DE GRUYTER OPEN

ECONOMIC THEMES (2015) 53 (1): 1-17

DOI 10.1515/ethemes-2015-0001

COMPANY CHANGING STATUS AND ITS LINKING TO COMPETITIVENESS

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UDC
339.137.2
Review paper

Abstract: The authors present the issues and challenges related to the changes in status of a company and its impact on competitiveness. Status changes of companies, mostly mergers and acquisitions of companies, are one of the ways in which capital owners and management direct economic activities with the aim of maximizing profits. In order to make the right and justified decision, in terms of achieving the economic interests of the company, it is essential to know the laws and regulations in this area. This paper should provide answers on various questions which will be presented to decision makers in every company, considering status changes. Bearing in mind that the question of status changes often associated with an international element, the authors will pay special attention on the EU legislation and current legal framework in the Republic of Serbia.

Received:
14.12.2014
Accepted:
27.03.2015

Key words: status changes, companies, competitiveness, mergers, acquisitions

1. Introduction

According the European Union company law, the fundamental freedom of establishment of companies beside their form, as well as of the legal bases for the harmonization of mentioned branch of law, and capital markets law at EU level, are determined and defined in the Treaty of EU.

The paper is a part of Project No. 179066 financed by Ministry of Education, Science and Technological Development of the Republic of Serbia

There are different aspects of EU company law harmonization. Generally, the first step in creating European company law is presented in EC Treaty. After the freedom of establishment was defined in Articles 43 and 44(2)(g) of mentioned legal act, European legislators had serious task regarding harmonization. All Directives should be based on the EC Treaty generally, and article 43, particularly. That was one of the most important aims of the Commission, not only in the beginning of EU, but also in following decades. The internal market EU should develop through the corporate mobility, including people, capital, products.

The initial aims of the EU legislature were to establish an internal market for companies and to achieve market integration in the field of EU company law. The group of EU company law directives makes the minimum of basic steps in order to be defined setting up, activities and position of companies in the internal market. Harmonization process involved numerous directives, but the whole procedures definitely based on following: First - disclosure requirements for limited-liability companies, Second - minimum requirements concerning the capital of public limited-liability companies, Third - procedures for domestic mergers, Sixth – procedures for divisions, Tenth - cross-border mergers, Eleventh – establish the branches of the companies that are established in another Member State, the Twelfth Company law Directive introduced the possibility to found limited-liability companies with a single Member, and the Takeover Bid Directive as an EU company law instrument with strong links to EU capital market law.

2. EU directive in a field of establishing companies and changing their status

The process of adopting set of directives was very long. The first one was adopted in the 1960s, for example. Many of directives have been updated several times in order to adapt them to new developments. But, generally speaking, directives have remained fundamentally unchanged since their adoption.

In order to improve rules, European Commission is, in July 2007, proposed an initiative in the area of company law. Additional field understood accounting and auditing. As a result of that activity, in July 2007, it was adopted so-called Communication. The Communication highlighted two options for the simplification of the company law. Both of them are in according the *acquis*. What did exactly Commission want to change? No matter what option would be chosen, the idea is to improve and make common rules for companies and the other participants at the internal market.

The first option involved changes regarding Second, Third, Sixth and Twelfth Directives, actually companies' capital, domestic mergers and divisions, and single member companies. The second option, also understood mentioned Directives, but it considered to some key simplification measures related to specific provisions of the directives (for example, management reports, expert reports, the creditor protection)[1].

There were serious problems in whole process of amending the XIII Directive. The first draft failed to pass in the European Parliament. After that, in order to speed up the amending that act, the European Commission established the High Level Group of Company Law Experts (Expert Group). The Expert Group was made many activities wishing to approach national rules of the Member States. It prepared a new proposal. I than period, the diplomatic and legislative struggles were very intensive. National corporate laws had shown high level of difference. The Expert Group's report on takeover law was greatly anticipated. Shortly after its presentation on January 10, 2002, the Expert Group initiated a public consultation procedure regarding the Group's second task - regarding a wide range of corporate law issues.

2.1. Takeover the companies – legal approach

There are opinions that the takeover has different approach in Europe, practically in continental Europe, and USA on the other side (Ferrell, 2003, p. 4). It seems that main cause is in ownership structure of companies in continental Europe, which is different, compared to that of their USA and British corporations. In European companies ownership is essentially concentrated. Some researching show that more than 50% of listed, non-financial companies in Austria, Belgium, Germany, and at the same time Italy have a single control block with a majority of voting rights (La Porta et al., 2000, p. 58).

Deference between company structures is more than obvious, due to only 3% of companies in the United States and the United Kingdom have a single control block with a majority of voting rights.

The first proposal of Takeover Bid Directive made in 2001. Soon after that, The Commission should present its second draft in 2002. Expert Group made proposals regarding numerous questions, such as equitable price, defensive measures. This Group of Experts paid attention on differences between two legal systems – American and European. According their suggestions, the European Parliament involved equitable price requirement, and regulating *squeez-out* and sell-out procedures, as well as employees' right to be informed about the bid.

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[1] http://ec.europa.eu/internal_market/company/simplification/index_en.htm

But, there are obstacles to be amended in suggested form. It caused conflict between the Commission and the Expert Group. Despite some unsolved problems, the Council's formal vote on the Directive's passage on March 2004. The Directive was signed by the Council and the EP on April 21, 2004.

Developing way of Takeover Directive was very complex. Due to overlap stakeholders' interests, European Union tried to improve every segment, and did it everything what better. One of the necessary step on that way was so-called the Winter Report. This Report was trying to provide and present how it could look the concentrated ownership structure in some companies, and at the same time compares it with corporate control of companies with dispersed ownership[2].

But, the basic problem and question regarding – dispersed or concentrated ownership, wasn't solve. Generally speaking, corporate law is still on very low level in some countries. It means that it couldn't follow and organize control of owners. On the other hand, in a case of dispersed ownership, it opens the possibility for a third party who can acquire control of the company.

A takeover is significant procedure for changing a company status. All participants have their own interests in that process. What does exactly *takeover* mean? Perhaps the main part of the takeover is BID, and due to that *takeover* can be technically defined 'as a takeover bid to acquire the control over a company listed on a public market'. 'Control' is achieved when the offeror has acquired enough shares of the offeror company to be able to appoint directors to the company's board (Davies, Hopt, 2004, p. 313).

Control package of shares could be shared by one or more controlling shareholders. Business practice also recognizes the situation when the board of directors has important role. Directors could be in position to represent all shareholders, as well as the company.

From some point of view, there is no seems to discuss about other potion than public bid for takeover shares. But, in some opinions it could be found that a transfer of control would be achieved by a private sale of control.

A private sale of control is a bilateral negotiation between the acquirer and the acquire. Obviously, one of the mentioned participants has a block holder role. Private sales of control will take place more frequently in an environment with full or partial concentration of ownership and control. This procedure understands the acquirer will offer a premium that is tailored to the controlling shareholders' willingness to sell the benefits they are able to extract from minorities (so-called *private benefits of control*) (Zingales, Dyck, 2004).

[2] Mentioned problems could be presented as interaction between *technical barriers* to takeovers, it means defensive tactic involving the management role, and *structural barriers,* which is pointed by concentrated ownership.

Besides numerous economists don't prefer this way of acquiring the shareholder, its existence has led regulators to introduce more general principles into the Directive, for example the equal treatment of shareholders[3].

Table 1. Control transfers

Sale of control	Takeover bid (takeover)
No coordination problems (bilateral)	Controlling shareholders-acquirer
Coordination problems (multilateral)	Offeror-shareholders-management
	Among shareholders
Private offer	Public offer
Control premium	Market premium
Low transparency	High transparency

Source: The Takeover Bids Directive Assessment Report, 2010

The Directive has four main areas:

1. mandatory bid rule,
2. board neutrality rule,
3. breakthrough rule, and
4. squeeze-out and sell-out rules.

Table 2. Mandatory bid rule thresholds

Austria	30%	**Ireland**	30%
Belgium	30%	**Italy**	30%
Cyprus	30%	**Luxembourg**	33%
Czech Republic	50%	**Netherlands**	30%
Denmark	50%	**Poland**	33%
Estonia	50%	**Portugal**	33%
Finland	30%	**Romania**	33%
France	30%	**Slovakia**	33%
Germany	30%	**Spain**	30%
Greece	33%	**Sweden**	30%
Hungary	33%	**UK**	30%

Source: Menjucq, M. (2006), "The European Regime on Takeovers", ECFR, 2.

3 Article 3.1(a) of the Directive 2004/25315; see also High Level Group of Company Law Experts on Issues related to Takeover Bids or "Winter Report," 2002, p. 1

Takeover is complex procedure. It should provide realization of interests of all participants. Due to that shareholders as one of the key stakeholders have important role. Protection of shareholders' rights must be on the first place for corporate governance. According that, the Directive, on one side defines strong shareholder protection principles, and the other, it is granting some flexibility in the application of main parts of the legislative text. A threshold of voting rights is applied to the acquisition of new shares. Exceeding the threshold triggers the obligation to launch a takeover bid for all shares. Having regarded the EU, legislations of member states define thresholds. It could be seen that thresholds usually are defined between 30% and 33%, and the exception is made in three countries.

2.2. Economic impact of XIII Directive

Perhaps, the shares should be in the focus of key stakeholders in all joint stock companies, especially if any of them interested in takeover. The rule affects companies where there are several classes of shares which provide voting rights attached. Voting rights are important due to control (Bennedsen, Nielsen, 2004). There are analyses about the distribution of voting, on one, and cash flow rights, on the other side, in more than 1,000 companies with dual-class shares in 10 European countries. Research has shown that 3% to 5% of companies where controlling owners held more than 50% of voting rights but less than 25% of the shares, therefore making them subject to a direct loss of control in the face of the breakthrough rule in the Directive. In addition, interesting fact is that the majority of these companies were located in Denmark, Germany, Italy and Sweden. Also, 11% to 17% of companies were controlled by less than 50% of voting rights and less than 25% of shares, and were hence subject to a potential loss of control.

In business practice, it is usual that a large number of listed companies, so-called block holders exist, and better to say, they are organizing in order to have control based on ownership the largest share of capital without diverging from the one share – one vote principle (Coates, 2003, p. 345). Of course, it could be seen the opposite thesis (Papadopoulos, 2008). Namely, disrespect the one-share one-vote principle could result by dispersed ownership, but this opinion lost its meaning in business world.

What benefits could be reserved for the controlling shareholder? The first one, partly the benefits can be considered as compensation for the costs involved in monitoring management (Zingales, Dyck, 2004, p. 537-600). Secondly, the one share – one vote principle provides an incentive for institutional shareholders to engage. This principle enables arising of level of control. It means that the controlling shareholder may capture business opportunities on preferential terms through its affiliates (European Corporate Governance Forum, 2007).

One of the possible economic problems in the procedure of issuing new series of shares, for example, could be the costs. It could discourage the companies from issuing new shares to parties other than the controlling shareholders.

The practice has shown incumbent shareholders would probably apply more cost-efficient situation and to switch the mechanism through which they hold control and build up a pyramid scheme. Also, there is pinion that the opacity of these structures may have a negative impact on capital markets (Coates, 2003, p. 301).

2.3. The directives and competitiveness

One of the prime aims of EU in following years is higher level of competitiveness. Growth of competitiveness is involved in the framework of the Europe 2020 Agenda. Agenda is, definitely one of the most important legal act and leading paper for Member countries, as well as the companies and the other participants in economic relationship. There are different aspects of competitiveness. Also, there is no common definition of competitiveness, even at the level of individual countries. For example, 'the OECD defines competitiveness as a measure of a country's advantage or disadvantage in selling its products in international markets' (OECD, 2007). On the other side, economic science is focused on numerous factors that determine the level of competitiveness. Factors are thinks of high importance for every economy. Between two, as well as among more factors there are the interactions, which could be base for different measurement. Traditional competitiveness indicators are based on the difference between domestic and competitors' unit manufacturing labor costs and consumer prices (Bennedsen, Nielsen, 2004, p. 259-283).

The factors should be connected with other facts, or maybe is better to say, indicators, in order to define concrete situation on right way. According different meanings, factors must be the part of corps which offers the answer what is competitiveness, exactly (Mccahery, et al, 2010). This is the one way to contribute not only to economy, but to other aspects of living, such as education, training, innovation, governance and trade. Competitiveness is important topic for the World Economic Forum (WEF). Every year this organization has presented the report considers the approach followed by which assesses multiple factors grouped into 12 pillars to compile its Global Competitiveness Index (GCI). This index places the emphasis on the link between competitiveness, sustained economic growth and long-term prosperity, and therefore represents a useful tool for policy making. Available since 2004, the index covers 139 countries, including most European economies.

Definitely, competitiveness is a combinable concept. Having regarded the participation of the competitiveness in economic status of every company, the Takeover Bids Directive has a significant meaning them. The takeover applying impresses on companies' competitiveness. It could note the impact on the level of competitiveness and growth of the European economy, generally. There are serious links between takeovers and competitiveness, which could be seen through the different approaches.

Previous mentioned pillars are split into basic requirements (first row in the table below), innovation and sophistication factors, and efficiency enhancers (all other factors).

Table 3. Competitiveness "pillars" considered by the Global Competitiveness Index of the WEF

institutional environment	Infrastructure	macroeconomic environment	health and primary education
business sophistication	Innovation	higher education and training	goods market efficiency
labor market efficiency	financial market development	technological readiness	market size

Source: CMS (2011), CMS Guide to Mandatory Offers and Squeeze-Outs, CMS

Competitiveness is connected to economic growth. Economists usually highlight that the Europe Agenda 2020 is made according the base options and principles defined by the WEF. But, the economists also point out that link between competitiveness and growth has its beginning in economic theory. Due to previous explanation, competitiveness could be used for determination actual and potential economic growth.

On the other side, it should be mentioned the GCI, again. This Index has been endorsed by the Joint Research Centre of the European Commission as a robust indicator of competitiveness.

Additionally, it should be noted one definition of competitiveness, firstly due to the WEF suggested it. Competitiveness determines productivity, which in turn explains the rates of return of the different factors employed in the economy (CMS, 2011). GCI is the factor of importance for making list of economic prosperity countries. It means that a country with higher competitiveness and productivity would be more prosperous. For economies productivity and growth depend on the innovation and significant components of competitiveness.

European Union Rules made unbreakable connection among competitiveness, economic growth, and company status changes, takeover primarily. The Europe 2020 Agenda is based on three priorities: smart growth, sustainable growth, and inclusive growth.[4]

European Union has pay attention on improving economic factors. The impact of takeovers on competitiveness is very important for every economy. European 2020 Agenda understands both institutions as its priority, which could be seen in special session.

Table 4. Linking competitiveness to takeovers

Europe 2020 Smart growth	Global Competitiveness Index Higher education Innovation Technological readiness Business sophistication
Sustainable growth	Infrastructure Goods market efficiency
Inclusive growth	Health and primary education Labour market efficiency Training
Other actions	Financial markets development Market size Institutions Macroeconomic environment

Source: The Takeover Bids Directive Assessment Report, 2010

Legal framework is a necessary segment of takeovers. All participants in takeovers procedures shouldn't feel uncertainty through the process of public procurement as a required condition in all legislation. If a country wants to be competitive, it should provide the same conditions for domestic and foreign interested companies. Directive is a base for efficiency national legislation. It means that well oriented national policies in a field of takeover will provide its positive effects.

Takeover regulation needs to be understood as part of the broader system of corporate governance, which impacts on productivity and competitiveness.

[4] Developing an economy based on knowledge and innovation, promoting a more resource efficient, greener and more competitive, as well as fostering a high-employment economy delivering economic, social and territorial cohesion.

Corporate governance should be organized very well in order to be achieved the main aim every company – the best possible position in the market. Corporate governance has very important and serious role in takeover procedure. All authorized boards must protect interest of shareholders, employees, as well as the other stakeholders. This is the only way to be competitive and at the same time to realize all planned activities. (OECD, 2001)

During 2001 OECD introduced the regulation on takeover, but also highlighted the growing importance of cross-border mergers and acquisitions. Obviously, Internal market EU couldn't develop without harmonization takeover regulation. A common set of rules is expected to increase the efficiency of every company and the market generally speaking. It should provide a positive impact on competitiveness. At the moment there is no full harmonization of takeover regulation in Europe. The group of High experts recommended that Takeover Directive should provide the base for national legislation regarding adoption own provisions. According that politics Member States could decide to transpose suggestions into national law, or not to do it.

There is estimation that equal rules can have different effects in business practice depending on the ownership structure that exists in each country (Ventoruzzo, 2010, p. 302). Optional provisions would therefore be a useful tool to account for national diversities in the governance structure (Mccahery, et al, 2010).

In 2007, after several years applying Takeover Directive, the Commission concluded that the "number of Member States implementing the Directive in a seemingly protectionist way is unexpectedly large" (EC Report 2007).

3. Status changes and takeovers of companies under the company law of Republic of Serbia

The Company Law stipulates four types of status changes: merger, acquisition, division and separation[5]. Unlike the solutions envisaged in the Third Directive, which involves merger by acquisition or merger by the foundation of a new company, Serbian company legislation consider under the term ***merger*** only type of status change in in which two or more existing companies merge to the newly established company, and that after that they evanesces without following the procedure of liquidation.

Also, while the appliance of Third Directive is restricted to the joint-stock companies, the legal provisions of the status changes in the Company Law can be applied onto the joint-stock company and onto the limited liability company.

[5] Zakon o privrednim društvima Republike Srbije, ("Sl. glasnik RS", br. 36/2011, 99/2011 i 83/2014 i dr. zakon) article 485.

The Company Law provides two methods in which the status change can be carried out: regular procedure and simplified procedure. Regular procedure is carried out as a basic and mandatory, regardless of the type of status change, except in the case of effectuating acquisition of the company in a situation in which the acquiring company control company in relation to the transferor company (Sekula, 2007).

Therefore, merger of companies in Serbia will be carried out in a Regular procedure which contains several phases. At the very beginning, it is essential that there is aspiration in all participating companies in the status change to enter into negotiations, and considering the implementation of the intended changes.

In this, we can call it ***the preparatory phase*** of a status change, the director or the board of directors or the supervisory board if there is two-tier company management, must prepare certain documents on which the Assembly of the company would be able to review the decision on the implementation of the intended changes. (Čolić, 1999)

Firstly, it is necessary to draft a Contract on the status change, as well as a draft decision on amending and supplementing the Charter and Statutes of the acquiring company, and also proposal of Founding Act and Statute of newly founded company. Further more, list of members of the transferor company, stating the nominal value of their shares in the transferor company and the shares into the acquiring company and a list of employees in the company of the transferor whose employment continues in the acquiring company.

In addition to the draft Contract on the status change, it is necessary to attach financial statements with the external auditors, as of the day preceding the date of the decision of the Assembly on the status change of a maximum of six months, also the auditor's report on audit of the status change and report on status change by the board of directors or executive committee if there is two-tier company management.

Based on these documents the director or the board of directors or the supervisory board, if there is two-tier company management, shall send a draft decision on the status change, which must be adopted by a qualified majority of the members of the Assembly.

In the next phase, the positive decision to commence the process of the merger, it is necessary to conclude the Contract on the status change. The Contract will particularly include the business name and headquarters of companies participating in the merger, the goal and conditions under which the process of merger will be executed, an indication of the value of assets and the amount of the liability which are transferring to the acquiring company, a description of the manner in which the transfer will be made, record of replacement and range of proportionality of shares, and information about special rights in the acquiring company acquiring company members transferring to special rights. The contract must also contain the date from which ceased business activities of the transferor companies and the date from which the transactions of the transferor company are considered, in terms of accounting, transactions carried out in the name of the acquiring company. In particular, the Contract on the status change will include the conditions under which it employees will continue employment with the acquiring company.

Based on this compiled and signed Contract on the status change, there will be drafted a separate document so called ***Plan of division***. Role of the Plan of division is reflected in the fact that it will be further developing all the issues and details of the technique itself implementation status change. The Plan will not only include the statutory legal provisions but also will contain answers to technical questions like will the future manufacturing process, questions of the use of protected intellectual property, the question of the status of employees, relationships with stakeholders, and so on.

As a particular phase, The Company Law states "the notification of implementation of status changes". Given that there are numerous categories of persons who are interested in the business of a company, starting with the owner, through employees, to the creditors and debtors of the company, it is necessary to inform the public on the implementation of the merger procedure, so that all interested parties were aware of this fact.

Activities that are imposed on the company at this stage of the implementation of the merger, are the obligation to publish, the obligation to provide access to documents and obligation to personal notify some creditors. Draft Contract on the status change, and a draft Plan of division company must present on its web site and deliver to the State Agency for Business Registers for publication on the website of the Registry, no later than one month before the date of the meeting at which the decision on the status change. Along with these drafts will be published a Notice to members of company of the time and place where they can have access to the documents of the company which are concerning the process of status changes.

A company that conducts merger is due provide access to records and documents related to the merger to its members at the headquarters of the company, as well as in annual financial statements for the last three years for each of the companies participating in the status change, and the auditor's opinion if they audited.

Special regulations are provided for notifying creditors of a company that conducts merger. The company is obliged on sending written Notice of the implementation of the merger, to a creditor who is known to her, and whose claims are at least 2 million dinars on the date of the draft agreement or decision on the status change. The Notice contains elements of procedure for conducting merger within 30 days prior to the meeting of the Assembly at which the decision on the status change will be approved.

After successfully completed the previous actions it can be started with process of making a final decision on the implementation and approval of intended merger by the Assembly. Along with the Decision on merger the Assembly will specifically approved the Plan of division, Contract on the status change or the Draft of contract on the status change status change, if the Contract is not concluded until the meeting.

In the case of joint-stock companies status changes shall be made with a three-fourths majority vote of the shareholders, if the statute is not set greater majority.

The Assembly shall simultaneously with the Decision on merger also conduct Founding Act of newly founded company and Statute of the company if it is a joint-stock company.

The Contract on the status change shall come into force when the Decision on merger is approved by the Assembly of all the companies that participate in a status change or the date of conclusion of the Contract, if that date is later, unless the Contract provides some other solution. The Plan of division shall come into force when the Decision on merger is approved by the Assembly of all the companies that participate in a status change, unless the Plan provides some other solution. Founding Act of newly founded company and Statute of the company if it is a joint-stock company shall take effect simultaneously with the entry into force of The Contract on the status change.[6]

Once the Decision on merger is approved, it is necessary to register the consequences resulting from the implementation of such decisions by the State Agency for Business Registers. After registration, the implementation of the status change of a company merger can be carried out in practice.

The law stipulates that the status change of the merger carried out in a simplified procedure if the acquiring company controls target-company with at least 90% stake in the share capital of the company transferor, or at least 90% of voting shares in the target company.

Simplification of the procedure refers to the fact that it is not necessary that the Assembly of the acquiring company makes a decision on the status change if the following conditions are provided. To ensure simplified procedure, it is necessary that the acquiring company fulfill the obligation to disclose all documents relevant to the implementation of status changes, in accordance with

[6] *"Regular procedure"*, as a method of conducting status change is regulated in articles 490-500 of Serbian Company Law.

the law, not later than one month before the date of the Assembly of the target company, on which decisions about the status change will be conducted.

Also, as a condition for the implementation of the simplified procedure Company Law stipulates obligation of the acquirer to provide insight into the acts and documents for its members in a period of one month before the Assembly of the target company, on which decisions about the status change will be conducted.

As a special condition for the implementation of the simplified procedure Company Law stipulates that the shareholders of the acquiring company who own shares representing at least 5% of its share capital shall not be required to convene Assembly of the acquirer for making a decision on status change.

If mentioned conditions are acquitted, the procedure is simplified in the sense that the transferor company shall not be obliged to submit to the Assembly in order to obtain approval of reports relating to the draft contract status change, as well as the auditor's report and the report of the Board of Directors or the Executive Director on the status change if the management company is bicameral.

For any questions concerning simplified procedure of status changes which are not regulated especially, Company law provides pursuant to the provisions relating to the implementation of statutory changes in the regular procedure.[7]

When it comes to taking over a company, legislatures in Serbia ratified a Law on Takeovers back in 2006[8]. This law applies only to joint-stock companies and to those that are listed on a stock exchange or unlisted joint-stock companies with over 100 shareholders and over three million euros total capital.

The Law insists that takeover bid needs to be public, transparent and in accordance with the law. A person is required to make a takeover bid public when the control ledger of 25% of the voting shares of the target company is reached. The notice of intention shall be submitted to the stock exchange on which the target company is listed, the Central Registry and Securities Commission as well as the target company. The Law forbids takeover bids that do not treat all shareholders in the same way. Also the Law provides exceptions for disclosure of the public offer in cases if the acquirer acquired the shares of the target company by way of inheritance, in bankruptcy procedures, a merger of companies, and so on.

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[7] *"Simplified procedure"*, as a method of conducting status change is regulated in article 501 of Serbian Company Law.

[8] *Zakon o preuzimanju akcionarskih društava Republike Srbije, ("Sl. glasnik RS", br. 46/2006, 107/2009 i 99/2011)*

Once the takeover bid is published in accordance with the Law, the period of its validity is between 21 and 45 days. The offered price of shares of the target company must not be lower than the weighted average price of shares in the last three months before the publication of the notice of intention, which is determined on the basis of reports of trading on the stock exchange.

During the validity of the bid, the interested shareholders may accept it and deposit their shares which are the subject of takeover in the Central Registry. After the expiry of the bid and the deadline for payment, in this case three days of the last day of validity of the bid, the bidder is required to submit and publish a report on the completed takeover, within one business day (Radenković-Jocić, Sekulić, 2013, p. 89).

The Law specifically recognized the right of all shareholders in the equal position in the takeover, the right on protection of their already clamped rights and the right to be informed in the takeover process. It also stipulates the right of dissenting shareholders to force the bidder in the takeover to buy their shares, which has gained 90% of the voting shares of the target company.

4. Conclusion

Making regulatory and legal framework definitely is one of the most important steps in the companies' competitiveness process. Through very long period European Union tried to improve every segment, and did it everything what better. One of significant element of adopting the directives is providing realization of interests of all participants. Due to that shareholders as one of the key stakeholders have important role. Protection of shareholders' rights must be on the first place for corporate governance. Analysis of status changes in European Union companies show many applicable facts. For example, new made company has better economic position at market, employees can protect own labor rights, and shareholders cannot lose their rights.

Among different directives, takeover of joint stock company is perhaps in focus of whole status changes procedures. According that, the Directive, on one side defines strong shareholder protection principles, and the other, it is granting some flexibility in the application of main parts of the legislative text. A threshold of voting rights is applied to the acquisition of new shares. Exceeding the threshold triggers the obligation to launch a takeover bid for all shares.

Legal framework is a necessary segment of takeovers not only in EU but in all national legislation. All participants in takeovers procedures shouldn't feel uncertainty through the process of public procurement as a required condition in all legislation. If a country wants to be competitive, it should provide the same conditions for national and foreign interested companies.

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UTICAJ STATUSNIH PROMENA KOMPANIJA NA NJIHOVU KONKURENTNOST

Abstrakt: U ovom radu autori se bave pitanjima i izazovima koji stoje u vezi sa statusnim promenama kompanije i kako one utiču na konkurentnost privrednog društva na tržištu. Statusne promene, u prvom redu spajanja i pripajanja kompanija, predstavljaju model ekonomske aktivnosti kojom vlasnici kapitala i menadžment kompanije teži ka maksimaciji profita. Kako bi se u tom procesu donosile dobre i opravdane odluke, sa ciljem ostvarivanja najboljih interesa kompanije, neophodno je dobro poznavanje propisa iz ove oblasti. Ovim radom se pružaju odgovori na različita pitanja koja će se naći na putu onih koji donose odluke i sprovode proces statusne promene. Imajući u vidu činjenicu da sprovođenje statusne promene često ima internacionalni karakter, zbog toga što su kompanije uključene u statusnu promenu rezidenti različitih država, autori će posebnu pažnju obratiti na legislativu Evropske unije kao i na važeći zakonodavni okvir Republike Srbije u ovoj oblasti.

Ključne reči: statusne promene, kompanije, konkurentnost, spajanje, preuzimanje