and of the notion of the equitable price[45]. To that end, any additional national criteria or derogations established by the national authorities of Member States should be subject to a narrow framework.

Enriques asserted that Member States already providing for a MBR would understandably confirm the variable range of derogations they have in place today while those introducing it for the first time would also provide for more or less far-reaching derogations[46].

[42] See paragraph 2 of Article 5 of the Takeover Directive

[43] Papadopoulos, T. 2007. The mandatory provisions of the EU Takeover Bid Directive and their deficiencies. Law and Financial Markets Review, 527. Available at http://ssrn.com/abstract=1088894

[44] Case C-101/08. Audiolux SA and Others. v. Groupe Bruxelles Lambert SA (GBL) and Others and Bertelsmann AG and Others, Judgement of the Court of 15 October 2009, para 51

[45] Papadopoulos, T. 2013. Acquisition of corporate control and clear criteria in the adjustment of the mandatory bid price. Law and Financial Markets Review, 7, p. 98. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2238603

[46] Enriques L. 2004. "The Mandatory Bid Rule in the Takeover Directive: Harmonization Without Foundation?" European Company and Financial Law Review, 443

Last but not least, a takeover rule providing for the highest price paid for the shares, in a time period prior the acquisition that triggers the bid implies that the entire maximum premium for control is offered to all minority shareholders[47].

2.2.3. Partial Bids

A partial bid entails an acquisition of less than 100% of the target company's shares. This is the case when the bidder seeks acquisition of control otherwise than by making a general public offer.

The Takeover Directive does not prohibit partial bids. In this context, there is a strong likelihood a bidder to look for a stake below the mandatory bid threshold determined by each Member State, which of course is not followed by a bid requirement. The reasons can be either the intent to acquire working control or the simple desire for a larger stake[48]. If an existing controlling shareholder holds 10% of the voting shares, it would be sufficient to further acquire, for instance, 18% so as to hold the reins.

The fact that the Directive permits partial bids does not imply that Member States are not able to prohibit such bids. For example, the UK Takeover Code does not permit partial offers unless there is the consent of the Takeover Panel and only in exceptional circumstances[49].

Permitting only full bids constitutes an effective protective measure for minority shareholders. According to Burkart, a mandatory bid legislation which precludes partial

[47] Ventoruzzo M, The Thirteen Directive and the Contrasts Between European and U.S. Takeover Regulation : Different (Regulatory) Means, Not So Different (Political and Economic) Ends? Bocconi University Institute of Comparative Law "Angelo Sraffa" (I.D.C.). Research Paper No. 06-07. p 45 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=819764

[48] Enriques L. 2004. “The Mandatory Bid Rule in the Takeover Directive: Harmonization Without Foundation?” European Company and Financial Law Review, 446; Papadopoulos, T. 2007. The mandatory provisions of the EU Takeover Bid Directive and their deficiencies. Law and Financial Markets Review, 527. Available at http://ssrn.com/abstract=1088894

[49] Maul, S. and A. Kouloridas (2004). "Takeover Bids Directive, The German LJ 5: p. 362

bids contributes to the protection of minority shareholders, even if the bidder is free to set the price of the bid[50].

Since the relevant control threshold is not crossed in an acquisition, any obligation for a mandatory bid is excluded. As a result, the bidder acquires shares without offering any premium. The technique of a partial bid defeats the purpose of the MBR, namely the protection of minority shareholders who end up being in a really disadvantageous position (no mandatory offer made to all the outstanding shares, so no exit right granted to all shareholders).

2.2.4. Consideration paid

The MBR provision provides that in an offer the consideration should involve either cash or liquid securities. However, under the above provision cash consideration is compulsory (even in the form of cash alternatives) in the following cases: first of all, when the consideration offered includes illiquid securities, not traded on a regulated market; second, when the offerror, at the time the bid is still open, acquires securities carrying 5% or more of the voting rights of the offeree company in cash; finally, in any case that Member States decide to require cash consideration at least as an alternative[51].

Ex ante, the cash consideration requirement seems to strengthen the principle of equal treatment and therefore, the protection of minority shareholders. However, a deeper look at the provision leads to the conclusion that a bid carrying an obligation to buy all the shares of a company and offer cash consideration is highly possible to discourage prospective buyers. In fact, these features make takeovers very expensive and reduce the number of control shifts taking place[52].

[50] Burkart, M. and F. Panunzi (2003). Mandatory Bids, Squeeze-out, Sell-out and the Dynamics of the Tender Offer Process (June 2003). ECGI - Law Working Paper No. 10/2003. Available at SSRN: http://ssrn.com/abstract=420940 or http://dx.doi.org/10.2139/ssrn.420940; Burkart, M. (1999), Economics of takeover regulation, SITE Working Paper 99/06, Stockholm School of Economics

[51] See Article 5(5) of the Takeover Directive

[52] Jennings, Nicholas. Mandatory Bids Revisited [article], Journal of Corporate Law Studies , Vol. 5, Part 1 (April 2005), p. 54

2.2.5. The definition of ''securities''

Article 2(1)(e) of the TOD call 'securities' only the transferable securities carrying voting rights in a company. In this respect, neither voluntary nor mandatory bids should extend to non-voting shares. This means, however, that the new controlling shareholder will presumably make use of his power at the expense of those holding non-voting shares who are not granted any exit opportunity by the Directive.

As seen, however, Member States are free to impose additional protection norms. It is expressly stated in recital 11 of the preamble that the obligation for a MBR does not apply in cases of securities which do not carry voting rights but Member States are not precluded from applying the mandatory bid rules to the above type, or other types as well, of securities[53].

Therefore, a more explicit and flexible definition of ''securities'' given by the Directive would be more helpful. To that end, holders of non-voting rights would be able to ''get out'' from the company after the change of control. Such an exit opportunity would be a sigh of relief for the latter, since under the current regime they still remain trapped in a company suffering the consequences of the change in control.

2.2.6. The concerted parties

The notion of ''concerted parties'' is another one creating ambiguities in the field of takeovers. The definition is given by article 2(1)(d) of the Directive:

'' persons acting in concert shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid ''.

The ''concerted parties'' element is thus involved in the acquisition of shares through the crossing of the control threshold (Article 5(1)). As we analyzed above, the control threshold as well as the method and criteria of its calculation are left to the discretion of the Member States. It stands to reason that Member States are free to

[53] securities which carry voting rights only in exceptional circumstances

define the percentage of voting rights that gives control to the acquirer or the parties acting in concert with him/her. Therefore, they are free to give their own interpretation of the ''parties acting in concert''.

Thereafter, the definition of concerted parties or of the actions taken in collaboration with other parties is not harmonized among Member States. Some jurisdictions, for instance, have preferred to adopt the Directive's definition (the UK, the Netherlands, Italy) while others have supplemented it with more stringent rules (France and Germany)[54].

In this sense, it is feared that the broad discretion of Member States facilitates national protectionism in another one field of activity, the field of takeovers[55], as happened several times in the past[56]. What is more, it circumvents the principle of minority protection; cases of hidden *de facto* control are not covered by the mandatory bid provision. As a result, in an attempt to avoid the triggering of a bid, the controller may engage in secret elaborate agreements to sell his shares to "white knights", for instance to investment banks, which will hold the shares on his behalf[57]. Thus, the ''hidden'' controller will have achieved to acquire control without financing a mandatory bid. Once again, the non-controlling shareholders are the losers of the game.

Finally, the wide discretion situation creates an extremely uncertain environment which does not allow either shareholders to develop consistent strategies or investors to operate across jurisdictions in Europe. The role of the shareholders is, in general, to coordinate actions and pursue corporate governance improvements without a view to gaining control of the company. If those actions are assumed to be concert actions, the overall percentage of voting shares holding by them may well cross the relevant control threshold leading them to launch a mandatory offer. This has also a negative impact on investors and markets throughout Europe[58].

---

[54] Corte Lorenzo, Simpson Scott, February 25, 2013, Law360, Europe M&A: The Evolving Takeover Landscape. Available at http://www.yumpu.com/en/document/view/10606320/europe-ma-the-evolving-takeover-landscape

[55] Papadopoulos, T. 2007. The mandatory provisions of the EU Takeover Bid Directive and their deficiencies. Law and Financial Markets Review, 529. Available at http://ssrn.com/abstract=1088894

[56] See below the case of the acquisition of the Italian bank Antonveneta

[57] Papadopoulos, T. 2007. The mandatory provisions of the EU Takeover Bid Directive and their deficiencies. Law and Financial Markets Review, 529. Available at http://ssrn.com/abstract=1088894

[58] For a detailed analysis on the issue of concerted parties see Papadopoulos, T. 2007. The mandatory provisions of the EU Takeover Bid Directive and their deficiencies. Law and Financial Markets Review, p. 528-530. Available at http://ssrn.com/abstract=1088894

2.3. The relation to other provisions

2.3.1. The breakthrough rule

Article 11 of the TOD introduces the so called ‘’breakthrough rule’’ which warrants that, in a takeover situation, the company operates in accordance with the one-share-one-vote principle, voiding inconsistent arrangements, either in the articles of association or in contractual agreements[59].

A close look to the above provision leads to the conclusion that the breakthrough rule is intended to facilitate takeovers, by making it harder for the controlling shareholder and the incumbent managers to exercise disproportionate control of a company. They are not able to use multiple voting rights or transfer restrictions to hinder the respective bid. By contrast, they have to compete for control.

At this point, attention should be paid to the interaction between the breakthrough rule and the MBR. The enforcement of the breakthrough rule facilitates the crossing of the control threshold by the bidder and therefore, triggers the MBR. Consequently, the breakthrough rule promotes the mandatory bid mechanism and the protection of minority shareholders.

However, not a few scholars strongly believe that the two rules are completely irrelevant, given that the breakthrough rule is optional and that the most significant issue is the current de facto exercise of control by the offeror without the breakthrough mechanism[60].

2.3.2. The squeeze-out and sell-out rights

The squeeze-out provision grants the acquirer the right to force minority shareholders, who have not previously assented to the bid, to sell their shares to

[59] See Article 11 of the Takeover Directive

[60] Papadopoulos, T. (2008). "The European Union Directive on Takeover Bids: Directive 2004/25/EC", International and Comparative Corporate Law Journal, p. 31

him/her at a fair price. The acquirer is able to exercise this right only if he reaches a specific percentage of equity (the squeeze-out threshold), which amounts to 90% (by reference to capital and, alternatively, by reference to the voting rights) or 95% depending on the Member State's choice[61].

The squeeze-out mechanism allows a bidder to gain 100% of the share equity of a company and hence, to establish a more effective management scheme without having to deal with the minority shareholders. On one hand, the rule gives the prospective controlling shareholders the impetus to invest and therefore, it promotes freedom of establishment and free movement of capital.

The justification for the introduction of the squeeze-out mechanism is given by the European Commission on the Winter Report; the existence of minority shareholders after a successful bid and the continuing protection of them, imposes various costs and risks; the squeeze-out rule makes takeover transactions more attractive for potential bidders; thereby, the rule is seen as a counterpart to the MBR[62].

In sum, the squeeze-out rule mitigates any problems arising between minority shareholders and the controlling shareholder after the latter has acquired most of the company's equity share, such as a possible free-riding behaviour by small shareholders[63]. Ultimately, the squeeze-out rule is intended to facilitate takeovers and further contribute to the development of the takeover market.

On the other hand, it could be said that this rule also enhances the protection of minority target shareholders, as the latter are -indirectly- given a second chance to sell their shares after the first bid has been made.

The main provision, however, which aims at the protection of minority shareholders, is the sell-out rule. According to that rule, minority shareholders are entitled to compel the controlling shareholder to buy their shares at a fair price[64]. Hence, the rule provides an exit opportunity to the remaining shareholders, who would

[61] See Article 15 (2) of the Directive

[62] Report of the high level group of company law experts on issues related to takeover bids, Brussels, 10 January 2002, section 3.1., The justification for the squeeze-out right, p. 60-61

[63] See Goergen, M., M. Martynova, et al. (2005). "Corporate governance convergence: evidence from takeover regulation reforms in Europe." Oxford Review of Economic Policy 21(2): 243-268

[64] Article 16 (2) of the Directive

otherwise stay trapped in the company and their only choice would be to sell their depreciated shares at a low price[65].

Like the squeeze-out, the sell-out rule also prevents conflicts between the controlling shareholder and small shareholders. In any case, both mechanisms are activated once the bid has been made to all holders of the oferee company's shares for all of their holdings. In other words, the exercise of the squeeze out and sell-out rights depend on a prior launch of a mandatory bid.

As discussed above, the implementation of the MBR is largely dependent on the discretion of Member States. Subsequently, the implementation of the above two rights is inevitably subject to that discretion. Especially for the sell-out right and the protection of minority shareholders, the following strange situation is observed: while the TOD introduces the sell-out mechanism to protect the remaining small shareholders, at the same time, it invalidates its use by rendering the MBR easily avoidable under the different national bid rules and exceptions[66]. It is evident that the minority shareholders still remain in a perplexing situation in which the sell-out rule is without purpose.

[65] Papadopoulos, T. (2008). "The European Union Directive on Takeover Bids: Directive 2004/25/EC", International and Comparative Corporate Law Journal, p. 40

[66] Papadopoulos, T. (2008). "The European Union Directive on Takeover Bids: Directive 2004/25/EC", International and Comparative Corporate Law Journal, p. 41; also Papadopoulos, T. 2007. The mandatory provisions of the EU Takeover Bid Directive and their deficiencies. Law and Financial Markets Review, 530-531. Available at http://ssrn.com/abstract=1088894

Part III. The implementation of the Mandatory Bid Rule

3.1. In the European Union

Since its inception, the implementation of the MBR in the majority of Continental European States has been inefficient mainly due to the difficulties in delineating the ‘concerted parties’ and ‘‘threshold percentages’’ as well as in adjusting the mandatory bid price. With respect to the whole European landscape, those difficulties were boosted, as noted above, by the wide discretion granted to the national supervisory authorities of Member States in establishing further detailed norms and exemptions from the TOD. And this is demonstrated by a series of cases in which dominant shareholders, taking advantage of the relevant national bid rules and derogations, have acted to the detriment of minority shareholders.

To begin with, when transposing the TOD in 2007, Italian legislature has replaced the previous compromise rule of an average price with the ‘‘highest price paid rule’’[67] of the Directive. Since then, questions were often raised with respect to takeovers that have occurred in the Italian market before the transposition of the Directive, as in the takeover of company Toro by its competitor Generali and that of the Bank Antonveneta by the Dutch bank ABN on March 2006.

The latter acquisition of the Italian bank Antonveneta is also connected to the scandal that led the then governor of the Italian Central Bank, Antonio Fazio, to resign. When, in March 2005, ABN was to make a voluntary bid to buy the shares of Antonveneta, the Banca Popolare Italiana (BPI), went forward to make a second offer. The managing director of the latter bank was then heard to be closely related to Mr.

[67] Before the adoption of the TOD, Italian law provided for that the bid price was the arithmetic average between the average market price of the twelve months preceding the triggering event and the highest price agreed upon by the bidder in the same period for the same shares. With that process, only a part of the premium was given to the remaing shareholders. The aim was to both protect minority shareholders and reduce the acquisitions costs for the bidder.
After the transposition of the Directive, the new text of Article 106 Testo Unico Finanziario T.U.F. lays down that the price offered should not be less than the highest price paid by the bidder in the twelve months preceding the acquisition of the triggering threshold. The whole text of the article is available at www.consob.it

Fazio who unfairly favoured BPI over ABN so as to prevent any foreign control over a national financial institution which would increase competition in the Italian market[68].

Moreover, in the cases of Pirelli and Fiat, the controlling shareholders maintained a controlling stake just under the respective threshold so as to avoid financing a mandatory bid. Whereas Pirelli used traditional acquisition methods to avoid crossing the mandatory bid threshold, Giovanni Agnelli & C. employed different tactics with the use of financial derivatives to stay away from exceeding the 30% of shareholdings in Fiat Group Spa[69].

Interestingly, other European countries such as France, have adopted with the same statute that implemented the TOD[70], some “collateral measures” which might hinder takeovers. During the same period, Spain finally adopted a single control threshold of 30% of the shareholdings for all Spanish corporations, entirely abandoning the previous multi-tiered scheme[71].

The German Beiersdorf case mainly concerns problems arising from the interpretation of ‘’concerted parties’’. In the above case, Tchibo bought a control stake together with other shareholders, without making a bid for the remaining shares. Since the Directive mentions nothing on the issue, this fact illustrates the difficulties in establishing legal standards which prevent conducts coordinated by multiple parties against minority shareholders.

[68] Ventoruzzo, M. (2006). "Europe's Thirteenth Directive and US Takeover Regulation: Regulatory Means and Political and Economic Ends." Tex. Int'l LJ 41: 171. p. 40-41; See also Ventoruzzo M. Takeover Regulation as a Wolf in Sheep’s Clothing: Taking Armour & Skeel’s Thesis to Continental Europe.1 January 2008. Bocconi University Institute of Comparative Law "Angelo Sraffa" (I.D.C.). Penn State Legal Studies Research Paper No. 2008-02. p. 17. Available at SSRN: http://ssrn.com/abstract=1084429

[69] Kirchmaier, T., J. Grant, et al. (2009). Financial Tunnelling and the Mandatory Bid Rule (January 2009). FMG Discussion Paper No. 536. p. 11. Available at SSRN: http://ssrn.com/abstract=613945 or http://dx.doi.org/10.2139/ssrn.613945

[70] With *Loi* n° 2006-387 of March 31, 2006, the French legislature introduced a new type of poison-pills in the form of free warrants (*bons de souscrition*), which can be issued to existing shareholders.

[71] Kirchmaier, T., J. Grant, et al. (2009). Financial Tunnelling and the Mandatory Bid Rule (January 2009). FMG Discussion Paper No. 536. p. 18. Available at SSRN: http://ssrn.com/abstract=613945 or http://dx.doi.org/10.2139/ssrn.613945

In June 2012, the European Commission published a report on the application of the TOD, indicating the key areas needed to be revised, among which the definition of acting in concert, the wide range of national derogations and the control threshold[72].

3.2. In EFTA States

Among EFTA States[73], Norway applies mandatory bid rules for several years. Within the framework of the Takeover Directive, the ruling of the EFTA Court in *Periscopus AS v Oslo Børs ASA and Erik Must AS* case[74] has been decisive for the interpretation of article 5 of the Directive. The Court dealt in particular with the definition of "equitable price" given by article 5(4) of the Takeover Directive as well as the criteria for the adjustment of the mandatory bid price by the national supervisory authorities of EU Member States laid down in the above article.

To that end, the EFTA Court adopted certain guiding principles and general requirements under which Member States should establish the most appropriate criteria for the adjustment of the mandatory bid price in accordance with the needs of their internal capital markets[75]. And any discretion afforded to the national supervisory authorities should be narrowly construed and adequate justified.

Against the Norwegian vague legal framework, Periscopus Decision provides for a quite precise adjustment mechanism. Thus, the interpretation given by the EFTA Court regarding the notion of equitable price and the criteria for the adjustment of the

[72] Commission report on the application of the Directive on Takeover Bids, Brussels, 28.06.2012, COM (2012) 347 final, p 5-9

[73] The European Free Trade Association (EFTA) is a free trade organisation between four European countries (Iceland, Liechtenstein, Norway and Switzerland) which operates in parallel with the European Union. The EFTA was established on 3 May 1960 as a trade alternative for European states who were either unable or unwilling to join the then European Economic Community (now EU).

[74] EFTA Court, Case E-1/10, Periscopus AS v Oslo Børs ASA and Erik Must AS [2010]

[75] Such guiding requirements are the protection of minority shareholders and the fundamental freedoms of the EU, namely the free movement of capital and the freedom of establishment which are either explicitly mentioned or implied by the text of the Directive. It was also mentioned above (in the Audiolux case) that the scope of the principles referred to in the TOD (Article 3) is restricted and therefore, national authorities have a narrow discretion in granting adjustments or derogations.

mandatory bid price of Article 5(1) and (4) constitutes a landmark for Member States which are hereinafter able to implement the bid rule according to circumstances and criteria clearly determined within a more stable and uniform legal framework.

3.3. The case of Greece

Greece has transposed the Thirteen Directive into national Law 3461/2006[76], which applies in takeover bids for the acquisition of securities of a company having its registered office in Greece and its securities have been admitted to trading in Greece at the date that the decision to launch a bid was made publicly announced and notified to the Capital Market Commission (CMC)[77].

The CMC is the Greek regulatory authority competent to supervise a bid, when the acquisition of securities exceeds the limit of 1/3 of the total of the voting rights of the target corporation. The acquirer is then obliged to submit the bid within a period of 20 days from such acquisition by offering a fair and reasonable consideration[78].

The above obligation applies also to any person who is holder of more than 1/3 without exceeding ½ of the total of the voting rights of the target and who acquires within 12 months, directly or indirectly, on its own or in cooperation with other persons acting for its account or in concert with it, securities of the target which represent at least 3% of the total of the voting rights of the target. The foregoing obligation does not apply, if the bidder has already submitted a mandatory bid[79].

Furthermore, the Greek Law has established a series of exemptions from the MBR which are listed in article 8 of Law 3461/2006.

Since the implementation of the TOD by the Greek State, a number of acquisitions have occurred, either hostile or voluntary, mainly in the fields of telecommunications and transportations such as the acquisition of Cosmote by Hellenic Telecommunications

[76] Law 3461/2006, Transposition of the Directive 2004/25/EC on takeover bids to the National Legislation, Government Gazette A' 106/30-5-2006

[77] See Articles 3 and 10 of Law 3461/2006

[78] Article 7(1) of Law 3461/2006

[79] Article 7(1) of Law 3461/2006

Organization (OTE), of Blue Star Ferries by Marfin Investment Group, of Minoan Lines by Grinaldi Group, of Hellas Gold by European Goldfields ltd, etc.

Particularly in the light of the squeeze-out rule, only four months after the implementation of the Directive in Greece, the CMC had to approve the exercise of the first squeeze-out rights by Nestle to the shareholders of the Greek public company Delta Ice Cream and by Credit Agricole to the shareholders of Phoenix Metrolife Emporiki (the insurance subsidiary of Emporiki Bank)[80].

The acquisition that raises the interest of all, is the sale of the majority stake owned by the Greek government in Greek (OTE) to the German Deutsche Telekom AG in 2011, as the process of that sale entirely ignored the rights of minority shareholders and no takeover bid was ever submitted, in breach of articles 3 and 5 of the Takeover Directive [81]. As a result, a series of accusations and lawsuits against the administration of the Capital Market Committee and the German corporation followed.

The justification used for the refusal to launch a mandatory bid was article 8(g) of Greek Law 3461/2006, which exempts companies already been subject to privatization processes from the obligation to make a mandatory bid.

In a question addressed to the Commission by a Greek deputy, the Commission replied that the provisions of the MBR, the protection of minority shareholders and the equivalent treatment principle, may not have been properly implemented while derogations from those provisions adopted has been interpreted too extensively[82].

Against the background of sovereign debt crisis, spread throughout the Eurozone, Greek state, seeking to enhance its economy, increase competitiveness and of course repay its massive debts, has enacted more broad reforms including further privatization plans as well as recapitalization plans of Greek banks. The ECB considers the

[80] Rampos, D. (2007). "Squeeze-Outs Arrive-Greece has Entered the Modern Era, with Effective Squeeze-Outs and Even Back-Door Delistings Now Possible." Int'l Fin. L. Rev. 26: 30. p. 30-32

[81] that is to say that the rights of 108.000 natural persons and 4.000 legal persons owning the remainder of the shares in OTE were ignored.

[82] Question for written answer to the Commission Rule 117 Nikolaos Chountis (GUE/NGL), 26 April 2011, available at http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2011-003959&language=SL

In a previous question of him related to the case, the Commissioner responsible, Mr McCreevy, had stated that *'when Member States derogate from the mandatory-bid rule, they must nevertheless respect the general principle of protection of minority shareholders and ensure that they benefit from a treatment equivalent to that of majority shareholders. I have yet to see how the Greek authorities will ensure such protection in the present case...''*

implementation of these plans be consistent with the European regime on takeover bids[83].

In that recapitalisation context, several acquisitions have taken place so far, such as that of Geniki Bank by Pireaus Bank S.A[84] and of Eurobank properties by Fairfax Financial Holdings Limited[85].

[83] Opinion of the European Central Bank on the recapitalisation of credit institutions (CON/2013/17),12 March 2013, p. 3, Application of takeover bid provisions in the recapitalisation process, available at http://www.ecb.europa.eu/ecb/legal/pdf/en_con_2013_17_f_sign.pdf

[84] Ανακοινωση σχετικά με την υποχρεωτική δημόσια πρόταση για την απόκτηση μετοχών της «ΓΕΝΙΚΗ ΤΡΑΠΕΖΑ ΤΗΣ ΕΛΛΑΔΟΣ Α.Ε.». Available at: http://www.ase.gr/content/gr/announcements/companiespress/press.asp?press_id=163841

[85] Ανακοινωση σχετικά με την υποχρεωτική δημόσια πρόταση για την απόκτηση μετοχών της «EUROBANK PROPERTIES ΑΝΩΝΥΜΗ ΕΤΑΙΡΕΙΑ ΕΠΕΝΔΥΣΕΩΝ ΣΕ ΑΚΙΝΗΤΗ ΠΕΡΙΟΥΣΙΑ». Available at http://www.ase.gr/content/gr/announcements/companiespress/press.asp?press_id=173021

Conclusion

Takeovers are of paramount importance for EU economies. As more and more businesses operate across borders, a stable and uniform legal framework is precious. Throughout the discussion, we have noted that Takeover legislation is found at the interface between company law and capital markets law. As such, it is dependent on the interactive principles of minority shareholders protection, equality and fairness, and the efficiency and market integration. Although these rationales sometimes seem unrealistic, they constitute a hard effort to create a uniform takeover environment, enhance competitiveness of national economies and encourage cross border transactions.

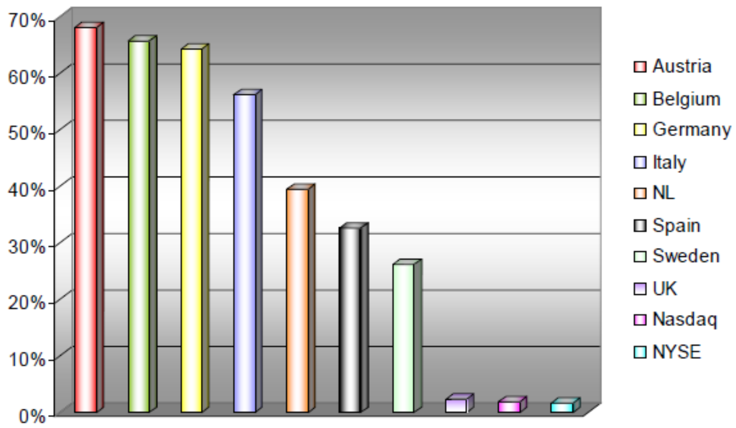
No one denies that the MBR suffers from inefficiencies. It could be said indeed that it is the mere example of a rule with bipolar effects. It is presented as a strong shield of protection for minority shareholders but does not convince that it can perform that function. Similarly, the rule is supported to prevent some value-decreasing transactions. On the other hand, the way in which the MBR operates to protect minority shareholders, excludes certain value-increasing transactions.

However, the very fact that Europe has finally adopted a common regulatory framework, even if with significant national differences, has historic and legal significance that should not be underestimated. Legal scholars have many times commented on the rule's failure to harmonize takeover regulation in Europe. Although political controversies and compromises still remain, which are depicted in the freedom the Directive confers on Member States with regard to defining the bid thresholds and the bid prices as well as establishing derogations and exemptions from the MBR, the picture of the current situation is that the rule represents a laborious achievement of a uniform legal framework throughout Europe.

Combating the MBR leads nowhere especially now that the MBR mechanism has been anchored in EU market practices and would be very difficult to reverse it. A stricter harmonisation framework, though, without too much freedom granted to Member States, might be needed to make market integration and corporate restructuring more effective while protecting minority shareholders. In this way, the European MBR could fulfil the purposes of its legislation. We can hope that the European regulators will be open to take that into consideration.

Anex I

Figure 1. Percentage of Listed Companies under Majority Control



The above figure shows the differences between the EU Continental corporations, characterised by majority shareholdings, and the more dispersed Anglo-American ownership structures[86].

Figure 2. Average largest shareholder

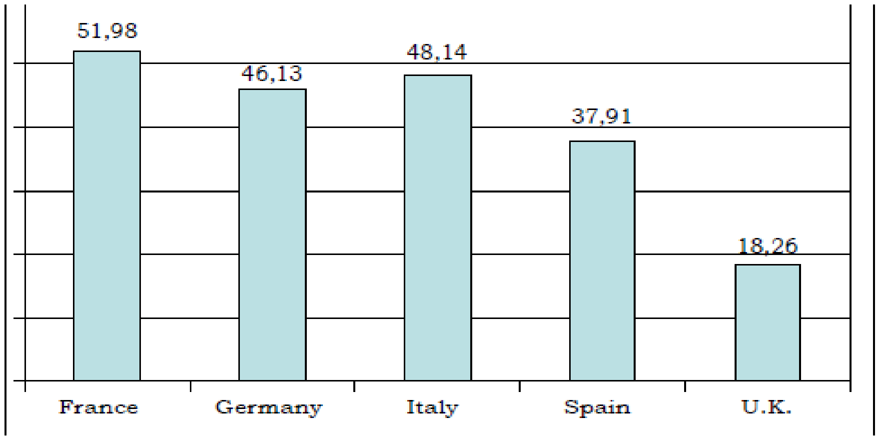


Figure 2 provides the average shareholding percentage of the largest shareholder in corporations of five countries, France, Germany, Italy, Spain and the United Kingdom respectively[87].

[86] Barca F. and Becht M. "The Control of Corporate Europe" (Oxford University Press, Oxford, 2002).

[87] Ventoruzzo M. Takeover Regulation as a Wolf in Sheep's Clothing: Taking Armour & Skeel's Thesis to Continental Europe.1 January 2008. Bocconi University Institute of Comparative Law "Angelo Sraffa" (I.D.C.). Penn State Legal Studies Research Paper No. 2008-02. p. 17. Available at SSRN: http://ssrn.com/abstract=1084429

Figure 3. Year of implementation and control threshold in different Member States

Country	Implementation year	Threshold of voting rights
Denmark	1988	33.33%
Finland	1989	67.67%
France	1992	33.33%
Germany	2001	30.00%
Greece	2006	33.33%
Italy	1998	30.00%
Netherlands	2006	30.00%
Norway	1990	33.33%
Spain	1988	30.00%
Sweden	2006	30.00%
Switzerland	1995	33.33%
United Kingdom	1985	30.00%

Table 3 presents the year in which a MBR (pre-existent of the TOD or not) was adopted in each of the above countries and the threshold percentage of control that triggers the rule in the respective national legal systems[88].

[88] Sapnoti K. Eswar, Has Takeover Regulation Altered Value Creation In the European M&A Market, February 2012, London Business School

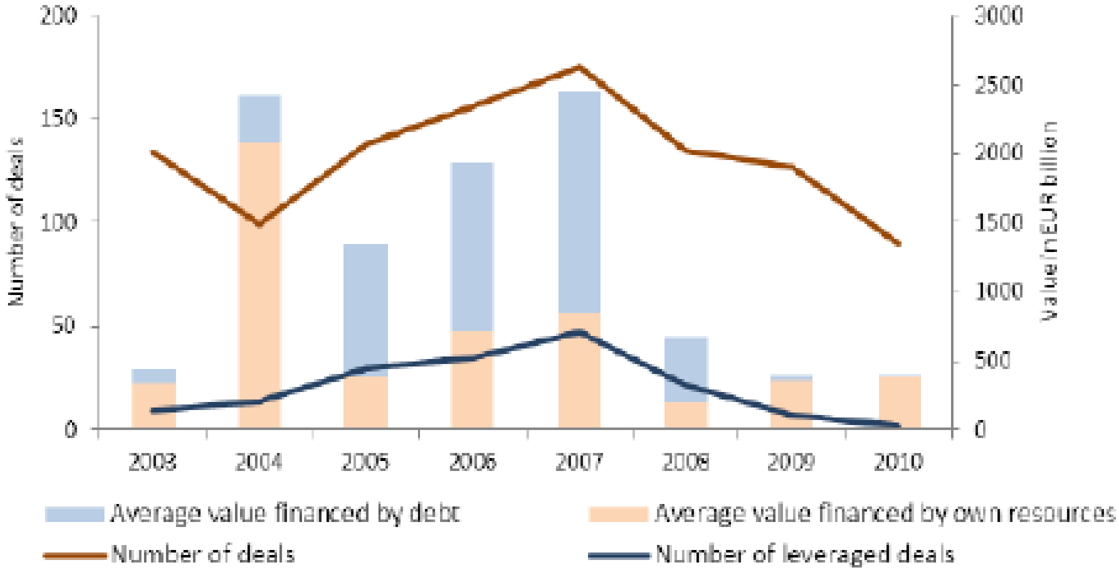
Figure 4. Transposition of the TOD in the EU, January 2007[89]

	Transposition of the Directive	Obligation to apply the board neutrality rule	Obligation to apply the breakthrough rule	Reciprocity	Number of listed companies[31]*	Capitalisation in € million*
Austria	yes	yes	no	no	93	121803
Belgium	no	no	no	yes	136	266302
Cyprus	no	yes	no	yes	140	8442
Czech Republic	no	yes	no	no	31	31466
Denmark	yes	no	no	yes	180	approx. 156000
Estonia	no	yes	yes	no	16	approx. 3000
Finland	yes	Expectedly yes[32]	no	no	138	approx. 214000
France	yes	yes	no	yes[33]	647	1676585
Germany	yes	no	no	yes	650	1097336
Greece	yes	yes	no	yes	289	133115
Hungary	yes	yes	no	yes	44	26162
Ireland	yes	yes	no	no	55	105381
Italy	no	no	no	yes	284	732654
Latvia	yes	yes	yes	no	40	approx. 2000
Lithuania	yes	yes	yes	no	43	approx. 6000
Luxembourg	yes	no	no	yes	37	54941
Malta	yes	yes	no	no	13	3699
The Netherlands	no	no	no	yes	223	587758
Poland	no	no	no	yes	246	91358
Portugal	yes	yes	no	yes	47	69189
Slovakia	yes	yes	no	no	214	3880
Slovenia	yes	yes	no	yes	107	8092
Spain	no	yes	no	yes	224	862941
Sweden	yes	yes	no	no	269	approx. 387000
UK	yes	yes	no	no	2876	2703364

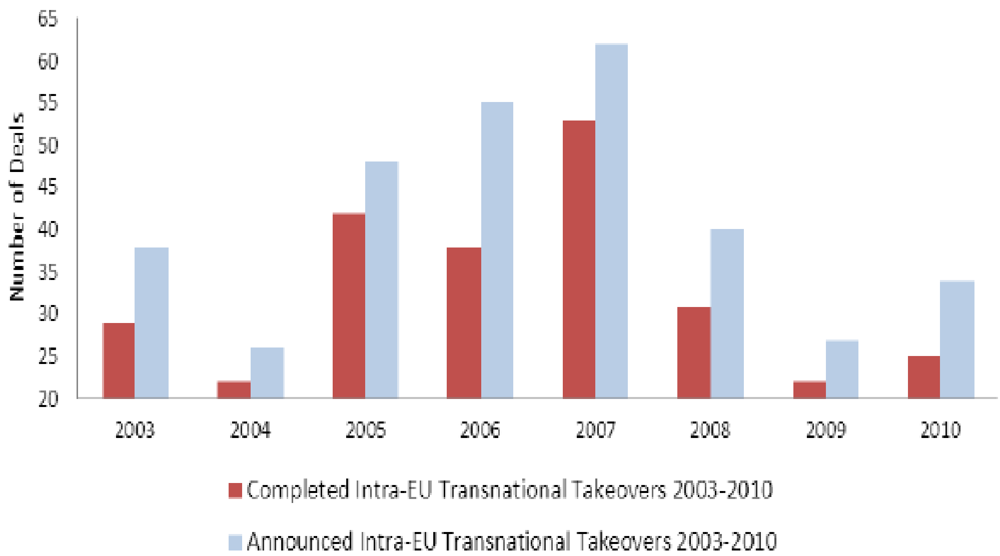
[89] Commission report on the implementation of the Directive on Takeover Bids, Brussels, 21.02.2007, SEC (2007)

Figure 5. Application of Directive 2004/25/EC on takeover bids

Evolution of takeovers in Europe



Number of Intra-EU Takeover Deals 2003-2010



The above tables illustrate the evolution of takeovers in Europe and the respective number of intra-EU takeovers for the period 2003-2010, according to the Commission report on the application of the Directive on Takeover Bids[90].

[90] Commission report on the application of the Directive on Takeover Bids, Brussels, 28.06.2012, COM (2012), p.12

Bibliography

A. Legislation

1. Consolidated version of the Treaty on the Functioning of the European Union
2. Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids
3. Law 3461/2006, Transposition of the Directive 2004/25/EC on takeover bids to the National Legislation, Government Gazette A' 106/30-5-2006

B. Case Law

1. EFTA Court, Case E-1/10, Periscopus AS v Oslo Børs ASA and Erik Must AS [2010]
2. Case C-101/08. Audiolux SA and Others. v. Groupe Bruxelles Lambert SA (GBL) and Others and Bertelsmann AG and Others, Judgement of the Court of 15 October 2009

C. Books

1. Mc Cahery J, Renneboog L, Ritter P & Haller S. The Economics Of the Proposed Europaen Takeover Directive April 2003, CEPS Research Report in Finance and Banking, No. 32.
2. Yearbook of European Law 28, Clarendon Press Oxford, Oxford University Press, 2009

D. Newspapers/Articles/Reports/Opinions

1. Burkart, M. (1999), Economics of takeover regulation, SITE Working Paper 99/06, Stockholm School of Economics
2. Burkart, M. and F. Panunzi (2003). Mandatory Bids, Squeeze-out, Sell-out and the Dynamics of the Tender Offer Process (June 2003). ECGI - Law Working Paper No. 10/2003. Available at SSRN: http://ssrn.com/abstract=420940 or http://dx.doi.org/10.2139/ssrn.420940
3. Commission report on the application of the Directive on Takeover Bids, Brussels, 28.06.2012, COM (2012) 347 final
4. Commission report on the implementation of the Directive on Takeover Bids, Brussels, 21.02.2007, SEC (2007)

5. Corte Lorenzo, Simpson Scott, February 25, 2013, Law360, Europe M&A: The Evolving Takeover Landscape. Available at http://www.yumpu.com/en/document/view/10606320/europe-ma-the-evolving-takeover-landscape
6. Ehrhardt O&Nowak E “Private Benefits and Minority Shareholder Expropriation – Empirical Evidence from IPOs of German Family-Owned Firms” (March 22, 2002), CFS Working Paper No. 2001/10. Available at http://www.econstor.eu/bitstream/10419/25376/1/346207533.PDF
7. Enriques L. 2004. “The Mandatory Bid Rule in the Takeover Directive: Harmonization Without Foundation?” European Company and Financial Law Review, 440-457
8. Goergen, M., M. Martynova, et al. (2005). "Corporate governance convergence: evidence from takeover regulation reforms in Europe." Oxford Review of Economic Policy 21(2): 243-268.
9. Hansen Jesper Lau, The Mandatory Bid Rule The Rise to Prominence of a Misconception, Stockholm Institute for Scandianvian Law 1957-2009
10. Jennings, Nicholas. Mandatory Bids Revisited [article], Journal of Corporate Law Studies , Vol. 5, Part 1 (April 2005)
11. Kirchmaier, T., J. Grant, et al. (2009). Financial Tunnelling and the Mandatory Bid Rule (January 2009). FMG Discussion Paper No. 536. Available at SSRN: http://ssrn.com/abstract=613945 or http://dx.doi.org/10.2139/ssrn.613945
12. Krause, H. Periscopus and Clear Criteria in European Public Takeover Legislation, Comments on Periscopus AS vs. Oslo Børs ASA and Erik Must AS (EFTA Court), European Company and Financial Law Review, 2011
13. Maul, S. and A. Kouloridas (2004). "Takeover Bids Directive, The German LJ 5: 355.
14. Magnuson William, Takeover Regulation in the United States and Europe: An Institutional Approach, 21 Pace Int'l L. Rev. 205 (2009)
15. Mucciarelli Federico, Cross-border Tender Offers, the Exclusion of Certain Shareholders and the Principle of Equal Treatment, Uniform Law Review, Vol. 14, Issues 1/2 (2009), pp. 165-180
16. Mucciarelli, Federico M., Equal Treatment of Shareholders and European Union Law - Case Note on the Decision 'Audiolux' of the European Court of Justice (December 9, 2010). European Company and Financial Law Review, 2010. Available at SSRN: http://ssrn.com/abstract=1758821
17. Opinion of the European Central Bank on the recapitalisation of credit institutions (CON/2013/17),12 March 2013, Application of takeover bid provisions in the recapitalisation process, available at http://www.ecb.europa.eu/ecb/legal/pdf/en_con_2013_17_f_sign.pdf

18. Papadopoulos, T. 2013. Acquisition of corporate control and clear criteria in the adjustment of the mandatory bid price. Law and Financial Markets Review, 7, 97-106. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2238603
19. Papadopoulos, T. (2008). "The European Union Directive on Takeover Bids: Directive 2004/25/EC", International and Comparative Corporate Law Journal, 13-103
20. Papadopoulos, Thomas, Greek Legislation on Strategic Investments; the Next Golden Share Case before the European Court of Justice? (December 1, 2009). European Company Law (ECL), Vol. 6, No. 6, pp. 264-270, 2009. Available at SSRN: http://ssrn.com/abstract=1541635
21. Papadopoulos, T. 2007. The mandatory provisions of the EU Takeover Bid Directive and their deficiencies. Law and Financial Markets Review, 525-533. Available at http://ssrn.com/abstract=1088894
22. Question for written answer to the Commission, Rule 117, Nikolaos Chountis (GUE/NGL), 26 April 2011. Available at http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2011-003959&language=SL
23. Rampos, D. (2007). "Squeeze-Outs Arrive-Greece has Entered the Modern Era, with Effective Squeeze-Outs and Even Back-Door Delistings Now Possible." Int'l Fin. L. Rev. 26: 30.
24. Report of the high level group of company law experts on issues related to takeover bids, Brussels, 10 January 2002
25. Sapnoti K. Eswar, Has Takeover Regulation Altered Value Creation In the European M&A Market, February 2012, London Business School
26. Schuster, E.-P. 2010. Efficiency in private control sales–the case for mandatory bids. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1610259
27. Sepe, S. 2010. Private sale of corporate control: Why the European mandatory bid rule is inefficient. Arizona Legal Studies Discussion Paper. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1086321
28. Seretakis A, A Comparative Examination of Private Equity in the United States and Europe: Accounting for the Past and Predicting the Future of European Private Equity
29. Silja Maul & Athanasios Kouloridas, The Takeover bids Directive, 5 German Law Journal (2004). Available at http://www.germanlawjournal.com/index.php?pageID=11&artID=411
30. Testa Pedro, 2006, “The mandatory bid rule in the European Community and in Brazil: a critical view”. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=943089
31. Tsibris Michael, Mitsou Anna and Koumettis John, Greece Takeover Guide

32. Ventoruzzo, M. (2006). "Europe's Thirteenth Directive and US Takeover Regulation: Regulatory Means and Political and Economic Ends." Tex. Int'l LJ 41: 171.
33. Ventoruzzo M. Takeover Regulation as a Wolf in Sheep's Clothing: Taking Armour & Skeel's Thesis to Continental Europe.1 January 2008. Bocconi University Institute of Comparative Law "Angelo Sraffa" (I.D.C.). Penn State Legal Studies Research Paper No. 2008-02. Available at SSRN: http://ssrn.com/abstract=1084429
34. Ventoruzzo M, The Thirteen Directive and the Contrasts Between European and U.S. Takeover Regulation : Different (Regulatory) Means, Not So Different (Political and Economic) Ends? Bocconi University Institute of Comparative Law "Angelo Sraffa" (I.D.C.). Research Paper No. 06-07. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=819764
35. Wymeersch, Eddy, A New Look at the Debate About the Takeover Directive (March 23, 2012). Ghent University, Financial Law Institute Working Paper No. 2012-05. Available at SSRN: http://ssrn.com/abstract=1988927 or http://dx.doi.org/10.2139/ssrn.1988927
36. Zwecker A. The EU Takeover Directive: Eight Years Later, Implementation But Still No Harmonization Among Member States on Acceptable Takeover Defenses, Winter, 2012, Tulane Journal of International and Comparative Law

E. Online Sources

1. http://curia.europa.eu/
2. http://europa.eu/index_el.htm
3. http://home.heinonline.org/
4. http://www.lexisnexis.com
5. http://www.lawtel.com/
6. http://www.ssrn.com/
7. http://www.google.gr
8. http://scholar.google.gr/