

The rule of neutrality of target company governing body in EU from the perspective of corporate governance

Abstract

The subject of this thesis is a legal analysis of the neutrality rule from the corporate governance perspective in the context of the EU harmonisation of the legal regulation of takeover bids. The main research question is whether the neutrality rule is a justified and appropriate instrument to regulate corporate governance problems associated with takeover bids and, simultaneously, to what extent the harmonisation of the neutrality rule in the EU is necessary.

The first chapter discusses corporate governance issues in the context of takeover bids in general, focusing on problems arising from the authority of the governing body of the target company to adopt takeover defences against a takeover bid. In this context, broader questions of the regulation and harmonisation of takeover bids in the EU are also discussed.

The subject of the second chapter is a legal analysis of the neutrality rule in the Takeover Bids Directive. In particular, attention is dedicated to the transposition and application mechanism of the neutrality rule under the Takeover Bids Directive and the assessment of the fulfilment of its harmonisation objective with regard to the neutrality rule. A partial conclusion is that the Takeover Bids Directive does not fulfil its harmonisation objective as regards the rule of neutrality.

The third chapter is the central part of this thesis, and its subject is a structured assessment of the arguments for and against the neutrality rule from a corporate governance perspective. The need for EU harmonisation of the neutrality rule is also examined in this chapter, considering some specific features of capital market and corporate governance in EU jurisdictions.

The fourth chapter is devoted to outlining and assessing selected alternative approaches for the harmonisation of the neutrality rule in the EU in case of a revision of the Takeover Bids Directive.

The conclusion of this thesis is that the neutrality rule is generally the most effective and reliable corporate governance tool to regulate corporate governance problems arising from the conflict of interest of board members of the target company when deciding to adopt takeover defences against a takeover bid, and therefore has its justification from a corporate governance perspective. At the same time, the neutrality rule does not lack relevance in view of some specific features of EU jurisdictions.

Key words: takeover bids, board neutrality rule, corporate governance