



EU Law and Harmonization of Takeovers in the Internal Market (European Monographs)

Thomas Papadopoulos

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Takeover bids are important for the internal market because they contribute to market integration and to business consolidation in accordance with the EC Treaty provisions on freedom of establishment. The Takeover Bid Directive of 2004 is designed not only to protect the interests of the holders of securities of companies (in particular, those with minority holdings), but also to promote EU-wide clarity and transparency in respect of legal issues to be settled in the event of takeover bids and to prevent patterns of corporate restructuring from being distorted by arbitrary differences in governance and management cultures. Analysing the Takeover Bid Directive in the light of EU Law, this important monograph examines the extent to which the Directive facilitates the exercise of the fundamental freedom of establishment and the free movement of capital in the internal market. The analysis begins with a discussion of the fundamental freedom of establishment of companies, as well as of the legal bases for the harmonization of company law and capital markets law at EU level. Additionally, the significance of corporate mobility and of the freedom of establishment case law of the European Court of Justice for the takeover process is analysed. The author shows that, far from achieving market integration in the field of EU company law, the Takeover Bid Directive is a compromise resulting from the very different legal and policy approaches of the Member States in the field of takeover regulation. Although some provisions of the Directive are obligatory for all Member States, two key provisions have been made optional: the non-frustration rule, which requires the board to obtain the prior authorization of the general meeting of shareholders before taking any action that could result in the frustration of the bid; and the breakthrough rule, restricting significant transfer and voting rights during the time allowed for acceptance of the bid. Other relevant legal issues covered in the course of the analysis include the following: A { the right of establishment as a right of legal persons; A { vertical vs. horizontal direct effect; A { regulatory competence to harmonize the internal market; A { the Financial Services Action Plan and the Company Law Action Plan; A { effect of the principle of subsidiarity; A { the Takeover Report of the High-Level Group of Company Law Experts; A { the mandatory bid rule; A { squeeze-out and sell-out rights; A { the non-frustration/board neutrality rule; and A { the reciprocity rule. Company lawyers, managers, and investors in European undertakings will benefit from the author's well-informed analysis of the extent to which obstacles to cross-border takeovers addressed by the Directive, or indeed left intact by the Directive, are to be regarded as restrictions on the right of establishment, or simply as obstacles in practice to making a successful takeover bid. It may be anticipated that some of the insights to be discovered in this work will find their way into EU law in the coming years.

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